

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SHANE ISAAC JOHNSON,

APPELLANT

APPELLATE CASE NO 2017-000873

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:
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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
) No. 2015 GS 40 06544

3

4 STATE OF SOUTH CAROLINA)

5)

6 versus)

TRANSCRIPT OF RECORD

7)

8 SHANE ISAAC JOHNSON)

9 Defendant)

March 27, 28, 29, 2017

11 B E F O R E :

12 HONORABLE R. KNOX McMAHON, Judge Presiding

13

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

15 For the State:

LUCK CAMPBELL, Esq.
 Assistant Solicitor

16

17 For the Defendant:

BANKS, Esq.
 N. SIMPSON, Esq.

18

19 Reporter Present:

CRYSTAL HOLMES

20

21

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24

25

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15 (CV of Dr. Raven also

16 marked per audio but

17 not shown on list of

18 Reporter) p. 37

19

20

21

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23

24

25

1 (The within matter came before the Court for hearing
2 on March 27, 2017)

3 SOLICITOR: Your Honor, the Defendant is here.

4 THE COURT: All right, Mr. Banks.

5 MR. BANKS: Thank you, Your Honor. May it please the
6 Court.

7 We are here today on State v. Shane Johnson which was
8 scheduled for trial next week in the Court of General Ses-
9 sions.

10 He is charged with one count of intention to inflict
11 great bodily harm on a child and the infliction of great
12 bodily harm on a child.

13 This is the Defendant's motion for the Court to order
14 an independent evaluation of the alleged victim in this
15 case, Your Honor.

16 The basic background in the case is that the child
17 or the alleged victim is a minor who at this point is some
18 eight years old and who was seven years old at the time of
19 the alleged incident.

20 He was taking a shower and at some point he was in-
21 jured severely during the shower, and the only independent
22 witness or witnesses of that was the alleged victim, the
23 minor child. That is the position of the Defense.

24 There has been no review as to the custody or of the
25 medical records concerning the alleged victim, Your Honor,

1 and we have retained a forensic psychiatrist, Jessie Raven,
2 to address some concerns that we have.

3 We would like to present his testimony today and then
4 to have some discussion with the Court concerning the com-
5 petency of the child.

6 THE COURT: All right, do you have anything at this
7 point before the witness is called, Solicitor?

8 SOLICITOR: Your Honor, we would oppose the motion of
9 the Defendant, and I would hand up to the Court a copy of
10 the report of the incident in question.

11 (Portion inaudible)

12 THE COURT: Thank you, Solicitor.

13 You may call your witness.

14 MR. BANKS: We would call Dr. Jessie Raven.

15 JESSIE RAVEN, being duly
16 sworn, testified as follows:

17 CLERK: Please be seated and state your full name for
18 the record.

19 WITNESS: My name is Jessie Andrew Raven.

20 DIRECT EXAMINATION

21 BY MR. BANKS:

22 Q. Dr. Raven, would you please explain to the Court what
23 your profession is?

24 A. Yes, I am a psychiatrist and I have training in for-
25 ensic psychiatry. I also have training in childhood and

DR. RAVEN ON DIRECT

1 adolescent psychiatry and in general psychiatry. I am
2 board certified in all three.

3 Q. And would you give the Court your background and edu-
4 cation?

5 A. I have a Bachelors from Western Kentucky University.
6 My medical degree is from the University of Kentucky.

7 I have training in general psychiatry, childhood and
8 adolescent psychiatry as well as forensic psychiatry, hav-
9 ing gone to U.S.C. Palmetto Health Care in Columbia for
10 six years of credit. As I said, I am board certified in
11 each.

12 Q. And where are you currently employed?

13 A. I am self employed. I have my own business, and I am
14 an Associate at Midland Psychiatric and that is where I do
15 my outpatient psychiatry.

16 I also have a contract with the Department of Disabil-
17 ities and Special Needs as their consultant psychiatrist.

18 Q. Have you ever been qualified as an expert?

19 A. Yes, I have.

20 Q. Have you ever been retained as an expert in a criminal
21 case?

22 A. Yes, I have, by Solicitors in Beaufort County.

23 MR. BANKS: Your Honor, at this point we would move to
24 have Dr. Raven qualified as an expert in forensic and child
25 psychiatry.

DR. RAVEN ON DIRECT

1 THE COURT: Solicitor.

2 SOLICITOR: No questions of the witness.

3 THE COURT: All right. Then he is so qualified.

4 BY MR. BANKS:

5 Q. Doctor Raven, in what capacity are you involved in
6 this case?

7 A. You have asked me to review records regarding this
8 case and the minor child in this case who has a history of
9 autism spectrum disorder.

10 Q. And what was the extent of that review?

11 A. . . .

12 Q. Was it documents, videos or . . .

13 A. I was not able to interview the child. I was able to
14 review the videos of department interviews and the reports
15 associated with that.

16 I was able to review his pediatric records, his re-
17 cords from independent resources, D.S.S. records, school
18 records, and then the discovery records that you have pro-
19 vided to me in wide variety.

20 Q. All right.

21 A. What I was excluded from reviewing was that I did not
22 review the actual interview of the two adults in the case.

23 Q. And this morning did you see this video in my office
24 which I asked you to review?

25 A. Yes, I believe so.

DR. RAVEN ON DIRECT

1 Q. And was that the same item that was presented to you
2 earlier that you said you reviewed prior to this?

3 A. Yes, I believe so.

4 MR. BANKS: Your Honor, I would like to mark this for
5 identification as a Court's Exhibit.

6 THE COURT: Court's Exhibit 1.

7 (CD marked for identification as Court's Exhibit Num-
8 ber 1)

9 THE COURT: You may continue.

10 BY MR. BANKS:

11 Q. Doctor, just to be clear, did you have an opportunity
12 to actually evaluate the minor child?

13 A. No, I did not.

14 Q. Now, in your review of the records that you just went
15 over, including the videos and other records, did you have
16 any concerns regarding the competency of the child?

17 A. Yes, I have some concern about the potential issue of
18 whether he is competent to testify.

19 Q. All right, and could you distinguish for us the dif-
20 ference between competency, say, of a defendant, and the
21 competency of a witness?

22 A. Are you referring to competency to stand trial or --
23 someone can be competent for a wide variety of things and
24 be not competent for a variety of things. The difference
25 here being assisting his attorney and competent to stand

DR. RAVEN ON DIRECT

1 trial versus competent to testify.

2 If a person is competent to testify it would mean that
3 they are able to remember and to accurately present the
4 facts, to know the difference between truth and a lie.

5 Q. Okay. Now, to be clear on this, were you able to act-
6 ually form an opinion about whether or not Reginald is com-
7 petent or not?

8 A. No, I don't have an opinion as to whether he is compe-
9 tent or not competent.

10 Q. Were you able to form an opinion about whether he
11 should be evaluated to determine whether or not he is com-
12 petent?

13 A. In my opinion to a reasonable degree of medical cer-
14 tainty I believe it would be of benefit to have him eval-
15 uated by someone specifically trained in autism to assure
16 that he does have competency.

17 My concern is that individuals with autism spectrum
18 disorder sometimes appear to be more competent than they
19 actually are. Oftentimes if someone is at a higher end of
20 functioning they can articulate their words very well and
21 communicate what their thoughts are pretty well but because
22 of the autism spectrum disorder they may be interpreting
23 facts -- they may have difficulty interpreting facts.

24 They may have difficulty putting facts together in a
25 way that is meaningful.

DR. RAVEN ON DIRECT

1 They may appear to be answering yes to a question or
2 even telling what a lie is or the truth is but not be able
3 to have more meaningful communication about it.

4 Q. All right. Now with autism is the child's age a factor
5 in your determination that he should be evaluated?

6 A. It -- yes, there are variations of autism but these
7 children in general if they are acclimated to time and
8 place they are able to testify, and while I have to con-
9 sider that for any child the consideration here is more the
10 autism than the age. More the autism diagnosis than the
11 age is of concern.

12 Q. Specifically turning to the video, could you explain
13 to the Court the concerns you have given that as far as the
14 competency issue?

15 A. Yes. I have concerns about the video as a whole in
16 terms of the content of the video itself. What I drew from
17 that is that I believe there were signs on the video that
18 are consistent with the records that exist that the child
19 has inherent communication skills.

20 Again, when the video served again, I guess, as my only
21 opportunity to see him, for lack of a better term, in life
22 form and communicating with other individuals rather than
23 just reviewing records.

24 Q. So your opinion is not based on how well or not well
25 the forensic interview is done?

DR. RAVEN ON DIRECT

1 A. No.

2 Q. So that was just more of an opportunity for you to
3 see the child interacting with someone else?

4 A. Yes.

5 Q. Now, let me see. I know we've been using this much
6 today but could you explain what you mean when you refer
7 to spectrum?

8 A. It means that by processing this as autism spectrum
9 disorder the spectrum -- the word spectrum has been used
10 for many years to describe the wide range in which someone
11 can present with autism by symptoms, but autism spectrum
12 disorder is a disorder with a central issue inherent in
13 communication, some verbally or non-verbally, or a com-
14 bination thereof.

15 It includes not only the ability to articulate, to
16 communicate, to form words, but also to have a meaningful
17 knowledge of communication, understanding nuances and mak-
18 ing a sentence.

19 Like having a practical communication with someone and
20 not just forming words.

21 Q. All right. Now, there has been some reference that
22 Reginald's autism is classified as highly functioning. Is
23 that something that you agree with with what you were able
24 to review, or did you have concerns?

25 A. I don't have an opinion whether it is high functioning

DR. RAVEN ON DIRECT

1 or not because I haven't interviewed him, but whether I've
2 gleaned from that is -- I would say that means a lot of
3 things, and I could not say that based on what I've seen
4 that someone is able to be competent to testify, just
5 based on that.

6 If I were to evaluate someone I might say they were
7 highly functioning but that might not mean that person is
8 competent in a variety of ways.

9 Q. Did you have any concerns about background or training
10 in autism that anybody in this case had or did not have?

11 A. In large part I am not familiar with any of their
12 personal resources, but to the best of my knowledge none
13 of them were specialists in diagnosing or treating autism.

14 Q. Is it important for someone to have treatment and ex-
15 perience in the area of autism to be able to tell whether
16 or not they will be able to distinguish between truth and
17 a lie?

18 A. I believe that would be important in this case.

19 Q. And along that same line, is it important for a per-
20 son to have training and experience in evaluating whether
21 a person is able to communicate what happened to him?

22 A. Yes, I would believe so.

23 Q. And do you have concerns about Reginald's ability to
24 perceive an event with a substantial degree of accuracy?

25 A. I have concern that he needs to be evaluated to find

DR. RAVEN ON DIRECT

1 whether he's able to do so or not, and I believe from his
2 diagnosis and history he should be evaluated.

3 Q. Is it your opinion that Reginald should be indepen-
4 dently evaluated -- is that psychological or psychiatric-
5 ally evaluated?

6 Can you explain that a little bit?

7 A. What I am describing is evaluation by an individual
8 who has training and education in autism spectrum disorder
9 to evaluate him. Whether it is a psychiatrist or psycholo-
10 gist, I think the training in autism is far more important
11 than the kind of degree.

12 Q. Do you have an opinion of anybody who would be quali-
13 fied to conduct this evaluation?

14 A. Number one, someone with the set of skills and educated
15 in forensics, say, as well as in autism, but I do believe
16 that the autism spectrum disorder is the most important
17 thing.

18 Q. Okay. All right.

19 A. I believe someone connected with the DDSN, the Depart-
20 ment of disabilities and Special Needs, such as Betty
21 Campbell, would be ideal or Dr. Michelle Hall, who for ten
22 years has been with DDSN and she has an extensive background
23 and history of autism evaluating. They would be ideal, and
24 I also think there are child psychologists around the State
25 -- Dr. April Richardson in Greenville, South Carolina.

DR. RAVEN ON DIRECT

1 (Portion inaudible) There are also other experts in autism
2 in general.

3 Q. Okay. Can you explain to the Court the nature of the
4 examination you suggest? How intrusive the examination
5 would be?

6 A. If you refer him to someone for psychological testing
7 then that would be in their discretion and their expertise,
8 but I would think primarily an interview evaluation. It
9 would not be a hands-on visit or physical or any sort of
10 invasive type evaluation.

11 Nothing that would be intrusive or damaging in the
12 evaluation especially with someone doing the evaluation who
13 has the proper training.

14 Q. All right. Can you explain why the evidence and the
15 information you currently have and that you have reviewed
16 is not adequate in determining the competency of this
17 young person?

18 A. In terms of my ability to evaluate him or . .

19 Q. Sure. In terms of your ability.

20 A. Well, I haven't met the person and haven't had the
21 direct contact with him so I would not be able to form an
22 opinion without having that chance.

23 So I have not had adequate information and would not
24 be able to evaluate him without meeting him directly.

25 MR. BANKS: Court's indulgence.

DR. RAVEN ON DIRECT

1 THE COURT: Yes, sir.

2 (Brief pause)

3 BY MR. BANKS:

4 Q. Just very briefly, in your review of the video could
5 you explain some specific things that Reginald may or may
6 not have done that caused you concern or gave you pause?

7 A. Sure. I would start by saying that these things espe-
8 cially depending on knowing there is a history and a back-
9 ground of autism -- a lot of things I would describe could
10 apply to typically developing children in interviews like
11 this, but they are especially important knowing the autism
12 history.

13 For example, he is not a very social person but he was
14 standing very close at times to the interviewer, having
15 just met the person. I assume he had just met her going
16 into the interview.

17 He seemed moving around quite a bit during the ques-
18 tions. In giving answers to question that called for a
19 very concrete response he would not just give a yes or no
20 answer but in my view was being very difficult.

21 With a simple question he would just go into every-
22 thing else in his recitations rather than being concrete
23 and direct. In my view it appears that he wanted to answer
24 and get out of there, to leave the interview room although
25 he did answer a few more questions. (Portion inaudible)

DR. RAVEN ON DIRECT

1 Q. I think that's all the questions I have for you. Thank
2 you.

3 THE COURT: Solicitor.

4 SOLICITOR: May it please the Court.

5 CROSS EXAMINATION

6 BY SOLICITOR:

7 Q. The thing you said that concerned you -- let me back up.

8 I just talked to you initially the first time this
9 morning.

10 A. Right.

11 Q. And I asked the defense attorney if I could do that,
12 and you told me you didn't have any concerns about the in-
13 terview?

14 A. I didn't have any concerns about how the interview was
15 conducted.

16 Q. You told me when I asked you about what your concerns
17 were about this child's behavior during the interview you
18 told me that you didn't have any concerns with the inter-
19 view but you had concerns because he was autistic?

20 A. . . .

21 Q. That's what you told me?

22 A. That's not what I meant to say.

23 Q. So now you're saying you think he stands too close to
24 the interviewer?

25 A. I thought that was a sign of convincing communication.

DR. RAVEN ON CROSS

1 Q. That you thought that he had concrete answers and he
2 wouldn't just answer yes or no but he actually said what
3 happened concretely?

4 A. He --- yes, the concrete answers that he was not able to
5 --- I don't know if he was not able to or chose not to answer
6 concretely but wanted to elaborate further.

7 Q. Which brings us to the next thing. You said he did
8 not want to be there?

9 A. Yes, I assumed that to be the case. Yes.

10 Q. So he didn't want to be there and talk about the most
11 painful thing in his life that has ever happened to him?

12 A. That's a fact.

13 Q. And that only occurs with autistic children?

14 A. No, I believe that it was a concern that I had. It
15 is based on the history of autism as I have seen.

16 Q. As you told me as he appeared in the video that he ap-
17 peared to be perfectly competent?

18 A. No, I didn't say that.

19 Q. You said he appeared to be more competent than he may
20 be. Is that how you put it to me?

21 A. I have said a person with autism may appear to be more
22 competent in a circumstance than they are.

23 Q. And that was your opinion in viewing this video?

24 A. My opinion is that there is not enough information and
25 that gives me concern.

DR. RAVEN ON CROSS

1 Q. Okay.

2 A. That there is not enough information.

3 Q. When did you get hired?

4 A. May I refer to my file?

5 Q. Sure. You have notes?

6 A. March 15th or the 17th -- I was contacted days or a week
7 before that.

8 Q. So about March first?

9 A. Roughly, yes.

10 Q. And then you entered into a contract on March 15th?

11 A. That's correct.

12 Q. And when did you inform the defense -- when did you
13 first review the audio that caused you concern?

14 A. It would have been after March 15th. March 22nd.

15 Q. So you didn't review it for a week after you were re-
16 tained or you had already seen it then?

17 A. No, I saw it then.

18 Q. And then when you got it you immediately told the
19 defense about your concerns?

20 A. After I had examined the records.

21 Q. Why did it take two or three weeks for you all to come
22 to an agreement as far as your retainer?

23 A. Well, I had to get the records and review them in or-
24 der to know what would become necessary. It is possible
25 that after reviewing the records I may have been needed or

DR. RAVEN ON CROSS

1 I may not have been needed, as well as whether or not an
2 evaluation would be warranted. Those were the conversations
3 we had on the initial contact when we discussed the case in
4 broad terms.

5 Q. As an expert in reviewing this, were you ever going
6 to tell them that you could come to an opinion as far as
7 this child's competency to be a witness without interview-
8 ing him?

9 A. No, I cannot think of a circumstance where someone had
10 asked me to form an opinion about someone's competency with-
11 out being able to interview them myself. I am able to say
12 that. I only review records.

13 Q. And since you were retained on March 15th you knew the
14 case was scheduled for trial in a few days?

15 A. That was what my understanding was.

16 Q. And then after you were retained on March 15th, they
17 give you the documents in a week, on the 22nd, and then you
18 were able to say, oh, his competency needs to be checked
19 out?

20 A. So I -- what was the question?

21 Q. Were you able to be retained on March 15th but you
22 don't get any of the records until the 22nd, and your opin-
23 ion is that he should be checked out because of the autism?
24 I'm a little confused on that.

25 A. No, there was indication as well in the video but not

DR. RAVEN ON CROSS

1 as you suggest from a review of the records.

2 Q. Well, in this case then he is a high-functioning per-
3 son with autism spectrum disorder, so your automatic response
4 -- your automatic response will always be, according to
5 you, that he needs to have an evaluation?

6 A. No, it is . . .

7 Q. Although he may appear to be more competent than he
8 really is.

9 A. He may appear to be very competent but I would still
10 recommend he have an evaluation to determine if they are com-
11 petent or not. But, yes, there is something about having an
12 autism spectrum diagnosis that it always needs to be evalu-
13 ated before they can be considered competent.

14 Q. So your assessment is that a child with aut-spec dis-
15 order should always be evaluated?

16 A. I don't know if there are exceptions to that but I'd
17 say most of the time, yes.

18 Q. In this case, you would agree with me and you have
19 admitted this child answered the questions pretty well?

20 A. . .

21 Q. As you said, he appears more competent than he may be?

22 A. He appears to be able to answer the questions that
23 were posed to him. A person diagnosed with autism spectrum
24 disorder may respond to questions and that not really be a
25 measure of their competency.

DR. RAVEN ON CROSS

1 He may or may not be competent and I do not have any
2 opinion because I don't have enough information to be able
3 to form an opinion. That is why I would suggest a fur-
4 ther evaluation.

5 Q. Let me ask you this. Did you know that he just had
6 undergone a physical examination right before this inter-
7 view; that they had to remove all of his bandages and treat
8 and graft skin?

9 A. I wasn't aware of that.

10 Q. Did you notice that he was able to move but kind of in
11 a stiff manner because he didn't have full use of his arms
12 at that point because of the burns?

13 A. I didn't notice any impaired mobility.

14 Q. You mentioned as a part of your training that you
15 trained here at the University of South Carolina?

16 A. Yes, when I came here.

17 Q. And in fact some of your training as far as determin-
18 ing a witness' competence -- you were actually trained by
19 (inaudible)?

20 A. Yes, the Childhurst training as well as for forensic
21 interview analysis.

22 Q. So you would agree with me that that training and the
23 Childhurst training as well as witness competency -- there
24 is a lot of training in that area where they train you?

25 A. . . .

DR. RAVEN ON CROSS

1 Q. Do you believe there is a lot of training?

2 A. There may be. I believe there is a lot of training
3 but you need training to be able to do a good job. How that
4 changes things or what the training is for an opposite
5 standpoint.

6 Q. They treat children with autism, they treat children
7 with mental health disorders, they treat all kinds of
8 children as you're aware, aren't you?

9 A. I'm not aware of treatment of autistic children, and
10 at this point I -- at one point they were treating it as . .

11 Q. I'm sorry. I mis-spoke. They evaluate children on
12 all kinds of different issues, be it hyper-activity, autism,
13 mental health issues, post traumatic stress disorder?

14 A. In my awareness I don't recall a treatment for autism.
15 Evaluation, yes. There are many different issues children
16 bring into play. I can't speak to them.

17 Q. As far as autism it is pretty prevalent nationwide or
18 world-wide, isn't it?

19 A. I believe that's . .

20 Q. One in sixty-eight children are diagnosed with autism
21 spectrum . .

22 A. Yes, I believe that's right.

23 Q. So you aren't saying that they aren't evaluating autistic
24 children because you don't know?

25 A. I don't know what the evaluation response is in autistic

DR. RAVEN ON CROSS

1 children.

2 Q. Let me get back to the records you brought with you.

3 You said you reviewed the interview?

4 A. Yes.

5 Q. The pediatric or pediatrician's records?

6 A. Yes.

7 Q. The DSS records?

8 A. Yes.

9 Q. And school records?

10 A. Yes.

11 Q. In fact, the confession by Mr. Johnson saying he did
12 it or admitted it?

13 A. I didn't -- the discovery records were excluded to me
14 and I did not see photographs. I understand there are video
15 interviews with the adults. I don't see those in my notes

16 Q. Okay. You didn't review the hospital records, did
17 you?

18 A. Only those that appeared in other areas.

19 Q. Were you aware that when the child first presented he
20 was literally in agony; that he had twenty-six percent of
21 his body in third degree burns and forty percent in other
22 burns?

23 A. . .

24 Q. Extensive burns. You agree with that?

25 A. Yes.

DR. RAVEN ON CROSS

1 Q. And he said Shane did this?

2 A. I saw that.

3 Q. And in that excited utterance under the influence of
4 what had just happened to him he immediately said who had
5 hurt him?

6 A. . .

7 Q. That wouldn't be reliable?

8 A. I can't say.

9 Q. Because he's autistic?

10 A. . .

11 Q. Are you aware he was immediately transferred to the
12 burn unit because his burns were so bad; that he told the
13 doctor there exactly who did it to him?

14 A. I am aware that he said to the doctor Shane or Daddy
15 did it.

16 Q. Shane or Daddy, and then as he stayed at the hospital
17 he told those people there who did it to him? The doctors
18 and the nurses?

19 A. I believe that's accurate based on what is in the re-
20 cords.

21 Q. Are you aware that when his family members, the ones
22 that were concerned about his health, asked him about what
23 happened, he told them Shane did it?

24 A. I'm not aware of that.

25 Q. Are you aware that since this event occurred he has

DR. RAVEN ON CROSS

1 never said anything other than Shane did this?

2 A. I know he has said that.

3 Q. Are you aware of studies around as far as autistic
4 children and their relation to (inaudible)?

5 A. . .

6 Q. Do you want me to show you this?

7 A. Sure.

8 SOLICITOR: If I may hand it up to the Court?

9 (Brief pause)

10 A. This is my first time seeing this.

11 BY SOLICITOR:

12 Q. And it talks about (inaudible) in autistic groups of
13 children.

14 A. . . .

15 MR. BANKS: Your Honor, he has said this is the first
16 time he's seen it. I don't think he can be questioned about
17 what it talks about.

18 THE COURT: He's an expert.

19 SOLICITOR: Thank you, Your Honor.

20 BY SOLICITOR:

21 Q. I'll start with the headline. It says -- it talks
22 about children lying. Correct?

23 A. Correct.

24 Q. Two different groups?

25 A. Correct. I see that.

1 Q. Autistic children -- ASD is how they refer to them?

2 A. Correct.

3 Q. And then the typically developed control children?

4 A. I see that.

5 Q. And in fact there are studies that found that typically
6 developing children lie at a much greater rate than autistic
7 children?

8 A. I see that.

9 Q. And then it goes on to say that children with ASD;
10 that's autism spectrum disorder, were poorer at maintaining
11 their lies than that control group?

12 A. I see that.

13 Q. Do you disagree with these findings?

14 A. No, not entirely. I'd have to look at the studies,
15 but it hasn't been established that anybody is lying which
16 is a bit different. There is a big difference in lying
17 and being able to accurately depict something. A lie is
18 telling something that is not true.

19 I haven't said anything about lying at all.

20 Q. Is what really catches you that he didn't perceive
21 what happened?

22 A. . .

23 Q. As far as telling what happened?

24 A. He's already been interviewed and interacted with a
25 lot of persons. We had the opportunity to see him interacting

DR. RAVEN ON CROSS

1 with a person and see whether autism symptoms appear to be
2 there. I don't know what is accurate or not accurate.

3 That's why he needs an evaluation so that that can be
4 assessed by someone fully able to step in that role with
5 the child.

6 Q. Doctor, in your opinion, you say it doesn't matter
7 where they are in the autism spectrum, that they should be
8 evaluated?

9 A. I don't say always. There are many cases that should,
10 yes. I would say in most cases.

11 Q. You are aware that the ability of a child witness or
12 an adult witness -- that competence has to be determined by
13 the Court?

14 A. Yes.

15 Q. And there are steps taken to maintain and insure the
16 child understands the difference between the truth and a
17 lie?

18 A. Yes.

19 Q. Because, as you know, no one can guarantee or make
20 someone tell the truth or a lie?

21 A. I agree.

22 Q. And you also are aware that this child has never devi--
23 ated from what he has said happened to him as to his version?

24 A. Yes.

25 Q. And would that affect your opinion in any way since

DR. RAVEN ON CROSS

1 you found out about that?

2 A. No, not my opinion that he should have an evaluation.

3 Q. You mentioned that part of your concern is that he was
4 uncomfortable talking about what happened to him?

5 A. I thought it was a difficult interview.

6 Q. And that being interviewed about it over and over and
7 over could be potentially detrimental to the child as well.
8 Did you ever look at the post-trauma resources?

9 A. Absolutely.

10 Q. So again he was consistent about what happened to him?

11 A. Yes, and there was one point in which he was reminded
12 of what had happened to him, and I was a little uncomfort-
13 able with that.

14 Reminding him may . .

15 Q. But it can be traumatic for a child to have to repeat
16 over and over what happened to him?

17 A. He . .

18 Q. Regardless of whether they are autistic or not?

19 A. It can be.

20 Q. So this could be detrimental to his health and speci-
21 fically if he's been diagnosed with post-traumatic stress
22 disorder?

23 A. I do not believe that such evaluation if it was made
24 would be detrimental to his health or affect it in a good
25 way.

DR. RAVEN ON CROSS

1 Q. Additionally, Doctor, are you aware that he has been
2 classified as a high-function -- on the higher range of the
3 autism spectrum?

4 A. I see it was mentioned, yes.

5 Q. And I think you said you can't give any verification
6 of that because most people other than you don't know what
7 they are talking about?

8 A. I never said that.

9 Q. You said that most people don't know what they're talk-
10 ing about or something to that effect?

11 A. No, I didn't.

12 Q. What did you say?

13 A. I said that there were some high-functioning character-
14 izations mentioned but I don't know what that means as it
15 was said. A lot of individuals who are listed as high-
16 functioning doesn't relate to someone's competency, in my
17 opinion.

18 Q. Would you agree with me most autistic children are ex-
19 tremely intelligent?

20 A. I believe most of them are at least of normal intelli-
21 gence.

22 Q. At least of normal intelligence?

23 A. Correct.

24 Q. And would you agree with me that most people with nor-
25 mal intelligence are able to perceive what happens to them?

DR. RAVEN ON CROSS

1 A. If they have autism, yes, that may be.

2 Q. Would you agree with me that if someone is able to re-
3 count specifically what happened that they would be able to
4 express that regardless of how close they are to somebody?

5 A. . . .

6 Q. Would that be indicative of their ability to relate
7 what happened to them?

8 A. Not necessarily.

9 Q. That would be so, I guess, with almost any child or any
10 adult?

11 A. A child with autism I think would be of greater, of
12 much, much greater risk than someone else.

13 SOLICITOR: Beg the Court's indulgence.

14 THE COURT: Yes, maam.

15 (Brief pause)

16 BY SOLICITOR:

17 Q. Would you agree with me that Reginald was able to give
18 contextual details?

19 A. Yes, to a degree.

20 Q. Would you agree with me that he appeared to under-
21 stand the interview questions and to provide consistent re-
22 sponses with previous reports?

23 A. Yes, to a degree. Yes.

24 Q. And you mentioned in your Direct Examination that he
25 has inherent communication skills?

DR. RAVEN ON CROSS

1 A. . . .

2 Q. That he was -- that he has inherent communication
3 skills in relating what happened to him?

4 A. No, I didn't say that.

5 Q. Did he appear to understand questions and respond ap-
6 propriately?

7 A. I don't know if he responded appropriately or not but
8 he appeared to hear questions asked of him. I myself am
9 not able to say if he responded appropriately.

10 Q. I have no further questions.

11 THE COURT: Mr. Banks?

12 MR. BANKS: Very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. BANKS:

15 Q. Dr. Raven, when you say giving concrete answers in an
16 interview, what does that relate or what does that mean
17 when you say concrete answers?

18 A. In terms of that it is talking about concrete versus
19 abstract answers. Abstract would mean that you would have
20 a lot more understanding that goes beyond just the words he
21 is saying.

22 For example, if someone is very concretely answering
23 they would say something like from a book but in the ab-
24 stract they would be giving more depth in their answer.
25 So concrete meaning more blue and white answer, I would say,

1 sort of yes or no, by the book.

2 Q. So someone giving concrete answers would not expand ---
3 did he ever seem to clearly expand on what happened to him
4 outside of Shane did this or did that?

5 A. Not much. I did not see that.

6 Q. When you talk about where he falls within this autism
7 scale, would it have been helpful to you to have this addi-
8 tional diagnosis or evaluation that gave you the diagnosis
9 of being autistic?

10 A. If I -- I'm not sure what . . .

11 Q. You were not provided that?

12 A. I don't believe so, no.

13 Q. Now, is it your position on the stand here today that
14 you believe he should be evaluated because you think that
15 Reginald is lying about anything?

16 A. No. What makes someone competent is being able to
17 communicate.

18 Q. Being able to communicate and to understand the dif-
19 ference between a lie and the truth?

20 A. Yes, I believe so.

21 Q. And those are the two concerns that you have?

22 A. Yes. I believe that he understands what the truth is
23 from a lie and what that means, but my question is, given
24 the autism diagnosis, does he understand the facts accu-
25 ately to be able to give them.

DR. RAVEN ON REDIRECT

1 I don't know whether he does or not. I do not have
2 enough information to know that so I believe he needs an
3 evaluation in order to know that.

4 Q. Would the purpose of this evaluation be to give another
5 tool in order to make the decision as to whether he is com-
6 petent or not?

7 A. In my opinion, yes. I have no idea what the answer
8 is as far as that.

9 Q. Thank you. No further questions.

10 THE COURT: Anything further?

11 SOLICITOR: Just a couple of questions.

12 RECROSS EXAMINATION

13 BY SOLICITOR:

14 Q. Doctor, you are here so I want to take advantage of
15 it.

16 A. Okay.

17 (Brief pause)

18 Q. Dr. Raven, looking at this, how much are you being paid
19 here today?

20 A. I get paid by the hour regardless of what is happening
21 in the case. Three Hundred Fifty Dollars per hour.

22 Q. So regardless of whether you are just reading the file
23 or testifying in Court or waiting to get on the stand?

24 A. That's correct.

25 SOLICITOR: Beg the Court's indulgence.

DR. RAVEN ON RECROSS

1 (Brief pause)

2 BY SOLICITOR:

3 Q. You thought he was able to articulate, and when asked
4 what happened to his skin he said he got burned; that Shane
5 burned me?

6 A. I believe so. I am not sure of the exact way he pre-
7 sented that.

8 Q. Did he burn him with hot water in the shower?

9 A. If that's what he said, yes.

10 Q. And after he got burned he was taken to the hospital?

11 A. If that's what he said.

12 Q. And he talks about how he didn't want to go to the
13 hospital because he was naked because he couldn't put his
14 clothes on?

15 A. Yes.

16 Q. Talks about he was taking a bath but he got burned be-
17 cause he was being bad?

18 A. Yes.

19 Q. So is that the extent of your notes?

20 A. That's the extent of my handwritten notes but . .

21 Q. Did you -- sorry.

22 A. . . just to be clear those were my observations of the

23 Q. Just a record but not of any substance?

24 A. . . that is -- if you would allow my answer?

25 Q. Sure.

DR. RAVEN ON RECROSS

1 (Counsel and witness speaking at the same time)

2 A. Okay, so that is the information sheet and that is the
3 letter, if you would like to look at it.

4 Q. That's okay.

5 A. That is the retainer agreement that was denied, and so
6 I have been used to sending the number of hours and request-
7 ing retainer. I initially sent in one on March 13th.

8 Q. Okay.

9 A. And that is the way they are typically worded, the
10 agreement for payment but not paying a retainer up front
11 which led to this on March 15th. This is the understanding
12 we came to.

13 Q. I see. So prior to today, how many hours have you
14 presented approximately?

15 A. Prior to today six or seven hours.

16 Q. So then your opinion is that the child would have to be
17 evaluated before he can come to Court and that would be
18 four hours or . . .

19 A. I understand I would not need to be the person who did
20 the evaluation.

21 Q. I understand that but you would have to put in addi-
22 tional time to come to Court and testify, and that all adds
23 or makes it more expensive?

24 A. I don't know at this time.

25 Q. Thank you. No further questions.

1 MR. BANKS: No further questions.

2 THE COURT: Thank you very much, Doctor. Thank you
3 for being with us.

4 (Witness excused by the Court)

5 MR. BANKS: That would be our last witness we would
6 call.

7 THE COURT: Anything from the State?

8 SOLICITOR: We were actually going to call -- beg the
9 Court's indulgence.

10 THE COURT: Yes, maam.

11 (Brief pause)

12 SOLICITOR: Your Honor, at this point we would ask that
13 you view the video or at some point, and we do have Heather
14 Smith here who conducted the forensic interview.

15 If you have any questions, she will be available.

16 THE COURT: Do you intend to call her?

17 SOLICITOR: I don't think so, based on their expert wit-
18 ness, Your Honor.

19 THE COURT: All right, I would view the video.

20 SOLICITOR: And we would also ask . .

21 THE COURT: I also have a report that was handed to my
22 Law Clerk, the Assessment Resource Center forensic interview
23 report.

24 MR. BANKS: Yes, sir.

25 THE COURT: Is that a part of the record?

1 SOLICITOR: We would like to make that a part of the
2 record, Your Honor.

3 THE COURT: And there is also what is termed a behavior
4 report as I understand it that you want to be a part of the
5 record.

6 SOLICITOR: Yes, sir, we would like that as well.

7 THE COURT: But you are not calling your witness?

8 SOLICITOR: No, Your Honor. We believe the inter-
9 view would be sufficient, and this is a copy of her CV to
10 be made a part of the record.

11 She is available for any questions the Court may have
12 for her.

13 THE COURT: I don't know that I have any questions of
14 her at this point.

15 SOLICITOR: In addition, Your Honor, we would hand up --
16 we would make these a part of the record from the hospital,
17 photographs of the burns to show basically the extent of
18 the trauma and which form the underlying basis for the
19 excited utterance.

20 (Brief pause)

21 MR. BANKS: I would have no objection, and if I may
22 approach the Court Reporter . . .

23 THE COURT: Yes, sir.

24 MR. BANKS: We would make Dr. Raven's CV a Court Ex-
25 hibit. Thank you.

1 THE COURT: All right. A part of the State's case is
2 the video.

3 SOLICITOR: Yes, sir. I would make the article an Exhibit.

4 THE COURT: I have the report handed up to my Law Clerk,
5 as I said, which I will review.

6 (Brief pause)

7 THE COURT: Would you like to call Ms. Smith?

8 SOLICITOR: Your Honor, I think we would like to put
9 her up as far as her training and as far as dealing with
10 children with different things such as autism.

11 THE COURT: All right.

12 SOLICITOR: The State calls Heather Smith.

13 HEATHER SMITH, being duly
14 sworn, testified as follows:

15 CLERK: Please be seated and state your name for the
16 record.

17 WITNESS: My name is Heather Smith.

18 DIRECT EXAMINATION

19 BY SOLICITOR:

20 Q. Ms. Smith, where are you employed?

21 A. I'm employed with D.S.S. and also with ARC.

22 Q. And how long have you been with ARC?

23 A. Fourteen years.

24 Q. What is your current position there?

25 A. I am a forensic evaluator and a human services worker.

H. SMITH ON DIRECT

1 Q. Would you describe for us just briefly what services
2 and training the Assessment Resource Center provides?

3 A. We provide forensic interviews for law enforcement and
4 the Department of Social Services, and we also provide
5 training to state faculties in South Carolina in the train-
6 ing of Child First South Carolina.

7 Q. And with respect to forensic interviewing, what are the
8 age ranges of children that you may see.

9 Q. We interview children as young as three and some of
10 it is not very successful but as young as three, and we will
11 also meet with children at times that have disabilities,
12 to as old as late teens and adults that have some kind of
13 disabilities.

14 The top age of normal functioning children is eight-
15 een years.

16 Q. And are you and other interviewers and individuals at
17 the Assessment Resource Center trained in dealing with the
18 children who have disabilities such as autism?

19 A. Yes, we are.

20 Q. And for purposes of this case, were you aware or did
21 you have some information that this victim, Reginald, did
22 suffer from autism?

23 A. Yes, I did.

24 Q. And based on that, the developmental delays, in the
25 interview -- are they structured in such a way to accommodate . .

H. SMITH ON DIRECT

1 A. Absolutely.

2 SOLICITOR: Your Honor, you have the CV as well as the
3 packet, and rather than going through everything we would
4 ask that she be qualified in child abuse dynamics and dis-
5 ability as an expert.

6 I'll be happy to go further in laying foundation.

7 THE COURT: Mr. Banks.

8 MR. BANKS: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 (Brief pause)

11 MR. BANKS: Your Honor, it is my concern that her being
12 qualified as an expert to be able to deal with any type of

13 . . .

14 THE COURT: Speak up a little.

15 MR. BANKS: It's my concern, Your Honor, that if she
16 is qualified as an expert for purposes of getting some type
17 of contention as to her ability to work with the child, or
18 whether or not there is ability to provide a forensic inter-
19 view or anything like that.

20 So I would object at this point to . . .

21 THE COURT: You don't object that she's an expert but
22 you object that it may not be relevant as to whether or not
23 she would be able to provide an independent psychiatric
24 evaluation?

25 MR. BANKS: That's correct, Your Honor.

H. SMITH ON DIRECT

1 THE COURT: What is she an expert in, Solicitor?

2 SOLICITOR: Child abuse interviews and disclosure.

3 THE COURT: All right, I will qualify her as to that.

4 SOLICITOR: Yes, Your Honor, and I would like to add
5 that their expert, Mr. Raven, did testify regarding concerns
6 about the victim's ability to recall data and perceive
7 things, and I would like to ask Ms. Smith some questions
8 based on that and her opinion of the victim.

9 THE COURT: Let me see her CV.

10 SOLICITOR: Yes, sir. Court's Exhibit 3.

11 (Brief pause)

12 THE COURT: All right. I'll allow her to testify as
13 to those things.

14 You may proceed.

15 SOLICITOR: Thank you, Your Honor.

16 BY SOLICITOR:

17 Q. With respect to your interview with Reginald, were
18 you aware that he had a medical exam prior to that?

19 A. Yes.

20 Q. And describe for the Judge and Court what that entails?

21 A. The bandages had to be removed and I recall our child-
22 hood specialist who worked during the child's exam just
23 commenting to me that removing the bandages was very pain-
24 ful.

25 Q. So as far as his condition when he came to you, did

H. SMITH ON DIRECT

1 he seem agitated or in pain?

2 A. He definitely seemed agitated.

3 Q. And with respect to his ability to participate in the
4 interview and his competency and that term, explain that
5 for the Court?

6 A. So when we meet with children as adults who are to
7 interview them we are able to see whether they are able to
8 participate in an interview.

9 We are looking at whether they are able to understand
10 the interview rules and guidelines that we explain to them,
11 and we are looking at whether they are able to answer ques-
12 tions that we ask in a forensic interview, questions that
13 support the investigation; to assess whether they -- make
14 sure they can follow the questions in giving their answers.

15 So part of what we look at in interviews with children
16 with autism or some kind of disability are that we may need
17 to simplify language, we may need to check to make sure we
18 are understanding what the child is saying.

19 Then in asking follow-up questions just to make sure
20 we are getting the most simple and concrete questioning pro-
21 relating to the child.

22 Q. So competency at that point is just to participate in
23 the interview, not necessarily to take the oath to tell the
24 truth or the kind of competency evaluation the Court would
25 make?

H. SMITH ON DIRECT

1 A. That's correct.

2 Q. And with respect to Reginald, was he able to partici-
3 pate in this interview?

4 A. Yes, he was.

5 Q. And in your opinion, just briefly, as to whether
6 Reginald was able to expand on what happened to him, did
7 he actually provide you with pretty significant details as
8 to what had happened?

9 A. He provided exceptional details. He was able to an-
10 swer questions about where other people were at the time
11 of the incident.

12 He was able to provide information about what was hap-
13 pening, what we call discretionary impressions. That was
14 where he was able to give that first and then something
15 else after that and something else. He was able to give
16 details in sequence which is what you want to see in a
17 forensic interview.

18 Q. And so based upon his development and everything you
19 knew, he was able to communicate with you?

20 A. Very well.

21 Q. With respect to not wanting to be there and that he
22 was uncomfortable, are any children with or without autism
23 uncomfortable in interview?

24 A. Yes. Oftentimes things have occurred before they get
25 to me where the have been removed from their homes, placed

H. SMITH ON DIRECT

1 in foster care, or they've been in a hospital setting such
2 as this case, where they are not always comfortable.

3 Especially in a child with autism you are going to use
4 a lot of direction. Also I think that he was not emotion-
5 ally regulated in the interview which affected his ability
6 to participate.

7 SOLICITOR: Beg the Court's indulgence.

8 (Brief pause)

9 SOLICITOR: Nothing further at this time, Your Honor.

10 THE COURT: Thank you. Any Cross?

11 MR. BANKS: Just very briefly.

12 CROSS EXAMINATION

13 BY MR. BANKS:

14 Q. Now, Ms. Smith, oftentimes there is some lack of what
15 is called back and forth connection, and I understand that
16 was there for a while. Right?

17 A. Correct.

18 Q. Did that exchange seem to cause him to struggle in
19 the interview?

20 A. . .

21 Q. In the beginning of it? Right?

22 A. Research has shown -- in the past we used to do what
23 is called (inaudible) measure where we assess a child's
24 ability to differentiate between the truth and a lie or in
25 giving a narrative to tell the truth in the interview.

H. SMITH ON CROSS

1 But many clinicians believe that a truth-lie discus-
2 sion along with a promise to tell the truth is what is the
3 best for children.

4 In my interview, Reginald did not -- when I asked him
5 did he promise to tell the truth, he said no, and I asked
6 him a question like why not or -- trying to understand his
7 answer, and he said, I don't want to talk.

8 And so he appeared to really not answer interview ques-
9 tions about the incident at that point.

10 Q. So you had some difficulty in getting him to give you
11 or explain details of what actually caused the burns or
12 what happened?

13 A. It was nothing unexpected. This was actually very
14 common in such interviews I have been doing with these
15 children, and this was not a simple thing for a child who
16 had gone through this really painful medical exam and then
17 also being asked to talk about this.

18 That's what we expect and I was able to redirect him
19 back to the interview. When we train the State on how to
20 do these interviews we talk about using a lot of reassur-
21 ance, trying to be able to let a child know to just do their
22 best.

23 So it was not unusual for that to happen in such an
24 interview.

25 MR. BANKS: That's all the questions I'd have.

H. SMITH ON REDIRECT

1 THE COURT: Redirect?

2 SOLICITOR: Just briefly.

3 REDIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. And you were able to get him to testify?

6 A. Yes, I was.

7 Q. And in your expert opinion, would you say that the
8 victim can understand the difference between the truth and
9 a lie?

10 A. Yes.

11 Q. Nothing further.

12 THE COURT: Mr. Banks?

13 MR. BANKS: Nothing at this time.

14 THE COURT: Thank you very much. You may be excused.

15 (Witness excused)

16 THE COURT: All right, any other witnesses?

17 SOLICITOR: No, Your Honor.

18 THE COURT: Mr. Banks?

19 MR. BANKS: No, sir.

20 THE COURT: All right. I have something else scheduled,
21 and I need to review all of this.

22 -----END OF THIS PORTION OF REQUESTED TRANSCRIPT OF RECORD-----

23

24

25

1 (The within matter came before the Court again for
2 hearing on March 28, 2017)

3 MS. SIMPSON: Your Honor, in behalf of the Defendant,
4 Shane Johnson, we have handed up a memorandum in support of
5 our motion.

6 It is noted that in the facts that the State allege
7 that the Defendant is a sexual offender, and we think for
8 purposes of the matter before you it is important that you
9 hear a little more factual background.

10 THE COURT: All right.

11 MS. CAMPBELL: Your Honor, this incident occurred on
12 October 7 of 2015. Officers responded to the E.R. concern-
13 ing suspected child abuse.

14 Approximately -- sometime in the evening the minor
15 victim, age seven, was brought to the E.R. -- presented to
16 E.R. by his mother, the Codefendant to Shane Johnson.

17 Also present were the Defendant, Shane Johnson, and a
18 friend of his.

19 The victim presented with severe burns about his head,
20 face and body, so severe that he was immediately trans-
21 ported to the Augusta Burn Unit.

22 He does suffer from spectrum autism, and it was stated
23 by hospital personnel that the victim was in severe pain
24 and was crying.

25 Both the Defendant and the Codefendant stated that

1 the victim was in the shower by himself and turned on the
2 hot water. They said they went into the bathroom where the
3 victim was taking a shower and brought him immediately to
4 the E.R.

5 That is completely inconsistent with what the doctors
6 have noted which was that Shane was in the bathroom with
7 him.

8 The victim was asked about it and he stated that
9 Shawn was in the bathroom. Then he looked at Shane and he
10 said, you did this to me; you did this to me.

11 Upon arrival of the officers he said Shane Johnson
12 did it. Both Defendant and CoDefendant^{of} Shawn Johnson gave
13 conflicting stories upon arrival.

14 The attending physician stated that the victim also
15 stated when asked that he did this to him; that both the
16 Defendant and Codefendant were present.

17 The nurses as well stated that.

18 The investigators then spoke with the doctor who said
19 it was one of the worst cases of child abuse he has seen,
20 and he stated the victim was scheduled for surgery.

21 He noted again that the victim said again and again
22 Shane did this to me, Shane did this to me.

23 Both the Defendant and Codefendant were advised of
24 their rights on October 12 and October 19 of 2015, and with
25 respect to their second statement, although there are some

1 differences -- both Defendants admitted specifically --
2 Kristen Campbell said she had been lying in her bed and her
3 reason to lie was that she was scared of what Shane would
4 do to her.

5 The Defendant said he was too tired at that time to
6 know the victim was even in the shower, and the Codefendant
7 offered that she was a little nervous because of the Defen-
8 dant being there.

9 She said after a time she heard her son screaming and
10 so she ran into the bathroom. She saw the steam coming over
11 his head and coming out of the shower and the Defendant just
12 standing there watching him.

13 She went to get a towel and turned the water off and
14 got him out. Mr. Johnson was just -- she said that he
15 was just standing there acting nervous and calling people.
16 He went out of the house at one point and she asked the
17 victim what happened and once again he said that Shane did
18 this to me, of course.

19 Rather than call nine one one the Defendant said it
20 looked like second degree burns and said to cool the child
21 off. So she said she filled up the bathtub with cold water
22 and put him in it because that is what the Defendant told
23 her to do.

24 She also said that she did not take him because he did
25 not want to go to the hospital, at which point she said she

1 told Shane that they need to go. They got into an argument
2 and finally after his friend arrived they did proceed to
3 the hospital.

4 Your Honor, with respect to his second interview, Mr.
5 Johnson did admit to putting the victim in the shower and
6 turning the water on. Shane said he was worried since he
7 had a past record and didn't want to be a part of this.
8 He said the victim was a bad child, was disrespectful and
9 this was his way of dealing with that; that he didn't know
10 this was going to happen and it was an accident.

11 Your Honor, even though -- let me back up. Subsequent
12 to that, the victim was interviewed by law enforcement and
13 gave his version of what happened. What he said was con-
14 sistent with what the victim had maintained throughout the
15 case as far as Shane Johnson doing this to me.

16 THE COURT: Thank you very much.

17 MS. CAMPBELL: Your Honor, I just wanted to put those
18 facts on the record based on the testimony the Court heard
19 yesterday regarding the incident and the motion for a psy-
20 chiatric examination.

21 THE COURT: Anything further from the Solicitor?

22 MS. CAMPBELL: No, sir.

23 THE COURT: All right, anything further?

24 MS. SIMPSON: Yes, sir. May it please the Court.

25 We have filed the motion to request the Court to

1 order an independent psychiatric or psychological evalua-
2 tion, and I can take you through the reasons submitted to
3 the Court on yesterday.

4 The concern is competency to testify as a witness, and
5 whether, one, a witness is presumed competent to testify but
6 he must have the ability to understand what it means for a
7 witness to tell the truth.

8 South Carolina case law is clear that for a witness
9 to testify or deemed competent to testify must be able to
10 perceive facts to a substantial degree and to remember them.
11 In this case, for eighteen months; be able to speak about
12 them intelligently and be mindful that he is under oath.

13 As stated in our brief, the party accused does not
14 have the burden to prove the witness' competency, but it
15 is the decision for the Trial Judge on proper motion to
16 make an appropriate examination of that witness. For the
17 witness to be disqualified there must be some lack of capac-
18 ity.

19 The lack of capacity can be evidenced from the general
20 demeanor of the witness, the age of the witness, or a pre-
21 sentation to the Court of the witness' psychological pro-
22 file through expert testimony.

23 That, Your Honor, is what we are requesting of the
24 Court here today, for a future inquiry into this child's
25 competency; for the Court to order that psychological

1 profile and psychological testimony to assist the Court in
2 determining competency.

3 Your Honor, if there is a showing of lack of capacity
4 to the Court, including the diagnosis of autism -- by def-
5 inition, autism is a persistent deficit in social communica-
6 tion; we have Dr. Raven who is trained in the practice of
7 psychiatry with children and autism spectrum disorder --
8 the only person who has reviewed this evidence who has any
9 training in autism in children to any degree.

10 We heard his testimony yesterday, Your Honor, and he
11 has serious concerns about the competency of this child.
12 He was not here to say whether he is competent or he isn't,
13 but he is here to testify about his serious concerns, and
14 he recommends that the child be evaluated further.

15 Your Honor, there are reasons for his concern as given
16 in our brief. Among them are whether or not he will tell
17 the truth, and when asked if he would he responded no.

18 Part of it is that if he doesn't understand something
19 asked of him, he can say I don't know. He doesn't have to
20 guess.

21 Showing as a demonstration, what is the dog's name?
22 The child responds dog. Ms. Smith followed up with, do you
23 know the dog's name, and he says no. (Reading from Ms.
24 Smith's discussion with the child)

25 He may be a little bit confused about where the truth

1 lies but he can say I don't know. That is something that
2 can be referenced as psycholization, meaning that he is not
3 able to properly process what happened and understand he
4 doesn't know the answer, which is a serious concern. It
5 prohibits ability to confront Mr. Johnson's accuser and
6 the problem in cross examination is pointed out in the case
7 I've cited in our brief.

8 There the South Carolina Supreme Court adopted six fact-
9 ors that allow a Trial Judge to have discretion in deciding
10 to order the alleged victim or child to undergo evaluation.
11 In so adopting these factors that give the Trial Judge dis-
12 cretion they point out that cross examination is insuffi-
13 cient in handling this; that to allow an incompetent wit-
14 ness to testify is a condition that could be established
15 that would be totally ineffective in protecting Defendant's
16 right to a fair trial.

17 A plaintiff who is incompetent to testify may not fully
18 understand or convey implications of his or her psychologi-
19 cal condition on cross examination. He may not fully answer
20 the questions, Your Honor.

21 The Supreme Court did adopt this scheme which would
22 allow a Trial Judge to order an evaluation. The six fact-
23 ors which the Trial Judge is to look to in balancing the
24 interests of the alleged victim and the Defendant's rights
25 to due process, a fair trial -- Your Honor, in the testimony

1 yesterday there was evidence there to show the penalty to
2 the Defendant for the alleged victim not to have an evalua-
3 tion.

4 I'll briefly go through those factors, Your Honor.
5 The nature of the offense the Defendant is accused of com-
6 mitting, the victim's age, and Reginald was seven at the
7 time barely.

8 So those main concerns are there as far as to remember
9 and to distinguish truth from a lie.

10 The resulting physical and emotional effects of the
11 exam on the plaintiff. Again, Reginald has had some counsel-
12 ing sessions as a result of this. He has spoken with ARC
13 so it is not something he is unfamiliar with. He has had
14 this before.

15 The probative value of the exam is very strong, Your
16 Honor. This is a situation where **Minor** and Mr. Johnson
17 were the only two people there at that time, the only eye-
18 witnesses at the time.

19 So understanding whether or not he is competent to tes-
20 tify is of crucial significance to Mr. Johnson. It can
21 mean the difference between a wrongful conviction and not.

22 Again, Your Honor, the passage of time to the exam
23 from the alleged wrongful act is likely to be more than two
24 years rather than eighteen months or a similar amount of
25 time.

1 The evidence has been provided to the Defense, and we
2 all have the initial reports and the diagnosis of autism.
3 We feel the need now to determine whether or not he is com-
4 petent to testify from the stand.

5 Yesterday Ms. Smith did basically -- she was asked if
6 she agreed the competency determination from her was based
7 on his competency to undergo a forensic interview.

8 She agreed on the stand that that was -- I'm trying
9 to remember her exact words, Your Honor -- not the same
10 standards of putting your hand on a Bible to -- she said
11 they don't do competency to testify evaluations because at
12 trial two years later they are not trained in competency
13 to testify.

14 Nothing in her CV is related to autism or qualifying
15 or evaluating someone's competency to testify. The only
16 person we heard yesterday who was able to -- who had been
17 trained in autism and competency, to do a forensic evalua-
18 tion by an independent evaluator -- we think that would be
19 necessary.

20 So, Your Honor, we are asking the Court for a psycho-
21 logical profile, Your Honor, in order to protect Mr.
22 Johnson's right to a fair trial and to find whether the ac-
23 cuser is competent under the Sixth Amendment.

24 THE COURT: Thank you.

25 (Brief pause)

1 THE COURT: Anything further from the State?

2 SOLICITOR: Just a couple of brief things, Your Honor,
3 that I would like to stress.

4 Your Honor, going to the factors and what they have
5 argued today is about how to determine truth from lie.

6 The expert yesterday conceded that it was obvious that
7 Reginald knew the difference between truth and a lie.

8 As well he had the ability to recall but much of what
9 he said was conditioned, Your Honor, just upon evidence he
10 had of what the victim had talked about to various people
11 and as well examining the evidence in the case.

12 Their expert has been trained in autism as shown by
13 the testimony yesterday. Our witness who testified yester-
14 day, Ms. Smith, is also trained as far as dealing with
15 children with any special needs, including autism.

16 Your Honor, in this case there has to be a determina-
17 tion as to why this particular child needs a separate eval-
18 uation as to competency. Their witness has said he thinks
19 generally all children with autism should be suspect.

20 In fact, he goes further and says that autistic child-
21 ren may appear to be more competent than they are because
22 they are autistic. I find that, Your Honor, to be somewhat
23 incredulous.

24 Their expert also testified that it was obvious even
25 though their argument today is that **Minor** didn't know right

1 from wrong that he knew right from wrong; that it was ob-
2 vious he knew right from wrong.

3 In going through the factors, Your Honor, as far as
4 the first factor, Your Honor, the intrusiveness of the act-
5 ual offense, their own expert also explained that one of
6 the reasons **Minor** is suspect with regard to expression and
7 wanting to talk about it is that it's traumatic to him to
8 have to go through it over and over.

9 But in asking for an independent evaluation it is as
10 if they are trying to get another shot at the victim here
11 because of his age, and there is no necessity for this,
12 Your Honor.

13 As far as the victim's age, Your Honor, in the case
14 they raised the victim was four at the time of the inci-
15 dent and was six when he testified.

16 The victim in this case is older and was seven when
17 it happened.

18 Your Honor, in the ultimate factors, you take the deter-
19 mining factors as far as competency of the witness to tes-
20 tify about what happened, taking into account all of the
21 information in this case.

22 In this case, this child's statements at the hospital
23 are contained in the hospital records. D.S.S. has constantly
24 been involved as well. They have all the counseling records
25 as well.

1 Additionally, they have the ARC evaluation and all of
2 those records. Your Honor, the school records as well have
3 been provided. So there is a plethora of information in
4 the case including the evidence as far as the offense.

5 In addition, in the case cited, I would note that a
6 few days before the incident there is testimony that just
7 before the incident was reported that he had started hear-
8 ing voices. Your Honor, that is significant and different
9 from what we have here.

10 In this case I believe their expert said he appeared
11 not only competent but he was able to recite who was where
12 when this happened to him; that Shane did this to him with
13 details about what happened to him.

14 We do not believe there is any probative value in doing
15 a further examination other than the intimidation of this
16 witness who has already suffered greatly at the hands of
17 the Defendant.

18 As far as the passage of time, Your Honor, the record
19 is here of what happened and how this occurred. Your Honor,
20 specifically there is an abundance of evidence available.

21 Again, their expert was not able to say any reasons
22 for this witness to be disqualified from testifying. I
23 talked to him just before this testimony and that was be-
24 fore he met with defense counsel. He told me he had no
25 problems testifying or getting on the stand. He talked

1 about how he was too close to the interviewer and things
2 of that nature but that does not give cause to their is-
3 sue.

4 Your Honor, based on the record before you, we respect-
5 fully ask that you would deny the motion before you.

6 THE COURT: Thank you. Anything in response?

7 MS. SIMPSON: Yes, Your Honor.

8 As to the records, that have become available to us and
9 records that Dr. Raven examined require more of an inquiry
10 into his competency because the records create more ques-
11 tions than answers.

12 Regarding specifically, for example, an IEP record --
13 if I may approach.

14 THE COURT: Yes, maam.

15 (Brief pause)

16 MS. SIMPSON: This was dated March -- no, April 13 of
17 2015, which was about six months before this incident oc-
18 curred.

19 On page three this references speech and **Minor**
20 ability in that area. Testing conducted on March 24, 2015,
21 he continues to have difficulty to retell a story.

22 He is only able to discuss details of a story in a
23 sequential order.

24 (Counsel reading from document)

25 He also evidences difficulty identifying multiple key

1 parts. He is able to identify fifty percent of multiple
2 key parts.

3 When asked questions about a story, he answers fifty
4 percent of questions correctly. When given directives he
5 is able to follow (portion inaudible).

6 Your Honor, this goes to his ability to answer ques-
7 tions on cross examination, on direct examination, and be
8 able to retell a story. That is one of the elements of
9 competency.

10 To be competent to testify he has to be able to shed
11 some more light on whatever was going on and whether still
12 going on today.

13 Again, Dr. Raven had access to all of these school re-
14 cords but nothing that would shed too much light on whether
15 or not he is competent to testify in a Court of Law about
16 what may have happened to him.

17 Your Honor, Ms. Smith, I believe, did say that part of
18 the reason that **Minor** had difficulty was because he was
19 hurting that day, and you have to measure difficulty that
20 day with future contact with him in Court, but we won't know
21 that unless we have him independently examined as Dr.
22 Raven said.

23 And so, again, we believe an independent evaluator
24 could check with the delay whether he is competent, whether
25 he was more competent before or after.

1 Your Honor, we are not saying here that **Minor** is in-
2 tentionally lying or not. We are just asking the Court
3 to obtain more information in making that determination as
4 to whether he is competent or not.

5 In balancing the rights of Mr. Johnson and of the vic-
6 tim here, Your Honor.

7 Thank you.

8 THE COURT: Thank you.

9 SOLICITOR: We would hand up school records that
10 were provided to the Defense and provided to their expert.
11 I would note that when questioning their expert on the re-
12 cords he obviously did not feel that was significant in
13 making his assessment as he never mentioned that.

14 THE COURT: All right. Thank you.

15 I'm going to consider the matter further and I will
16 rule before the day is out.

17 Thank you.

18 SOLICITOR: Thank you, Your Honor.

19 MS. SIMPSON: Thank you.

20 -----END OF REQUESTED PORTION OF TRANSCRIPT-----

21

22

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24

25

1 (The within matter came back before the Court for hear-
2 ing on March 29, 2017)

3 THE COURT: Is there anything from either side before I
4 make my ruling?

5 MR. BANKS: No, Your Honor.

6 SOLICITOR: Nothing from the State, Your Honor.

7 THE COURT: All right. I have reviewed the video and
8 have read the memorandum of the Defendant. I have heard
9 as well the arguments of the State and the Defense.

10 And in addition I would note, as the Defense has
11 pointed out, in order to be competent to testify the wit-
12 ness must have the ability to perceive the event with a
13 substantial degree of accuracy, be able to talk about it
14 and communicate the facts, as well as being mindful of the
15 truth.

16 They have cited State versus Leach, 323 SC 1349, a
17 1998 case. They have also cited State v. Green, 267 SC 599,
18 1976, which I have also reviewed.

19 I have also reviewed all cases that were handed up to
20 the Court by the parties, including Michael Leach, Shyman,
21 Delane, Green again, Epps, and I went back to State ver-
22 sus Green and also Green versus United States, 16 Su-
23 preme Court 93, 1995.

24 In my analysis of State v. Leach I found the victim
25 was also a child and was a victim of criminal sexual conduct

1 which is a distinction from this case. That child at the
2 time of the alleged incident was four or five years old.

3 All of these were cases in which the child was a vic-
4 tim of criminal sexual conduct, as I said, a distinction
5 from this case. However, I did do an analysis of those
6 cases.

7 In Michael Leach it appears that he and the victim in
8 that case had in the past taken showers together and were
9 taking a shower together when the Plaintiff was victimized
10 at his grandmother's.

11 The reporting is interesting in the way it took place.
12 In March of 1999 there was a story in the local news about a
13 man arrested for indecent exposure. The Plaintiff's mother
14 testified that the Plaintiff saw the news report and asked
15 her why the man had robbed children.

16 The mother responded that the man did not rob children
17 but he raped children and then explained to her son what
18 rape was.

19 Upon hearing that information her son told her, well,
20 the Respondent had done that to him before. He said it
21 had happened a while ago when he was in the shower with
22 the Respondent

23 The Respondent denied it and the Plaintiff was taken
24 to a doctor who testified there was no medical evidence of
25 a rape since in was in a time that was elapsed.

1 The Plaintiff was taken to a psychologist, a Dr. Way,
2 and in some of his sessions the child said he had been
3 hearing voices to him but he was inconsistent as to the
4 time frame. The sessions continued for some time before
5 the trial, and the Plaintiff finally told Dr. Way that the
6 voices had told him he should have raped the Respondent.

7 Dr. Way suggested then to the Plaintiff's mother she
8 should have the boy taken to a psychiatrist for treatment.

9 The Respondent's lawyers filed a motion but they did
10 not have notice from these four sessions, and I think it
11 was during cross examination they got it from Dr. Way.

12 There was a motion to have the Plaintiff submit to a
13 psychological evaluation and based on the revelation that
14 the Plaintiff had been hearing voices over a period of
15 time possibly when the alleged assault occurred.

16 They also moved to have the testimony stricken as in-
17 competent based on the boy hearing voices.

18 (Brief pause)

19 The motion was renewed after cross examination of Dr.
20 Way and for a new trial. The issue was whether or not the
21 victim should submit to a psychological examination to show
22 whether he was competent.

23 The Court went on to discuss Delane and the factors
24 that are intended to assist the Trial Judge in weighing
25 The Defendant's need for the examination as against the

1 victim's rights. Those six factors are laid out in the
2 Defendant's memorandum. The nature of the examination,
3 intrusiveness, the victim's age, the resulting physical and/
4 or emotional effect on the victim of the examination, the
5 probative value of the examination to the issues before
6 the Court, the abundance of time for the examination, and
7 the evidence already available to the Defendant.

8 The Court was balancing the interests of both the De-
9 fendant and the victim so as to ensure the truth of the
10 matter was brought to light and in justice to all parties
11 before the Court, the privacy rights of Plaintiff as well
12 as the rights of the Defendant to a fair trial.

13 (Brief pause)

14 The Court in balancing the victim's rights and the
15 Defendant's rights was ensuring neither of the parties would
16 be compromised by the ordering of a psychological examina-
17 tion of the child by the Court.

18 The Respondent again cited the child victim hearing
19 voices in explaining justification for compelling the vic-
20 tim to undergo the examination.

21 (Brief pause)

22 Factors the Supreme Court pointed out in Green were
23 the victim's very young age at the time of the alleged as-
24 sault and the fact that the victim was undergoing counsel-
25 ling. The victim's counsellor testified that the victim

1 would not be traumatized by undergoing examination, and the
2 fact that the victim's counsellor testified that the victim
3 reported hearing voices relating to the Respondent at the
4 time of the alleged incident.

5 The Judge in his discretion ordered that the child
6 submit to a psychological evaluation, and the Court reviewed
7 the decision in that case. There was a dissent in the case
8 by Chief Justice Toal indicating that evaluating a witness'
9 credibility is an important function in every case.

10 The Court of Appeals' decision was affirmed as to
11 evaluating a witness' credibility. A Judge in a case that
12 comes to trial must focus on those factors set out as to a
13 witness' competency prior to the trial.

14 Further addressing the issue of the victim's ability
15 to testify and the right to examine a witness or a testify-
16 ing victim, a well-prepared cross examination is discussed
17 as to the issue of credibility.

18 There were numerous cases cited. State versus Green
19 was a 1974 homicide case in Richland County in which the
20 witness was a six year old eye-witness to the killing, and
21 it may have been a sister or a brother who testified.

22 That was reversed in 1995 and cited a 1985 case where
23 the witness was a five year old or five and a half year
24 old boy who witnessed a homicide where his father was
25 killed by an intruder.

1 The Court stated that while no one should think of call-
2 ing a child as young as two or three years old, there is no
3 precise age at which a child could be called although the
4 age is not a determining factor on the question of compe-
5 tency. Whether or not the child can be called depends on
6 the competency of the child as well as the ability to under-
7 stand truth from falsity, the intelligence of the child.

8 (Short portion inaudible due to noise in the Courtroom
9 picked up on audio)

10 Other cases were cited where the Judges were of the
11 unanimous opinion that a child under the age of seven may be
12 sworn in a criminal prosecution and answer questions and
13 provide significant input if they possess sufficient know-
14 ledge, although there is no precise age given or any pre-
15 cise amount of time since the event that is given.

16 The admissibility depends on the sense of reason that
17 a child possesses in answering questions from the Bench that
18 may be posed to the child.

19 In this case I would say as an initial matter that a
20 child of seven and now eight years old -- I was provided
21 the school records of this child as well which show that
22 he attended school.

23 So I have considered all of the factors and the in-
24 formation provided to the Court, the child's age, the na-
25 ture of the incident in question, the matter of intrusiveness

1 of a psychological evaluation. I believe there is inher-
2 ent intrusiveness in a psychological examination regardless
3 of his or her age.

4 I think in this case it would be more inherently in-
5 trusive, the examination of a young person who is also an
6 alleged victim of such an event in his life. More intrus-
7 ive rather than less intrusive, and I believe it would have
8 some emotional effect on the victim, such an examination.

9 The probative value of the examination is not an issue
10 before the Court as to whether or not there should be a
11 psychological evaluation. Right now the only issue before
12 the Court is whether there should be a psychological eval-
13 uation of the child to assist the Court in the determina-
14 tion of competency of the witness.

15 As far as the competency issue, the Court has not
16 seen or heard or examined the witness.

17 The remoteness of time of the examination since the
18 date it occurred now is about one and a half years. That
19 might be an issue but the evidence is already available as
20 far as the incident. There are numerous references to those
21 records which the Defense has.

22 Those records would be probative in the matter of cre-
23 dibility of the witness if the witness were examined or
24 were to be found competent. The Defense has also had the
25 assistance of an expert in the field of child psychiatry.

1 In this case with the child having the autistic syn-
2 drome would not mean in my view that he or she should be
3 required to undergo a psychiatric examination, or that
4 the Court should require such an examination.

5 In looking at the pictures the meanness required or
6 the provocation, there is a lack of motive as far as the re-
7 cord is concerned. Necessity arises from circumstances
8 that exist in a case or in a situation.

9 (Brief pause)

10 In Black's Law Dictionary a compelling need is defined
11 as a need so great that irreparable harm or injustice will
12 result. Generally Courts decide whether a compelling need
13 is present based on many facts in a case.

14 There are some jurisdictions that have statutes con-
15 cerning that.

16 I heard the testimony of both expert witnesses, one
17 being a child psychiatrist. There was some inconsistency
18 in the testimony heard.

19 So at this point, not having heard nor seen the vic-
20 tim, I would find that there is sufficient power in cross-
21 examination if the victim were found competent. This is a
22 pre-trial ruling that there be no psychiatric examination
23 of the victim at this time.

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
25

CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Crystal Holmes to the best of my ability, having been heard in the Court of General Sessions for Richland County on December 27, 28 and 29 of 2017.

FURTHER, I certify that I am neither of ki nor counsel to any party to this matter, nor do I have any interest in the same.

October 7, 2017.

Harriet P. Bennett

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Numbers: 2015GS4006544

The State of South Carolina,)
)

vs.)

Shane Johnson,)
Defendant.)

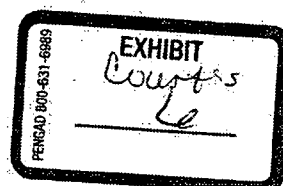
MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR AN ORDER
FOR A PSYCHOLOGICAL EVALUATION OF
THE ALLEGED VICTIM

The Defendant, Shane Johnson, moves this Court for an order for a psychological evaluation of the alleged victim, [REDACTED] Minor. Specifically, the Defendant moves this Court to order that the alleged victim submit to an independent psychological evaluation to evaluate his competency to testify at trial as well as his ability to differentiate between the truth and a lie.

FACTUAL BACKGROUND¹

On October 7, 2015, seven-year-old Reginald Walker Jr. (the child), lived with his mother, Kristen Campbell, and his mother's boyfriend, Shane Johnson, at 804 Easter Street, Columbia, SC, 29203. It is alleged that around 7:30 pm, Mr. Johnson placed the child in the shower. Within minutes, the child suffered serious burns. Mr. Johnson and Ms. Campbell brought the child to Palmetto Health Richland Hospital approximately two hours after the child had been injured. Upon arrival at Palmetto Health Richland, the decision was made to transport the child to the Augusta Burn Center for further treatment. Both Mr. Johnson and Ms. Campbell were interviewed by law enforcement on multiple occasions, both providing inconsistent statements regarding the series of events leading up to the child being burned. Mr. Johnson was charged with Infliction of Great Bodily Injury on a Child on October 19, 2015. Ms. Campbell was charged with Unlawful Conduct Towards a Child on November 2, 2015. The child was

¹ The facts are presented as alleged by the State.



interviewed at the Assessment and Resource Center (ARC) on November 24, 2015 by Heather Smith. The child was placed in the custody of his maternal grandmother and remains there to date.

COMPETENCY

SCRE Rule 601(a) states that “[e]very person is competent to be a witness except as otherwise provided by statute or these rules.” SCRE Rule 601(b) provides “[a] person is disqualified to be a witness if the court determines that (1) the proposed witness is incapable of expressing himself concerning the matter as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth.”

The Supreme Court of South Carolina further explained that “in order to be competent to testify, a witness must have the ability (1) to perceive the event with a substantial degree of accuracy, (2) remember it, (3) communicate about it intelligibly, and (4) be mindful of the duty to tell the truth under oath.” State v. Needs, 333 S.C. 134, 143 (1998) (citing Commonwealth v. Goldblum, 498 Pa. 455, 465 (Pa. 1982)). Furthermore, “a proposed witness understands the duty to tell the truth when he states that he knows that it is right to tell the truth and wrong to lie, that he will tell the truth if permitted to testify, and that he fears punishment if he does lie, even if that fear is motivated solely by the perjury statute.” Id. (citing State v. Green, 267 S.C. 599, 606 (1976)).

It is the trial court’s responsibility to determine whether or not a witness is competent to testify. State v. Camele, 293 S.C. 302 (1987). Upon timely motion by counsel, the trial judge has a duty to make an appropriate examination of a witness that will reveal his/her ability to give competent testimony. State v. Pitts, 256 S.C. 420 (1971). In order to make this inquiry, there must be some evidence of the lack of capacity of the offered witness; “[l]ack of capacity may be

evidenced by the general demeanor of the witness, the age of the witness, or the presentation to the court of the witness' psychological profile through expert testimony." State v. China, 312 S.C. 335, 339 (S.C. 1993) (emphasis added). The party objecting to the witness has the burden of proving a witness is incompetent. Needs, 333 S.C. at 143 (citing Goldblum, 498 Pa. 455).

ARGUMENT

I. A psychological evaluation of the child is necessary to aid the court in determining his competency because he is seven years old, affected by autism, and in the only interview available for the Court at this point in time he fails to differentiate between the truth and a lie.

The child is now eight years old and was seven years old at the time of the incident. According to the available medical records, records provided by the Department of Social Services (DSS) and school records, the child has a documented diagnosis of autism. Throughout the records, there is mention of the child being "highly functioning;" however, it is unknown where the child falls on the spectrum and what effect this diagnosis has on his competency as a witness.

The child was interviewed by ARC on November 24, 2015. During this interview, Heather Smith attempted to unveil the child's understanding of truth versus lie. Ms. Smith asks the child directly, "do you promise to tell me the truth?" to which he clearly responded, "no." Ms. Smith then explains that "part of telling me the truth is if you do not know the answer to something I ask, you can say 'I don't know.' You do not have to guess. Like if I said, [showing him an illustration] what is that puppy's dog's name? What should you tell me?" The child responds, "doggie." Ms. Smith then follows up with, "Do you know that dog's name?" and the child concedes he does not. The interviewer then tells the child that he can correct her if she gets something wrong. The child is then shown that same illustration and is asked "so if I said that girl was feeding that puppy a pizza, what should you say to me?" The child responds "yes." When she asks if that is a pizza, he then

says "no." After this exchange, Ms. Smith moves directly into asking the child what happened in this incident. The exchange, however, indicates there is a substantial issue with the child's understanding of the difference between the truth and a lie. It further indicates that he may not understand that he should not make up an answer when the answer is unknown. Such issues go directly to his ability to testify accurately, clearly, and truthfully.

Forensic psychiatrist Dr. Jesse Raley has had an opportunity to review this ARC interview, as well as the child's records. After reviewing the available records, Dr. Raley expressed serious concerns regarding the child's competency and believes an independent evaluation is necessary to explore the potential issue. Dr. Raley does not argue there were any issues with the way the ARC interview was conducted, but that the interview reveals the need for further evaluation. The ARC interview is not an evaluation for competency; Ms. Smith was only able to determine through her interview that the child was competent to undergo a forensic interview. Ms. Smith agreed that competency to undergo a forensic interview is not the same standard as competency to testify as a witness. The child has never been evaluated for competency to testify as a witness, much less by an evaluator trained in autism in children.

Therefore, based on the available records, the recorded interview from ARC, and the opinion of Dr. Raley, a trained forensic psychiatrist, it is necessary that there be further investigation into the child's competency through an independent examination by an evaluator with special training in autism.

II. The South Carolina Supreme Court supports the assertion that a trial judge has discretion to order an independent psychological evaluation of an alleged victim.

The South Carolina Supreme Court ruled in In The Interest of Michael H., that a trial judge may order a child complainant to undergo an independent psychological evaluation in order to

protect the defendant's rights to a fair trial and to confront his accuser, and to "ensure the truth of a matter is brought to light and justice to all parties before the court is served." 360 S.C. 540, 602 S.E.2d 729, 733 (2004).

Michael H. was charged, by juvenile petition, with CSC in the first degree, kidnapping, and CSC with a minor. Respondent, his younger brother, and complainant would bathe together when complainant spent the night. During one of those showers, the complainant, who was four to five years old at the time, claimed Michael H. "raped" him. During counseling sessions, after the alleged assault, complainant told his doctor he had been hearing voices for some time. However, according to the counselor, those voices stopped after taking medication. The complainant never saw a doctor or psychiatrist about the voices. Prior to the hearing, Respondent filed a motion to order the complainant to submit to psychological evaluation which was denied. Respondent renewed that motion after the counselor's testimony, and at that time it was also denied. The Respondent was adjudicated delinquent of CSC with a minor and ordered him to the Department of Juvenile Justice until his twenty-first birthday.

When there is question regarding the competency of a victim, evaluations are necessary to ensure the Defendant's rights to due process and to confront his accuser are upheld. Whether or not a trial judge could order an alleged victim to submit to a psychological evaluation was an issue of first impression in South Carolina. The Court researched how other States handled this issue and ultimately adopted West Virginia's approach in State v. Delaney, 417 S.E.2d 903 (W. Va. 1992), ruling that "the trial judge has discretion to order a psychiatric evaluation of the child victim after applying the *Delaney* factors to the facts of a particular case." *Id.*² In State v. Delaney, 417 S.E.2d 903, 907 (W. Va. 1992), the West Virginia Supreme Court held as follows:

² Note that a majority of the states who have addressed this issue have chosen to adopt the Delaney factors. Michael H., 602 S.E.2d at 736 (Toal, J., dissenting).

[I]n order for a trial court to determine whether to grant a party's request for additional physical or psychological examinations, the requesting party must present the judge with evidence that he has a compelling need or reason for the additional examinations. In making the determination, the judge should consider: (1) the nature of the examination requested and the intrusiveness inherent in that examination; (2) the victim's age; (3) the resulting physical and/or emotional effects of the examination on the victim; (4) the probative value of the examination to the issue before the court; (5) the remoteness in time of the examination to the alleged criminal act; and (6) the evidence already available for the defendant's use.

In Michael H., the Court affirmed the Court of Appeals decision to reverse the defendant's conviction and remand for a new trial, ordering the trial court to consider the motion for a psychological evaluation under the Delaney factors. 360 S.C. at 552. The Court ruled that the trial judge would have been within his discretion in ordering the victim submit to an independent psychological examination. Id. In the present case, the factors adopted by our South Carolina Supreme Court also demonstrate a compelling need for the alleged victim to undergo a psychological evaluation.

III. Because all six Delaney factors are satisfied in this case, thereby showing a compelling need for an independent evaluation, the trial judge should order the alleged victim to undergo an independent evaluation for competency.

STANDARD

The Delaney factors are intended to assist the trial judge in weighing the defendant's need for the examination to protect his rights to a fair trial and 6th Amendment right to confront his accuser against the victim's right to privacy. Delaney, 417 S.E.2d at 907.

1. The Nature of the Examination Requested and the Intrusiveness Inherent in that Examination.

The Defendant is requesting an independent psychological evaluation by a doctor trained in interviewing children with autism. The evaluation would be purely interviewing – no physical examination would be necessary – and it would not last longer than an hour or two. The

defendant's right to a fair trial outweighs the child's privacy rights and the information sought through this examination would be crucial in determining whether the child is competent to testify at trial. The results of this evaluation would greatly assist the trial judge in making that determination.

2. The Victim's Age

Based on Delaney, age is a factor to be considered by the Court because of the possible effects it has on the child's ability to perceive, remember, and explain events to the court and a jury, and to distinguish between truth and lie. In Michael H., the alleged victim was six years old at the time of trial. Here, the child was barely seven years old at the time of the incident and is currently eight years old.

3. The Resulting Physical and/or Emotional Effects of the Examination on the Victim

This examination would not cause the child to have any resulting physical and/or emotional effects. Discussing the incident is not novel to him as he has attended counseling sessions since the incident. Dr. Raley, a trained forensic child psychiatrist, testified that this type of evaluation is neither intrusive, nor does he foresee there being any resulting emotional effects so long as the evaluation is conducted by a professional trained in autism. The psychological evaluation would simply consist of talking and the entire process would only take a matter of a few hours at most.

4. The Probative Value of the Examination to the Issue Before the Court

This examination goes to the heart of the case against Mr. Johnson. The child is the only eyewitness in the case against the Defendant; no one else was in the room at the time he was burned in the shower. Determining how the child got those burns is the central element in whether Mr. Johnson committed a criminal act. The child's ability to not only distinguish truth from lies, but to have perceived what happened the night of the incident, to remember it for eighteen months, and

to accurately explain it in court is crucial to the State's case against Mr. Johnson. If the child is not competent to testify and the examination is never done to fully explore that possibility, the result could be an unfair trial that ends in a wrongful conviction. Therefore, the child's mental competence is essential in determining the facts of the case and it is necessary that an independent examiner have the opportunity to offer his opinion in order to assist the Court.

5. The Remoteness in the Time of the Examination to the Alleged Criminal Act

In Michael H., where the South Carolina Supreme Court determined the trial judge could have ordered the evaluation under those circumstances, the examination of the victim was held approximately two years after the alleged incident. In this case, the examination will be approximately a year and a half after the incident.

6. The Evidence Already Available for the Defendant's Use

There is minimal evidence already available to the defendant as to the child's competency. There is one evaluation from a February 4, 2016 pertaining to his continued Supplemental Security Income benefits, the twenty-five minute ARC interview conducted on November 24, 2015, and school records, DSS records, and family disclosures that mention the child having been diagnosed as autistic without going into further detail. The Defense does not have any report with the initial diagnosis of autism or explaining his symptoms or the factors that led to that diagnosis. Because the Defense does not have any records exploring the extent of the child's autism, and because the one interview of the child the Defense does have raises serious concerns as to his competency, it is imperative that the Defendant be allowed to have an independent examination of the child to determine competency.

CONCLUSION

Due to the child never being evaluated for competency as a witness by someone specially trained in autism in children, the Court should order the alleged victim undergo an independent psychological evaluation by an independent psychologist trained specifically in working with autistic children as the factors established in Delaney and adopted by the South Carolina Supreme Court in Michael H. are met in this case.

IT IS SO MOVED.

Respectfully submitted,


Jessica E. Sturgill
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 27th day of March, 2017



Richland School District One
Individualized Education Program

1225 Oak Street
Columbia, SC 29204

Minor
Legal Name of Student

DOB

29079
Local ID

4270795263
SUNS

04/13/2015
IEP Meeting Date

TYPE OF MEETING

School Age Annual Review

ENROLLMENT

Service District: Richland School District One
Home District: Richland School District One

Service School: Greenview Elementary
Home School: Greenview Elementary

Grade(s): 1

Primary Area of Disability: Specific Learning Disability

Secondary Area of Disability: Speech/Language Impairment



PARENT/GUARDIAN INFORMATION

Kristin Campbell
804 Easter St, Columbia, SC 29203
Home: (803) 727-2976

DATES

IEP Start Date: 8/17/2015
Next Annual Review: 4/12/2016

IEP End Date: 5/27/2016
Next Reevaluation/Eligibility: 7/13/2017

CONSIDERATION OF SPECIAL FACTORS

Special Factor	Yes	No
The student's behavior impedes the student's learning or the learning of others.		☒
The student exhibits behavior that requires a Functional Behavior Assessment.		☒
The student exhibits behavior that requires a Behavior Intervention Plan.		☒
The student has Limited English Proficiency.		☒
The student is blind or visually impaired.		☒
The student has communication needs. Communications needs and how will they be addressed: Reginald is receiving speech and language services by the speech therapist.	☒	
The student needs Assistive Technology devices or services.		☒

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PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

Student's Academic and Functional Strengths

In Reading, Minor areas of strength are in oral recognition of letters.

Letter Sound Fluency: On an AIMSweb letter sound fluency probe (LSF), Minor earned 27 points in 1 minute, which is within the average range nationally when compared to other Kindergarten grade students in the winter of the year.

Letter Naming Fluency: On an AIMSweb letter naming fluency probe (LNF), Minor earned 39 points in 1 minute, which is within the average range nationally when compared to other Kindergarten grade students in the spring of the year.

In Math, Minor areas of strength are in oral counting to 100 and Quantity Discrimination.

Oral Counting: On an AIMSweb Kindergarten grade oral counting probe (PSF), Minor earned 50 points in 1 minute, which is within the average range nationally when compared to other Kindergarten grade students in the spring of the year.

In Writing, Minor areas of strength are in letter formation.

Speech/Language: Minor presents with adequate articulation, voice and fluency skills. He communicates his wants and needs effectively. He is able to follow 1-2 step directions independently. Minor is cooperative and enjoys participating in speech therapy.

Student's Academic and Functional Needs

Phoneme Segmentation: On an AIMSweb phoneme segmentation probe (PSF), Minor earned 12 points in 1 minute, which is below the average range nationally when compared to other Kindergarten grade students in the winter of the year.

Nonsense Word Fluency: On an AIMSweb nonsense word fluency probe (NWF), Minor earned 14 points in 1 minute, which is below the average range nationally when compared to other Kindergarten grade students in the winter of the year.

Missing Number: On an AIMSweb missing number probe (MNM), Minor earned 12 points in 1 minute, which is below the average range nationally when compared to other Kindergarten grade students in the winter of the year.

Speech/Language: Based on criterion assessments, observations and student performance, Minor continues to present with an expressive and receptive language disorder with specific weaknesses in the areas of semantics and listening comprehension.

Impact of Student's Disability

Minor is a rising 1st grade student whose disabilities adversely affect his involvement and progress in the general curriculum by impacting his achievement of and access to Kindergarten grade level standards.

Parent/Student Input on PLAAFP

Parent agrees that continued resource room support in the areas of reading, math, and written expression will continue to benefit Minor. Mother will assist Minor with his summer reading and math packets.

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Academic Achievement

Area of Assessment: Reading

Date: 03/17/2015

Method or Name of Assessment:
Curriculum Based Measurement

Findings: **Phoneme Segmentation:** Minor achieved 12 points per minute on a phoneme segmentation (PSF) probe, which indicates that he is performing like an average Prekindergarten grade student in the winter of the year.
Nonsense Word Fluency: Reginald achieved 14 points per minute on a nonsense word fluency (NWF) probe, which indicates that he is Minor like an average Prekindergarten grade student in the winter of the year.

Academic Achievement

Area of Assessment: Math

Date: 03/11/2015

Method or Name of Assessment:
Curriculum Based Measurement

Findings: **Missing Number:** Minor achieved 12 points per minute on the PreK grade probe, which indicates that he is performing like an average Prekindergarten grade student in the winter of the year.
Quantity Discrimination: Minor achieved 12 points per minute on the Kindergarten grade probe, which indicates that he is performing like an average Kindergarten grade student in the winter of the year.

Academic Achievement

Area of Assessment: Speech/Language

Date: 03/24/2015

Method or Name of Assessment:

Standard Assessment: Therapy data, Language Checklist and Criterion Referenced Assessment

Findings: Based on upon assessments Minor continues to have difficulty with retelling stories. He is only able to state 2 out of 6 details of a story in sequential order. He also demonstrates difficulty with identifying multiple meaning words. He is able to identify 60% of multiple meaning words. When presented with questions about a story, he answered 50 % of questions correctly. When given directives, he was able to follow 2 out of 5 multistep directives.

ANNUAL GOALS AND/OR OBJECTIVES

Frequency of progress reports to parents: 15-16 Quarterly

Minor
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Goal 1

Area of Need: Math - Instructional/Special Education

Measurable Goal:

Quantity Discrimination: By the end of the 2015-2016 school year, Minor will increase from 12 points on a Kindergarten grade level probe to 36 points on a 1st grade level probe in 1 minute, as measured by Curriculum Based Measurement.

Missing Number: By the end of the 2015-2016 school year, Minor will increase from 12 correct missing numbers on a Kindergarten grade level probe to 21 correct missing numbers on a 1st grade level probe in 1 minute, as measured by Curriculum Based Measurement.

Goal 2

Area of Need: Reading - Instructional/Special Education

Measurable Goal:

Phoneme Segmentation: By the end of the 2015-2016 school year, Minor will increase from 10 points to 48 points on a phoneme segmentation probe in 1 minute, indicating performance on a Kindergarten grade level, as measured by Curriculum Based Measurement.

Missing Number: By the end of the 2015-2016 school year, Minor will increase from 12 correct missing numbers on a Kindergarten grade level probe to 21 correct missing numbers on a 1st grade level probe in 1 minute, as measured by Curriculum Based Measurement.

Goal 3

Area of Need: Speech/Language - Instructional/Special Education

Measurable Goal:

Given direct speech therapy instruction Minor will increase his ability to follow multi-step directions from 40% 80% accuracy as measured by criterion referenced assessment and therapy data logs.

Goal 4

Area of Need: Speech/Language - Instructional/Special Education

Measurable Goal:

Given direct speech therapy instruction Minor will increase his ability to identify words in categories from 50% to 80% accuracy as measured by criterion referenced assessment and therapy data logs.

Goal 5

Area of Need: Speech/Language

Measurable Goal:

Given direct speech therapy instruction Minor will increase his ability to retell events in stories in sequential order from 40% 80% accuracy as measured by criterion referenced assessment and therapy data logs.

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Goal 6

Area of Need: Speech/Language - Instructional/Special Education

Measurable Goal:

Given direct speech therapy instruction, Minor will increase his ability to answer questions about a story from 50% 80% accuracy as measured by criterion referenced assessment and therapy data logs.

Goal 7

Area of Need: Math - Instructional/Special Education

Measurable Goal:

Missing Number: By the end of the 2015-2016 school year, Minor will increase from 12 correct missing numbers on a Kindergarten grade level probe to 21 correct missing numbers on a 1st grade level probe in 1 minute, as measured by Curriculum Based Measurement.

Goal 8

Area of Need: Math - Instructional/Special Education

Measurable Goal:

Missing Number: By the end of the 2015-2016 school year, Minor will increase from 12 correct missing numbers on a Kindergarten grade level probe to 21 correct missing numbers on a 1st grade level probe in 1 minute, as measured by Curriculum Based Measurement.

ACCOMMODATIONS AND MODIFICATIONS

Accommodations

What type(s) of accommodation(s), if any, is (are) necessary for the student to make progress in the general curriculum and participate in extracurricular and other nonacademic activities?

- Multiple or Frequent Breaks
- Extended Time for quizzes and tests
- Extended Time for assignments
- Oral Administration

No curricular or non-curricular modifications were identified by the team.

Legal Name of Student **Minor**

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NORMAL SCHOOL YEAR SERVICES (EXCLUDES SUMMER MONTHS)

Category: Special Education/Specially Designed Instruction **Service:** Reading
Location: Special Education Classroom
Start Date: 8/17/15 **End Date:** 5/27/16
Direct/Indirect: Direct
Amount: 60 minutes weekly

Category: Special Education/Specially Designed Instruction **Service:** Math
Location: Special Education Classroom
Start Date: 8/17/15 **End Date:** 5/27/16
Direct/Indirect: Direct
Amount: 30 minutes weekly

Category: Special Education/Specially Designed Instruction **Service:** Speech and Language
Location: School Environment
Start Date: 8/17/15 **End Date:** 5/27/16
Direct/Indirect: Direct
Amount: 60 minutes weekly

Specific directions, considerations, or delivery methods for special education, other related services, and supplementary aids and services:

Minor will receive a total of 150 minutes of instruction per week for the areas of reading, math, and written expression. Specific allotments above will vary on a daily basis depending on individual student need.

ASSESSMENT PARTICIPATION

Accommodations and modifications must reflect those used in daily classroom instruction

District Assessment(s)

Assessment	Participation	Accommodations
Mastery Connect	Yes	Small Group

Explanation of why **Minor** will not participate in district assessments:

For students participating in statewide assessments:

In the event that the statewide assessment program for 2015-2016 changes, the accommodations described in this IEP will be applied, as allowable, for the new assessment program.

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State Assessments

Test	Participation	Accommodations
2nd Grade GT	Not in Group	
ACCESS for ELLs	Not in Group	

LEAST RESTRICTIVE ENVIRONMENT

Placement Setting and Delivery Model

Placement option that best describes the student's placement for the program developed by the IEP team:

- School of Residence

Delivery of Instruction and Services

Student's instruction will be delivered by:

- Specialized instruction that supplements general education instruction

Participation with Students without Disabilities

Student may be removed from all or part of the following general education courses and/or nonacademic activities:

Academic:

- ELA
- Language
- Spelling
- Reading
- Writing
- Math

Removal Justification:

Minor will be removed from general education in order to receive special education services in the areas of ELA and Math.

LRE Setting: Inside Regular Class and activities 80% or more of the day

EXTENDED SCHOOL YEAR

ESY Considerations

Yes	No	
	☒	A significant regression is anticipated if ESY services are not provided.
	☒	Nature and severity of the student's disability impact the maintenance of attained skills.
	☒	The student is at a critical point in instruction (e.g., emerging skill, transition point, etc.) such that continued specialized instruction and related services, without a break, is crucial to the student's educational program.
	☒	There are special circumstances, such as a large number of absences during the school year, that are relevant to consideration of ESY.

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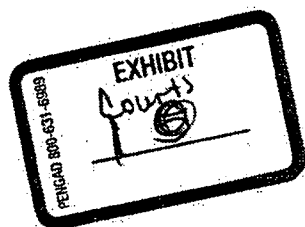
04/13/2015
IEP Meeting Date

The IEP team used the following information and data in determining the need for ESY services:

- Teacher assessment of the student's success with various instructional interventions
- Criterion-referenced and standardized test data
- Past educational history, as appropriate, including any ESY services
- IEP goals and objectives
- Student performance (pretest and posttest data)

Decision

It has been determined that the student is not eligible for extended school year services.



ASSESSMENT & RESOURCE CENTER FORENSIC INTERVIEW REPORT

NAME: Minor SEX: Male

INTERVIEW DATE(S): 11/24/2015 RACE: AA

DATE OF BIRTH: [REDACTED] AGE: 7

REFERRAL SOURCE/AGENCY: Atha Rose/RCDSS/803-714-7324

INVOLVED AGENCIES: Enter specific personnel and agency name.

☒ Law Enforcement Det. J. L. Charley/Columbia Police Dept.

☒ DSS same as above

☐ Other _____

TYPE OF ABUSE / EVENT SUSPECTED (Check):

☐ Sexual Abuse / Assault ☒ Physical Abuse / Assault ☐ Neglect

☐ Psychological Abuse ☐ Witness ☐ Other _____

Identity of suspect(s) (include full name, age, race): Kristin Campbell, 31, AA, F; Shane Johnson, AA, M

Relationship(s) to child: biological mother and mother's boyfriend

CHILD INTERVIEW and SUMMARY OF DATA:

Records reviewed / Available in chart:

Collateral Information:

- ☒ LE Records
☐ DSS Records
☒ ARC Intake
☒ Caregiver Questionnaire
☐ Other Records (specify): _____

Was interview observed by MDT Member?

If yes, by whom? Atha Rose/RCDSS

Media used in interview:

- ☒ Flipchart
☒ Interview Guidelines Tool:
 Proficient? ☒ Y ☐ N
 Comments: _____
☐ Anatomical Diagrams:

Symptom Assessment:

- ☐ TSCC
☐ TSCYC
☐ CBCL
☐ CSBI
☐ CAPI
☐ Other Symptom Measure:

- ☒ Yes
☐ No

- ☐ Anatomical Dolls
☐ Competency Book:
 Proficient? ☐ Y ☐ N
 Comments: _____
☐ Other media:

INTERVIEW OUTCOME

☒ Report of Maltreatment Typology: ☐ Sexual ☒ Physical ☐ Psychological ☐ Neglect ☐ Witness ☐ Other:	☐ No Report of Maltreatment Typology: ☐ Denial ☐ Recantation of Prior Disclosure	Comments:
Opinion: ☒ Clear ☐ Problematic	Opinion: ☐ Clear ☐ Problematic	

Summary of interview / report of events (Note: This is a summary. See video for child's complete statement.)

Minor was interviewed using a semi-structured interview protocol known as Child First. He had a difficult time focusing on interview questions and wanted to leave the interview room at multiple times during the interview but with redirection was able to participate in the interview. **Minor** has a diagnosis of Autism Spectrum Disorder and may be developmentally delayed. While discussing family, **Minor** reported he did not want to put 'Shane' on the chart. He said 'he put the hot water on me'. **Minor** became extremely agitated and did not want to answer interview questions about what happened with the hot water. **Minor** said his mother heard him crying from the bathroom and came in the room and said 'Shane, what you doing, he's burned up'. Then **Minor** said they took him to the hospital. **Minor** reported Shane put him in the shower and turned the hot water on. The water burned him. **Minor** said Shane put him in the tub and was hitting him in the head with a belt then turned on the hot water causing burns to his skin. **Minor** became agitated and did not want to answer interview questions. Interviewer provided reassurance and attempted to redirect back to the interview questions. Asked who turned the water on to 'hot', **Minor** said Shane did, not **Minor**. **Minor** again wanted to leave the interview room and appeared agitated.

Interviewer respectfully ended the interview.

See video for entire interview.

Summary of interview, continuation page**RECOMMENDATIONS TO TEAM OR FAMILY:**

1. **Minor** should be enrolled in trauma-focused cognitive behavior therapy (TFCBT) to process what happened to him. Post Trauma Resources can provide these specialized services and RCDSS should ensure he is referred and attends all scheduled appointments to completion.
2. No contact with alleged suspect during the investigation.

Evaluator Name: Heather M. Smith, LPC

Evaluator Signature: Heather M. Smith, LPC Date: 1/12/2016

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Shane Isaac Johnson,)
)
 Defendant.)
)
)

April 3, 4, 5, 6, 7, 2017
Columbia, South Carolina

The Honorable R. Knox McMahon, Judge

Kathryn Luck Campbell, Esquire, Assistant Solicitor
Lamar J. Fyall, Esquire, Assistant Solicitor
Nicole M. Simpson, Esquire, Assistant Solicitor
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1 that, what's that college? Clemson State, what is it?
2 What's that college? Clemson University, and of course she
3 also is a graduate of the University of South Carolina law
4 school.

5 That, that is true, correct, University of South
6 Carolina law school?

7 MS. POOLE: That's true.

8 *JURY VOIR DIRE*

9 THE COURT: Now we're going to go through a procedure
10 whereby we select a jury for the trial of this specific
11 case. You have already been qualified generally. I'm not
12 sure what judge conducted the qualification.

13 Who was that, Madame Clerk?

14 CLERK OF COURT: It was Judge Hood. Judge Hood.

15 THE COURT: Judge Hood? All right, Judge Hood
16 conducted the general qualification, and now, as I say,
17 we're going to go through a procedure where we select a
18 qualified jury in the trial of this particular case.

19 Several things. If you would please consider yourself
20 was still under oath, the clerk having administered the
21 oath to you earlier today.

22 Momentarily I'm going to read to you or publish to you
23 the indictment, the indictment that has been called for
24 trial. The indictment is not evidence. The indictment is
25 the formal charging document by which an individual is

1 placed on notice of charges that have been brought against
2 him or her. It contains mere allegations and is in no
3 sense evidence of the allegations contained therein. The
4 reason I read the indictment to you is because of certain
5 questions I will have to ask you to determine your
6 qualifications.

7 The indictment is 2015-GS-40-6544, *The State vs. Shane*
8 *Isaac Johnson* to my front left, who will be introduced to
9 you momentarily. The indictment alleges that Shane Isaac
10 Johnson did in Richland County, on or about 7 October 2013,
11 inflict great bodily injury upon a child aged seven years,
12 which created a substantial risk of death and/or cause
13 serious or permanent disfigurement and/or protracted loss
14 or impairment of the function of any bodily member or organ
15 in violation of South Carolina Code of Law, Section
16 16-3-0095(A) 1976 as amended. That is an indictment for
17 abuse or infliction of great bodily injury upon a child.

18 The state to my front right is represented by members
19 of the solicitor's office: Solicitor Campbell, Fyall, and
20 Simpson.

21 If y'all would please stand and introduce yourselves
22 to the jury panel.

23 MS. SIMPSON: My name is Nicole Simpson, and I am an
24 assistant solicitor with the Fifth Judicial Circuit.

25 MS. CAMPBELL: My name is Luck Campbell; I'm an

1 MS. PINNOCK: Yes, sir, thank you. If it pleases the
2 court? The argument on that, the best comparison I can
3 make is back to the improper bolstering of witness
4 testimony that we dealt with, you know, through all the CSC
5 cases. Your Honor knows the history of that and the, you
6 know, the controlling authority at this point, you know, it
7 bars any testimony by one witness, you know, about the
8 veracity of another witness.

9 THE COURT: I'm not talking about veracity. I'm just
10 talking about Detective Charley's statement in the -- that
11 might be in the second interview. I'm sorry, that's in the
12 second interview.

13 MS. PINNOCK: Yes, sir.

14 THE COURT: I, I agree with you on that, that as far
15 as you cannot bolster a statement. One witness cannot
16 bolster another witness's testimony, I, I agree with you on
17 that. I misread it. I was down in interview two.

18 So, I, I agree with that, Solicitor, that 1-54-07.

19 MS. CAMPBELL: On the second interview?

20 THE COURT: On the first. I'm just on the first, and
21 then past discipline, tell me, tell me about that,
22 Solicitor.

23 MS. CAMPBELL: Your Honor, I believe at that point in
24 the statement, he's just asked basically if he had ever
25 abused the child or something to that effect. He says he

1 just meant -- he basically says the only thing I've ever
2 done, and then describes what he's done, which is not in
3 any way, shape, or form a crime. He also talks about how
4 he does it to his other children as a form of discipline,
5 but it doesn't amount to any type of crime on anybody. So,
6 I don't know why that would not be admissible.

7 THE COURT: Ms. Pinnock.

8 MS. PINNOCK: Your Honor, our position, that is just
9 irrelevant. Whether or not Reginald, Jr., was ever
10 spanked, whether or not Mr. Johnson's children's were
11 spanked in the past has nothing to do with the allegations
12 in the case. It can be misconstrued by people because
13 depending on where you're from and how you were raised,
14 there's a split of opinions on corporal punishment, but
15 it's just irrelevant. That's why we objected to that. It
16 has nothing to do with his guilt or innocence on this
17 charge. So, our concern is it would be misconstrued. It
18 has nothing to do with the charge that he's facing in court
19 today. So, I, I don't see why it's necessary or admissible
20 at this point.

21 THE COURT: Solicitor.

22 MS. CAMPBELL: Your Honor, the relevance is it's just
23 part of the context of the entire conversation in which
24 they basically explore his relationships with the child,
25 and that is ---

1 THE COURT: I don't think it's relevant.

2 MS. CAMPBELL: --- at issue.

3 THE COURT: I, I don't think that he -- of course at
4 one point he denies it. In one of the interviews, he
5 denies ever and later on he talks about popping him on his
6 hand, along with his, Mr. Johnson's children, but I, I
7 don't think that's relevant. I don't think it's relevant
8 whether he did or whether he didn't unless it becomes
9 relevant through a witness's testimony.

10 MS. PINNOCK: Certainly.

11 THE COURT: All right. So, that, that was all I saw
12 on interview one: prison reference, children don't lie,
13 past discipline.

14 MS. PINNOCK: Yes, sir.

15 THE COURT: All right, and if that's the only -- and
16 of course y'all have got to listen to it now some time.

17 All right, how about the other motions, Solicitor?

18 MS. CAMPBELL: Your Honor, as far as Rule 5, we have
19 met on multiple occasions. I believe we turned over
20 everything. As far as any *Riddle* information, we've given
21 them basically everything we've got other than we did meet
22 with the teachers, who basically said he is a good student,
23 and then we went over some of his school records with them.

24 As far as settling the records of the state witnesses,
25 Your Honor, as far as the grandmother and any of the aunts

1 that may testify, they do not have a prior record. They do
2 work at local law firms. I will double check that. We did
3 run records on Starshema Jones and Bruce Gibbs, which we
4 have provided to the defense. We do not think anything on
5 Starshema Jones is impeachable.

6 And if they wanted to go into Mr. Gibbs, he does have
7 a conviction for possession of drugs, for which he got
8 six-months suspended to one year's probation. I don't have
9 a problem going into that. He also has a conviction for
10 hit and run with minor personal injury. If they want to go
11 into that, I don't have a problem with that either. And
12 then he has another malicious injury to personal property
13 which we'll be glad to go into.

14 THE COURT: All right, Mr. Bank.

15 MS. CAMPBELL: If that's what they want.

16 MR. BANK: That's -- we'll, we'll take those positions
17 -- we'll, we'll discuss that. I don't think we're going to
18 have any problem with that. They haven't -- they have
19 given us the rap sheets at this point.

20 THE COURT: 2(a) has been resolved, correct?

21 MR. BANK: Your Honor, I'd just like to put on the
22 record exactly, you know, what, what they've updated us on
23 in terms of *Riddle*. They've updated and told us that they
24 have met with Dr. Cartie, with Ms. Deborah Campbell, with
25 Ms. Kimberly Brown, with Ms. Caree, C-a-r-e-e. They've

1 told us that they have met with Reginald and that his
2 statements have been consistent and that either Shane did
3 this or Daddy did this or whatever statement that is that
4 he did this. And then now the update on the teachers
5 saying that he is a good student.

6 We had some discussions about the cell phones that
7 were taken in this case by law enforcement. There were two
8 cell phones taken by -- from by Ms. Kristin Campbell by law
9 enforcement. Those cell phones were attempted to be looked
10 at forensically by their state expert. They were,
11 according to their reports, unable to retrieve anything
12 from the two phones.

13 Those phones apparently a couple of weeks ago were
14 given back to Ms. Campbell, which we were unaware of. We
15 have asked if they would consent to us -- to getting the
16 phones back and to us having an expert attempt to do a
17 forensic recovery. They have agreed to that, and that's
18 going on as I know -- as we speak right now.

19 There is also -- the only other *Riddle* issue I think
20 that's -- that I can come up with, think of right now is
21 there were some thermometers used by Investigator Bailey in
22 the case to test the water in the shower some -- a week,
23 about a week later when they went back to look at the
24 house. My understanding is the state is no longer in
25 possession of those two thermometers. So, that's the

1 extent of the *Riddle*. And if they have anything they want
2 to correct from that, I'm more than happy if I misspoke on
3 anything.

4 MS. CAMPBELL: Your Honor, we've met with those
5 witnesses, as well as others, and we've given them anything
6 that -- anything that's changed in any way.

7 THE COURT: All right. Thank you.

8 MR. BANK: And on any of the experts, there's a number
9 of experts they've had on their witness list we don't have
10 anything on. We'd at least like CVs on those folks
11 whenever they get a chance to give those to us.

12 THE COURT: If you have them, Solicitor ---

13 MS. CAMPBELL: We'll give it to them.

14 THE COURT: --- you need to turn them over.

15 MS. CAMPBELL: Your Honor, also they've got experts on
16 their witness list that we would ask for CVs on them, too.

17 THE COURT: All right.

18 MR. BANK: And we'll provide those as well.

19 THE COURT: Thank you, Mr. Bank.

20 MR. BANK: Your Honor, just a couple matters I want to
21 make sure that I have on, on the record. Yesterday during
22 the jury selection, you instructed the prosecution to give
23 us any convictions of any of the jurors. They indicated to
24 us that none of the jurors had any convictions that were in
25 the jury pool. So, that was complied with.

1 THE COURT: Is that correct, Solicitor?

2 MS. CAMPBELL: Yes. I checked, Your Honor, and had
3 somebody double check to make sure I didn't miss something.

4 THE COURT: All right.

5 MR. BANK: Your Honor, I, I understand the renewal of
6 this motion is going to be more important whenever Reginald
7 testifies, but just so the court reporter has this, we are
8 renewing our motion for a court-ordered evaluation of
9 Reginald. We held hearings last week. I believe we took
10 testimony last Monday, which would have been March 27th,
11 and submitted a brief as a court exhibit that same day.
12 The next day on the 28th, my recollection is that we then
13 had oral arguments before Your Honor, and then the
14 following day on March 29th, again in this courtroom, we
15 were back on the record for you to provide your basis for
16 denying our motion, at least at that time.

17 THE COURT: All right. Anything, Solicitor?

18 MS. CAMPBELL: No, Your Honor.

19 THE COURT: All right. Thank you, Mr. Bank.

20 MR. BANK: Your Honor, something new that came up
21 yesterday that I want to bring to the court's attention.
22 During jury selection, there were a number of jurors that
23 were lined up waiting to be asked questioned by Your Honor
24 right here along the side. There were numerous times that
25 Reginald, who's the young boy who I understand is in the

1 trial of this case.

2 Juror number 108.

3 FOREPERSON: Yes.

4 THE COURT: Thank you. Thank you very much for
5 volunteering for that very important position. I
6 appreciate that.

7 FOREPERSON: No problem.

8 THE COURT: One, one day I'm going to find out how
9 jurors make that, that decision. Also as to your other
10 notes or any juror's notes, any time you need a break, just
11 please raise your hand. Y'all will take y'all's break. We
12 will take our break, okay?

13 All right, ladies and gentlemen of the jury, the case
14 we are about to try is the case of *The State vs. Shane*
15 *Isaac Johnson*, to left, the defendant. What I will now say
16 is intended to serve as an introduction to the trial of the
17 case. These remarks are not an instruction on the law in
18 the case. I will instruct you on the law applicable to
19 this case at the end of the trial before you begin your
20 deliberations and the consideration of your verdict. This
21 is merely an explanation of the procedure that we will
22 follow in the trial of the case so that you may better
23 understand what may be happening.

24 The defendant is charged by an indictment which I've
25 read to you previously with the offense of abuse to inflict

1 great bodily injury upon a child, the elements of which
2 will be explained to you later. This indictment again,
3 ladies and gentlemen, is the formal charging document by
4 which this case is brought before the court. It contains
5 mere allegations and in no sense is evidence of the
6 allegations contained.

7 Mr. Johnson has pled not guilty to this indictment.
8 The state, the party to my front right, therefore has the
9 burden of proving each of the elements of the indictment
10 beyond a reasonable doubt and it will be your duty, ladies
11 and gentlemen, to decide whether or not the state has met
12 that burden. A criminal defendant in South Carolina is
13 never required to prove himself or herself innocent; a
14 criminal defendant is always presumed to be innocent.

15 Your purpose as jurors is to find and determine the
16 facts. You, ladies and gentlemen, are the sole judge of
17 the facts in this case. If at any time I make any comment
18 regarding the facts, you must disregard it. You were to
19 determine the facts from the testimony you hear and any
20 other evidence introduced in court. It is also up to you
21 to determine what inferences which you feel may properly be
22 drawn from the evidence.

23 It is especially important that you perform your duty
24 of determining the facts diligently and conscientiously
25 because ordinarily there is no way to correct an erroneous

1 deliberation room because the law is reason, free from
2 passion. And convicting Shane of this crime won't undue
3 the burns that happened to **Minor** They won't undo the
4 pain, and they won't undo the scars.

5 This was a tragic and unfortunate accident, not a
6 criminal act, and that's why at the end of this trial Mr.
7 Bank will get up before you and urge you to render the only
8 just verdict in this case: not guilty.

9 THE COURT: Thank you. Thank you, Ms. Sturgill.

10 Before we start the trial of the case, I have one
11 question for the jury. Has any member of the jury panel
12 heard anything about the trial of the case except what
13 you've heard in the courtroom this morning by the clerk,
14 the solicitor, Ms. Sturgill, and myself? Heard any talk
15 about this case otherwise in the courtroom, outside of the
16 courtroom otherwise? If so, please stand.

17 Thank you. Thank you very much. No one stands.

18 Solicitor, you may call your first witness.

19 MR. FYALL: Your Honor, may we approach?

20 THE COURT: Yes, sir.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 THE COURT: All right, thank you. You may call your
23 first witness, Solicitor.

24 MR. FYALL: Thank you, Your Honor. State calls
25 Officer Don Timmons.

D. TIMMONS - DIRECT EXAMINATION BY MR. FYALL

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1 THE COURT: All right, if you'd come around for us and
2 be sworn.

3 DON TIMMONS, BEING DULY SWORN,
4 TESTIFIES AS FOLLOWS:

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

7 WITNESS: Don Timmons.

8 DIRECT EXAMINATION BY MR. FYALL:

9 Q. Officer Timmons, can you tell us where you're
10 employed?

11 A. The City of Columbia Police Department.

12 Q. And how long have you been? How long have you been
13 employed there?

14 A. Three years.

15 Q. And on October 7, 2015, what was your duty at that
16 time?

17 A. I was the responding officer to the hospital, Palmetto
18 Richland.

19 Q. All right. Can you tell us what time you responded to
20 that hospital?

21 A. I was dispatched at 2232. I arrived at 2236.

22 Q. And what did you see when you arrived?

23 A. Medical staff were in the room with the victim. They
24 were preparing him to transfer to the burn center. He had
25 burns to his face and head. That's all I could see. The

D. TIMMONS - DIRECT EXAMINATION BY MR. FYALL

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1 rest of his body was wrapped, getting ready for transport.

2 Q. All right, and did you witness him actually being
3 transported?

4 A. I did, as he was leaving. As I was arriving, he was
5 being pushed out.

6 Q. All right. Now, did you speak to anyone while you
7 were there?

8 A. I spoke to the defendant and the victim's mother, Ms.
9 Campbell, and several members of medical staff.

10 Q. Based on your conversation with the defendant, were
11 you able to determine how long it took them from the
12 incident to their arrival at the hospital?

13 A. The mother stated that the incident took place ---

14 MS. PINNOCK: Objection, Your Honor. Hearsay.

15 THE COURT: Yes, sir, you'll have to rephrase your
16 question. I would sustain that.

17 MR. FYALL: Yes, sir.

18 BY MR. FYALL:

19 Q. You can't tell me what anyone said, but what
20 conclusion did you draw as far as the length of time it
21 took them to get to the hospital?

22 A. It was approximately two hours.

23 Q. All right, you said you talked to the mother, the
24 defendant. Did you talk to the medical staff as well?

25 A. I talked to the physician that was over the --

D. TIMMONS - DIRECT EXAMINATION BY MR. FYALL

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1 patient's physician, assigned physician, as well as the
2 nurses that were assigned to him.

3 Q. All right, and how did you come to be called to the
4 scene?

5 A. Medical staff felt that it was ---

6 MS. PINNOCK: Objection, Your Honor.

7 THE COURT: I think I'll allow that without any
8 statement. The question is how did you come to be called.
9 You can respond to that question, Officer.

10 BY MR. FYALL:

11 A. I was dispatched by my dispatch that a child had been
12 burned.

13 Q. All right.

14 MR. FYALL: Beg the court's indulgence.

15 THE COURT: Yes, sir.

16 (A PAUSE.)

17 BY MR. FYALL:

18 Q. When you talked to the defendant, Mr. Johnson, where
19 was he at that time?

20 A. When I spoke to him, he was in the victim's room.

21 Q. All right, and when you spoke to him, what did he say
22 to you?

23 A. He said the child was -- had took a shower and had
24 gotten burned.

25 Q. All right.

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1 MR. FYALL: Beg the court's indulgence.

2 THE COURT: Yes, sir.

3 (A PAUSE.)

4 BY MR. FYALL:

5 Q. All right, when you were getting ready to leave the
6 scene, did you see the defendant, Mr. Johnson, and also the
7 mother, Ms. Campbell?

8 A. Yes, sir. They were in a hurry to leave so they could
9 get to the burn center with the victim. I, I stayed at the
10 hospital approximately twenty, twenty-five minutes
11 afterwards talking to the medical staff, and as I was
12 leaving, they were standing out in the park lot smoking
13 cigarettes.

14 Q. And so this was after the defendant told you he was in
15 a hurry to leave?

16 A. Yes. They asked us several times if they were -- they
17 could leave so they could be on their way to Augusta.

18 Q. All right. At that time, did that end your personal
19 involvement in this case?

20 A. It did. It was passed on to investigation from there.

21 Q. All right.

22 MR. FYALL: Nothing further, Your Honor.

23 THE COURT: Ms. Pinnock.

24 MS. PINNOCK: Please the court, Your Honor?

25 THE COURT: Yes, ma'am

1 CROSS-EXAMINATION BY MS. PINNOCK:

2 Q. Officer Timmons, do you have a copy of your report
3 there?

4 A. I do.

5 Q. Okay. As you were leaving, you said you saw Shane and
6 Kristin in the parking lot?

7 A. Yes, ma'am.

8 Q. You don't know what they were talking about?

9 A. No, ma'am. I didn't, I didn't stop and talk to them.

10 Q. Okay. You don't know if they had a car there?

11 A. The mother told me she drove there.

12 Q. Did you see them in a car?

13 A. No, ma'am.

14 Q. You don't know if they had directions to the burn
15 center? You just saw them in the parking lot, right?

16 A. I think we asked them if they needed instructions.
17 The medical staff there asked them if they needed ---

18 Q. Okay, do you know ---

19 A. --- instructions to the burn center.

20 Q. Do you know if they knew how to get there as they were
21 standing there?

22 A. No, ma'am.

23 Q. Okay, and you said you spoke to Mr. Johnson when you
24 got to the hospital, and he said that the child was burned
25 while taking a shower?

D. TIMMONS - CROSS-EXAMINATION BY MS. PINNOCK

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1 A. Yes, ma'am.

2 Q. Can you look at your report? I believe it's on the
3 second page.

4 A. Yes, ma'am.

5 Q. You say that Mr. Johnson told, told you that he helped
6 the child into the bathroom and he was burned in the
7 shower, right?

8 A. Yes, ma'am.

9 Q. Okay. That's how you have it typed up?

10 A. Yes, ma'am. Would you like me to read it?

11 Q. I mean, is that pretty much what it says, he helped
12 the child into the bathroom? Then the child got burned in
13 the shower?

14 A. Yes.

15 Q. Okay.

16 MS. PINNOCK: Thank you. No further questions.

17 THE COURT: Redirect, Solicitor?

18 MR. FYALL: No, Your Honor.

19 THE COURT: Thank you. Thank you very much, Officer.
20 You may step down.

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: You may call your next witness.

23 MS. SIMPSON: State calls Mary Smith.

24 MARY ELIZABETH SMITH, BEING DULY

25 SWORN, TESTIFIES AS FOLLOWS:

M. SMITH - DIRECT EXAMINATION BY MS. SIMPSON

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1 CLERK OF COURT: Have a seat in the witness stand,
2 please. State your name for the record. Please state your
3 name for the record.

4 WITNESS: My name is Mary Elizabeth Smith.

5 DIRECT EXAMINATION BY MS. SIMPSON:

6 Q. Ms. Smith, what is your profession?

7 A. I'm a registered nurse.

8 Q. And where are you currently employed?

9 A. I currently work for the Medical University of South
10 Carolina Hospital Authority in Charleston.

11 Q. Okay, and what -- tell the jury a little bit about
12 what you do and what your position entails at the
13 University of Charleston.

14 A. It's the Medical University of South Carolina.

15 Q. Medical University of South Carolina.

16 A. I currently work in the outpatient clinic that sees a
17 variety of pediatric patients. We see a bunch of specialty
18 clinics during the day, and in the evening we run an urgent
19 care for pediatrics.

20 Q. And how long have you been down in Charleston?

21 A. Moved in March of 2016, so we've been down there a
22 little over a year.

23 Q. And prior to that, were you actually living and
24 working in Columbia?

25 A. Yes, ma'am. I lived in Northeast Columbia and worked

M. SMITH - DIRECT EXAMINATION BY MS. SIMPSON

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1 at Palmetto Health Richland.

2 Q. And can you tell the jury about your educational
3 background and training?

4 A. Overall I have a Bachelor's of Sociology, and then I
5 have my associate's degree in nursing which I received from
6 Midlands Technical College, and I worked at Palmetto Health
7 Richland for a total of eleven years, and that would be --
8 six of that was as a nurse.

9 Q. Okay, and were you -- did -- how long would you have
10 been -- and I guess -- I apologize just because I've met a
11 few nurses. You've probably worked in different areas over
12 the course of your career, or were you primarily in
13 emergency medicine?

14 A. The majority of my time at Palmetto Health Richland
15 was spent in the emergency medicine area. I was in the
16 emergency adult side of the emergency room for a while, and
17 then I worked the last few years with the emergency
18 department in primarily the pediatric side.

19 Q. And how many patients would you say you have seen come
20 in and out of the emergency room?

21 A. Oh, more than I can count over the years.

22 Q. I want to turn your attention back to October 7th of
23 2015. Where were you working at the time?

24 A. I was working in the pediatric emergency department,
25 and I was the -- at that time I was trained as the triage

M. SMITH - DIRECT EXAMINATION BY MS. SIMPSON

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1 nurse, charge nurse for the area as well, and the spent
2 just some time in regular staffing.

3 Q. And just for our explanation, what is a triage nurse?
4 I mean, what do you do or what were you in charge of?

5 A. So, when you are a triage nurse, your primary goal or
6 your primary job for the evening is to assess, do kind of a
7 quick assessment, overall head-to-toe looking at a patient.
8 Get vital signs, get the patient roomed into the
9 appropriate room.

10 Q. Okay, and do you also work with, I guess, the
11 physicians?

12 A. Yes.

13 Q. That are on, on that shift as well?

14 A. Yes.

15 Q. At that time? I know -- have you had a chance to
16 actually review the medical records in this case?

17 A. Yes, ma'am, I was able to.

18 Q. But in addition to that, do you actually have some
19 independent recollection about this case?

20 A. Yes, ma'am. You never forget certain patients.

21 Q. Okay. Tell the jury on October 7th of 2015 what you
22 recall about when the victim in this case, Reginald Walker,
23 presented to the ER.

24 A. What I remember is a gentleman carrying a child who
25 was wrapped in a blanket or a towel; I remember him being

M. SMITH - DIRECT EXAMINATION BY MS. SIMPSON

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1 wrapped in something, being carried into the emergency
2 department. We immediately took him back to a room, and
3 the child was obviously burned. From what I could see
4 immediately was the chest area, but...

5 Q. And those were the visible injuries. What was the
6 child's demeanor? Was he excited? Was it clear that he
7 was under the stress and trauma of being burned?

8 A. Yes, ma'am. It was quite obvious to me as a nurse
9 that he was in pain. He was crying and upset.

10 Q. And you said that the gentleman that came in was the
11 one holding him?

12 A. Yes, ma'am. He was being carried by him.

13 Q. He was being carried, and did he kind of freely and
14 easily turn over access?

15 A. It took some encouragement from myself and other staff
16 members to get him to place him on the emergency room
17 stretcher so that we could examine the child fully.

18 Q. Okay, and once you did that, what decisions were made
19 with respect to this child's treatment and y'all's ability
20 to treat him at Palmetto Health Richland?

21 A. Once we were able to assess the extent of his
22 injuries, it was apparent that we needed to transfer him
23 the emergency -- to the burn center, excuse me, in Augusta.

24 Q. Okay, and I want to back up just a little bit to you
25 being a triage nurse and in charge of intake. In that

1 process, do you have a tendency to talk to certain
2 caregivers or whoever might bring the person into the
3 hospital in order to gather information about how to
4 proceed medically or what may have happened?

5 A. Yes, ma'am. Especially in pediatrics, we a lot of
6 times speak to whoever brings in the patient to see what,
7 what happened, how -- what the reason they're there for.

8 Q. Okay, and you said especially in pediatrics?

9 A. Yes, ma'am.

10 Q. What is the reason for that?

11 A. In pediatrics there is generally -- kids can tell you
12 what's wrong, what hurts, and certain things. But as in
13 specifics, generally adults -- you need that -- whoever the
14 caregiver is or whoever lives with the child during the
15 time of the injury or sickness. You need that, that person
16 to specifically give answers about what's going on.

17 Q. And in this case, too, the child is being treated with
18 respect to this case with fluids?

19 A. Yes, ma'am.

20 Q. Things of that nature, and did you have occasion,
21 without telling me what she said to you, to speak to Ms.
22 Kristin Campbell?

23 A. At the -- I remember her being in the room. I don't
24 remember specifically speaking directly to her.

25 Q. Okay. What do you recall about being in the room with

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1 the caregivers and the victim in this case?

2 A. What I remember is that it took a moment for us to be
3 able to get the gentleman to put the patient on the bed
4 so that we could see. And then I remember just when we
5 were trying to figure out what happened that we were told
6 that ---

7 MS. PINNOCK: Objection, Your Honor. It's hearsay.

8 THE COURT: Solicitor, is this for the purpose of
9 medical diagnosis or treatment?

10 MS. SIMPSON: Yes, Your Honor. I believe I've laid
11 the appropriate foundation through this witness. She's in
12 charge of the intake triage. This is immediately at the
13 time that Mr. Johnson finally handed over the child so that
14 they could view the injuries and the extent of those
15 injuries.

16 THE COURT: All right, Ms. Pinnock.

17 MS. PINNOCK: Your Honor, if we could approach, I
18 would ---

19 THE COURT: Sure. Of course.

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 MS. SIMPSON: Your Honor, I would actually offer up
22 *State vs. Sims*.

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

24 MS. SIMPSON: I cite ---

25 THE COURT: May I see it?

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1 MS. SIMPSON: Yes.

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

3 THE COURT: All right, anything further, Solicitor,
4 Ms. Pinnock?

5 MS. SIMPSON: Your Honor, with respect to the
6 statements, since it may not be qualified under medical --
7 for medical purposes, we would offer as an excited
8 utterance.

9 THE COURT: All right.

10 MS. SIMPSON: I can lay a little more foundation, but
11 I believe this witness has already testified to foundation
12 for that just as to the victim's statement.

13 THE COURT: All right, Ms. Pinnock.

14 MS. PINNOCK: Well, Your Honor, we'll just stand on
15 our objection. I don't believe that it does qualify under
16 the excited utterance either based on the totality of the
17 circumstances.

18 THE COURT: All right, I, I had -- initially I
19 misunderstood. I thought it was a statement by a different
20 party than the one you indicated now. I think it is
21 admissible under 801 -- excuse me, 803.2 which is cited in
22 *State vs. Sims*, 348 SC 16, 2002.

23 All right, you may proceed, Solicitor.

24 MS. SIMPSON: Thank you, Your Honor.

25 BY MS. SIMPSON:

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1 Q. Okay, Ms. Smith, let me back up a few minutes to
2 where y'all were. You were in the room and the gentleman
3 had just -- or the man had just released the child to
4 y'all, and were y'all questioning him?

5 A. We were, and to try and figure out how the injuries
6 happened.

7 Q. And what was his demeanor? Was he clearly under the
8 stress of what had happened?

9 A. Yes, ma'am. I would say that he was anxious, you
10 know. That was part of not wanting to set the child down
11 and ---

12 Q. Well, no. With respect to the victim.

13 A. With the victim, yes, ma'am, he was in distress. He
14 was in pain, very uncomfortable.

15 Q. Okay, and who all as far as not just the doctors, but
16 was -- who was in the -- present as far as the care -- the
17 room as far as the caregivers? Both male and female?

18 A. They were both male and female, I believe. Yes,
19 ma'am.

20 Q. Okay, and what do you recall the victim saying?

21 A. He did this to me.

22 Q. In whose direction was he looking at?

23 A. The gentleman.

24 Q. And, and do you recall whether or not the gentleman in
25 the room responded in any way or how he responded or any

1 statements that he made?

2 A. I remember there was a response, but I do not remember
3 exactly the response that was made by him.

4 Q. Okay, but again the victim said you did this to me,
5 looking at the male in the room?

6 A. Yes, ma'am.

7 Q. Okay, and once -- just tell us what you did next as
8 far as a nurse in treating Reginald Walker.

9 A. So, the next step in burn and as we were prepared for
10 sending a patient over, we calculated the amount of fluids
11 that he would need based on injuries and everything, and
12 then as well as we soaked gauze in saline and wrapped what
13 wounds we could.

14 Q. And then was he immediately transported or as quickly
15 as possible transported?

16 A. Yes, ma'am, as quickly as possible.

17 Q. And with respect to...

18 MS. SIMPSON: Beg the court's indulgence.

19 THE COURT: Yes, ma'am.

20 (A PAUSE.)

21 BY MS. SIMPSON:

22 Q. And would you characterize these injuries as severe?

23 A. Yes, ma'am, I would.

24 Q. And as far as your involvement in this case with the
25 victim, would that be the extent of it?

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1 A. Yes, ma'am.

2 MS. SIMPSON: Thank you.

3 THE COURT: Thank you..

4 Ms. Pinnock.

5 MS. PINNOCK: May it please the court? Beg the
6 court's indulgence.

7 THE COURT: Of course.

8 (A PAUSE.)

9 MS. PINNOCK: Thank you, Your Honor..

10 CROSS-EXAMINATION BY MS. PINNOCK:

11 Q. So, your first interaction with Minor and Kristin and
12 Shane was at the hospital, right?

13 A. Yes, ma'am.

14 Q. You were not on Easter Street before at the house?

15 A. No, ma'am, I was not.

16 Q. You don't know who was at the house?

17 A. No, ma'am, I do not.

18 Q. But all you, all you can tell us is what you saw after
19 they got to the hospital?

20 A. Correct. Yes, ma'am.

21 MS. PINNOCK: Thank you.

22 THE COURT: Redirect, Solicitor?

23 MS. SIMPSON: No, Your Honor.

24 THE COURT: Thank you. Thank you very much, Ms.
25 Smith. You may step down.

K. WILLIAMSON - DIRECT EXAMINATION BY MR. FYALL

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1 MS. SIMPSON: And, Your Honor, may this witness
2 actually be excused? She is out of town and, I believe,
3 working.

4 MS. PINNOCK: No objection.

5 THE COURT: Yes, ma'am, you may be excused. Thank
6 you. Thank you for being with us.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: How long is your next witness?

9 MR. FYALL: Not that long, Your Honor.

10 THE COURT: All right. You may call your next
11 witness. Thank you.

12 MR. FYALL: Thank you, Your Honor. State calls
13 Officer Keith Williamson.

14 THE COURT: If you'd come around and be sworn for us,
15 please.

16 KEITH WILLIAMSON, BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

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

20 WITNESS: Keith Williamson.

21 DIRECT EXAMINATION BY MR. FYALL:

22 Q. All right, and I apologize. It's Investigator
23 Williamson, correct?

24 A. Yes.

25 Q. All right. How long have you been an investigator?

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1 A. Just shy of a year now.

2 Q. All right, and what agency do you work for?

3 A. Columbia City Police Department.

4 Q. How long have you worked for CPD in total?

5 A. Approximately seven years.

6 Q. Seven years. All right, what was your role at CPD on
7 October 7, 2015?

8 A. I was assigned to the North Region Community Response
9 Unit, team. I was on directed patrol that evening.

10 Q. You were on what patrol?

11 A. Directed patrol.

12 Q. What's that?

13 A. You're assigned to a general area. This was around
14 the duration of the flood and just -- we'd proactively
15 patrol the area and respond to specific community
16 complaints.

17 Q. All right, and after 9:00 p.m., how did you become
18 involved in this case?

19 A. I was on stationary -- I was running stationary radar
20 on Farrow Road. I was sitting at the 5200 block of Farrow
21 Road. Observed a dark blue van traveling southbound on
22 Farrow Road at a high rate of speed. Measured speed at 56
23 miles per hour in a 35. Initiated a traffic stop and made
24 contact with the occupants.

25 Q. And when you made contact with the occupants, who was

1 driving that vehicle?

2 A. It was a female operator.

3 Q. All right. What did she tell -- I'm sorry. And when
4 you approached the vehicle, what did you see as far as what
5 was inside?

6 A. A female was driving the vehicle. I was informed they
7 were on the way to the hospital because the child was
8 burned. There was a male, middle row of the van, holding
9 what appeared to be a child wrapped in a blanket. There
10 was also an additional male passenger in the vehicle.

11 The female seemed a little frantic; she was stressed.
12 To expedite the process, we were in close proximity to
13 Richland Memorial Hospital. I just escorted them to the
14 hospital from there and ensured they arrived.

15 Q. Back up a little bit. Did you actually get to see the
16 child, whether or not he was burned?

17 A. No, I did not.

18 Q. All right, and you said the female was frantic. What,
19 if anything, did she say to you?

20 A. She just said that the child was burned and that they
21 were on the way to the hospital. She was moving her hands
22 roundabout.

23 Q. All right, and you followed them to the hospital?

24 A. Correct.

25 Q. When they got to the hospital, what did you see?

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1 A. The rear male passenger that was holding the child
2 wrapped in the blanket and the female driver exited the
3 vehicle after they parked and entered the emergency room.
4 The other male passenger remained with the vehicle.

5 Q. All right. Did you tell him to do anything with the
6 vehicle?

7 A. Yeah. I asked him to -- advised him to relocate it
8 because they'd parked along the curbside by the emergency
9 room entrance kind of blocking traffic. So, I asked them
10 to park in a parking space or relocate the vehicle.

11 Q. All right, just based on what you could see when you
12 made this traffic stop, what would you describe -- how
13 would you describe the demeanor of the individuals in the
14 car?

15 A. Most of my interaction was with the female. Like I
16 said, she was, she was frantic. She seemed stressed. I
17 had to repeat myself several times that she could proceed
18 to the hospital. Like she had a auditory exclusion where
19 she wasn't hearing what I was saying to her.

20 At that point, the male passenger actually opened up
21 the sliding door and just confirmed with me that they could
22 proceed to the hospital and I was allowing them to do so.
23 I couldn't really get a read on his demeanor because my
24 interaction was so brief with him.

25 Q. All right, and you followed them to the hospital, and

K. WILLIAMSON - DIRECT EXAMINATION BY MR. FYALL

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1 they got out of that van, and you advised them to park it?

2 A. Yes.

3 MR. FYALL: Beg the court's indulgence.

4 THE COURT: Yes, sir. All right.

5 (A PAUSE.)

6 BY MR. FYALL:

7 Q. Please tell us one more time the vehicle that they
8 were driving.

9 A. It was a dark blue van.

10 MR. FYALL: Nothing further, Your Honor.

11 THE COURT: Thank you.

12 MS. STURGILL: No questions for this witness, Your
13 Honor.

14 THE COURT: Thank you, Ms. Sturgill.

15 Thank you. You may step down.

16 WITNESS: Thank you, Your Honor.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: All right, Solicitor.

19 MS. SIMPSON: Your Honor, we want to approach about
20 scheduling. Our next couple of witnesses will be fairly
21 lengthy.

22 THE COURT: All right, and is there also an exhibit
23 that has to be reviewed?

24 MS. SIMPSON: Yes, Your Honor.

25 THE COURT: All right. Thank you. Thank you very

1 much, Solicitor.

2 Perhaps now, ladies and gentlemen, would be a good
3 time to take our luncheon recess. Typically I try to stop
4 around 1:00, but no need to hold y'all captive if we have
5 another matter to take up for a few moments.

6 Please remember my instructions to you to during your
7 luncheon recess. Do not discuss this case with others:
8 lunch mates, fellow jurors, anyone else. Do not read,
9 watch, listen to any news accounts about the case, past or
10 present should there be or should there have been any. Do
11 not do any independent research or any research on the
12 Internet as far as those areas which I explained to you
13 yesterday.

14 That's not by way of limitation but is by way of
15 example any research on a party, a witness, an attorney,
16 court officer, past news accounts if there were any, any
17 information obtained through juror research on any topics
18 raised, or testimony offered by any witness, or any
19 information collected through juror research on any other
20 topic the juror might think would be helpful in deciding
21 the case. Remember you decide the case based on the
22 evidence and the testimony you hear in this courtroom.

23 With that being said, I will ask you to please be back
24 -- it takes me a while to cipher sometimes -- 1345 hours,
25 1:45. Please be back promptly. That's about an hour and a

1 half at 1:45. Hope y'all have a pleasant lunch. Thank
2 you. Thank you very much. You may now go with your
3 bailiff.

4 (THE JURY EXITS AT 12:16 P.M.)

5 THE COURT: Anything further before we take our
6 luncheon recess, Solicitor?

7 MS. SIMPSON: No, Your Honor.

8 THE COURT: Mr. Bank?

9 MR. BANK: Your Honor, just for the record we had a
10 bench conference right before openings discussing an issue
11 that became irrelevant. I'd asked that there be a holding
12 on whether they'd be able suggest what the diagnosis was
13 from a medical doctor during their opening. It didn't come
14 up in opening anyway.

15 THE COURT: Thank you.

16 MR. BANK: So, I just wanted to make the record clear.

17 THE COURT: Thank you very much.

18 Now, you are going to listen, you and your colleagues
19 are going to listen to the redacted tape of Shane Johnson
20 10/12 and 10/19/15 during the break?

21 MR. BANK: Yes, sir.

22 THE COURT: All right, and you've been supplied and
23 provided that?

24 MS. CAMPBELL: We have the one we did before. We're
25 just going to take out those other two parts we discussed,

1 Your Honor, and we'll give that to them immediately.

2 THE COURT: This and this? This is the ---

3 MS. CAMPBELL: That's the original.

4 THE COURT: This one's marked redacted and this one's
5 marked...

6 MS. CAMPBELL: It's the original. It's original.

7 THE COURT: It's marked Shane Johnson and two dates.

8 MS. CAMPBELL: That's the original.

9 THE COURT: All right. Well, I have returned them. I
10 will return them to you, Solicitor, and you'll get it to
11 Mr. Bank.

12 MS. CAMPBELL: Thank you.

13 MR. BANK: Your Honor, just for interview two, we
14 still have two more, whenever we get to those, we have two
15 more issues within interview two that weren't addressed.

16 THE COURT: I didn't address number two.

17 MR. BANK: Sure.

18 MS. CAMPBELL: We won't get into that today.

19 MR. BANK: Okay.

20 THE COURT: Okay. I have -- I addressed it with
21 myself.

22 MR. BANK: Yes, sir.

23 THE COURT: And I had conversations with myself, but I
24 haven't addressed it with y'all at this time.

25 MR. BANK: Yes, sir. All right. Thank you.

1 THE COURT: Thank you very much.

2 MS. SIMPSON: Thank you, Your Honor.

3 THE COURT: Court will be in recess until 1:45.

4 (OFF THE RECORD.)

5 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBIT
6 NUMBERS 26 THROUGH 90 FOR IDENTIFICATION.)

7 (MEASUREMENTS MARKED AS STATE'S EXHIBIT NUMBER 91 FOR
8 IDENTIFICATION.)

9 (GOOGLE MAP MARKED AS STATE'S EXHIBIT NUMBER 92 FOR
10 IDENTIFICATION.)

11 (PHOTOGRAPHS MARKED INDIVIDUALLY AS DEFENDANT'S
12 EXHIBIT NUMBERS 1 THROUGH 10 FOR IDENTIFICATION.)

13 THE COURT: All right, Solicitor.

14 MS. CAMPBELL: Your Honor, may it please the court?

15 It was just brought to my attention that there was some
16 interaction between defense counsel and one of the jurors.
17 Apparently that they were in the elevator, and correct me
18 if I say anything wrong. Ms. Sturgill was doing -- was in
19 the elevator with a number of people. Apparently there was
20 a conversation that was initiated in which someone said to
21 her I hear your -- I haven't seen you around the courtroom
22 before. And then I believe Ms. Eigenbrot told her what a
23 good job she did in her opening or something to that
24 effect, at which point then the juror, who was standing
25 next to her, then looked at Ms. Sturgill and said you're

1 really tall or something like that or to that effect, to
2 which she replied something else.

3 My concern is there's this whole conversation about
4 what a great job she did, how she's new to the courthouse
5 which took place in the presence of the juror and were
6 talking specifically about this case.

7 I'm not so concerned because I think we can remedy
8 that one juror as far as eliminating her, but my concern
9 now would be if she's related anything about this
10 conversation she overheard to the rest of the jury panel.

11 THE COURT: Who was the conversation between?

12 MS. CAMPBELL: The conversation started out between
13 Ms. Sturgill and another third party. It then was between
14 apparently Ms. Sturgill and Ms. Eigenbrot in her office,
15 and then the conversation ended up being between Ms.
16 Sturgill and the juror is my information.

17 MS. STURGILL: I can clarify it. I can clarify for
18 Your Honor.

19 THE COURT: Sure. I'm going to come to you.

20 MS. STURGILL: Sure.

21 THE COURT: Let me write this down.

22 MS. CAMPBELL: That's what was related to me.

23 THE COURT: All right. Yes. Yes, Ms. Sturgill.

24 MS. STURGILL: Yes. Thank you, Your Honor. I got on
25 the elevator just, just moments ago to come up here. I was

1 carrying some folders, and my colleague Ms. Eigenbrot was
2 carrying some for me as well. I believe she started the
3 conversation with someone from the victim's advocate's
4 office that I was unfamiliar with. They were talking with
5 each other. This other woman, I guess from the victim's
6 advocate's office, said I haven't seen you before today,
7 and either she or Ms. Eigenbrot said, well, you did a nice
8 job today. Thank you. I said thank you. It was my first
9 time in general sessions court. That was the extent of
10 that conversation.

11 There was another lady, one of the older ladies on, on
12 the jury who did -- I didn't realize it at the time, said
13 wow, you're tall, and I said thank you, and I'm wearing
14 heels. And that was the extent of the conversation, Your
15 Honor.

16 We got off the elevator. When I realized she was
17 going back here, I realized she was a juror, separated
18 myself and I came in and I told, told Ms. Pinnock and Mr.
19 Bank about it.

20 THE COURT: So, it was only, it was only one juror ---

21 MS. STURGILL: One juror.

22 THE COURT: --- on the elevator, and can ---

23 MS. STURGILL: Who was not part of the initial
24 conversation who just said that I was tall.

25 THE COURT: Do we know ---

1 MS. STURGILL: And I said ---

2 THE COURT: --- which one that is?

3 MS. STURGILL: I would be able to point her out, Your
4 Honor. She was an older white lady with gray hair; she was
5 wearing a hat.

6 THE COURT: Sits right back there on the corner,
7 retired school schoolteacher, alternative school in Chapin.

8 MS. STURGILL: I apologize for any confusion this may
9 have caused.

10 THE COURT: I think that would be -- I think that's
11 number 12, but I'm not positive. Number 12 selected. 227
12 is who I think that is. Somebody tell me if I'm right or
13 wrong.

14 (A PAUSE.)

15 MS. CAMPBELL: I think that's right, Your Honor.

16 THE COURT: I think that would be 227.

17 MR. BANK: That's what we believe also, Your Honor.

18 THE COURT: That's what? I'm sorry, Mr. Bank?

19 MR. BANK: That's what we were -- that's the
20 conclusion we were coming to also looking back on our
21 notes.

22 THE COURT: Well, y'all want me to talk with her about
23 this out here on the record?

24 MS. CAMPBELL: Yes, sir, I think so. I mean, my
25 concern is now that there's been this conversation where

1 the defense has been told how good they are in front of
2 her, whether or not that would consciously or
3 subconsciously affect her, I don't know. But like I said,
4 my bigger concern and the inquiry I'd be more interested in
5 -- because she could be -- we've got alternates. She could
6 be replaced, but my bigger concern is whether or not she's
7 related this conversation to any of the other jurors.

8 MR. BANK: Your Honor, from what I've heard, we aren't
9 even sure if she heard the comment about, you know, whether
10 it was -- good in opening or not. I, I don't -- even if
11 that were true, there's been no discussion or thought that
12 there's anybody or anything that was said about the actual
13 case. I believe if you have any concerns, the victim
14 advocate was in here earlier. We can also pull her out to
15 see what the context of the conversation was. I don't, I
16 don't think there's any -- I don't think we have any ---

17 MS. CAMPBELL: We aren't questioning your version of
18 what happened.

19 MR. BANK: Okay.

20 MS. CAMPBELL: We are not at all casting aspersions on
21 anyone.

22 MR. BANK: Sure.

23 MS. CAMPBELL: We're just saying it happened, I mean,
24 but we aren't here to say that anyone intentional went out
25 and did something wrong..

1 MR. BANK: Sure. No, we, we understand.

2 MS. CAMPBELL: I didn't mean to imply that in any way.

3 MR. BANK: No.

4 MS. CAMPBELL: I mean, Judge, you acknowledged to them
5 and then told them in your address that, you know, if they
6 saw us in the hallway, we were going to turn and not talk
7 to them, and at this point that hasn't happened.

8 Regardless of the innocuous nature of the last part of the
9 conversation, there's now been a conversation between
10 defense counsel and one of the jurors, which I think is
11 easily curable. Then the only question is whether or not
12 she's related it to the rest of the jury.

13 THE COURT: Bring me juror 227, please.

14 *IN-CAMERA HEARING*

15 (WHEREUPON, JUROR NUMBER 227 ENTERS THE COURTROOM.)

16 THE COURT: Good afternoon, Madame Juror. I would, I
17 would like to ask you a few questions, but I preface all my
18 remarks by -- nothing was done wrong. I just -- when
19 certain things come to my attention, I have to address
20 them, and I think as it -- as I ask you certain questions,
21 it will be -- hopefully it will clarify it for you.

22 Upon your return during the break, did you ride up the
23 elevator?

24 JUROR: I'm sorry. Say that again.

25 THE COURT: Did you ride up the elevator?

1 JUROR: Yes, I did.

2 THE COURT: Were there others present?

3 JUROR: Yes, there were.

4 THE COURT: All right. Did you have any conversations
5 with those on board?

6 JUROR: I mentioned to one person that she ---

7 THE COURT: I'm sorry. I couldn't quite hear you now.

8 JUROR: I, I said that one person was very tall.

9 THE COURT: All right.

10 JUROR: Because I came about up to here on her.

11 THE COURT: All right. Do you recall who that was?
12 It was the tall one, right?

13 JUROR: Yeah.

14 Was it you? I don't know.

15 THE COURT: So, you, you're not positive that's who it
16 was, but that's who you think it was?

17 JUROR: I'm pretty sure.

18 THE COURT: Ms. Sturgill? You recall any other
19 conversation on the elevator, whether between you and
20 others, another, or between others?

21 JUROR: The, the only other thing that was said by
22 anybody referred to, which button to push on the elevator.

23 THE COURT: Referred to what?

24 JUROR: The -- what floor to push.

25 THE COURT: And you heard no other conversation?

1 JUROR: No, I didn't.

2 THE COURT: And none of that, as innocent as it is,
3 has been related to others in the jury room?

4 JUROR: No.

5 THE COURT: All right, Mr. Bailiff, just momentarily
6 will you have juror 227 just step outside the door, and let
7 me confer with the lawyers briefly.

8 (WHEREUPON, JUROR NUMBER 227 EXITS THE COURTROOM.)

9 THE COURT: All right, Solicitor.

10 MS. CAMPBELL: Your Honor, my only concern is
11 according to everyone there, there was additional
12 conversation. She was very specific in saying the only
13 other conversation on the elevator was pushing what button.
14 Obviously there was other conversation. Whether or not --
15 I don't know if she just doesn't want to tell you about it
16 or what, but obviously there was several other things said
17 on the, the thing which she denied happened by all
18 accounts.

19 THE COURT: What, what are you asking me to do,
20 Solicitor?

21 MS. CAMPBELL: At this point, I think the ---

22 THE COURT: And that, that wasn't one of my smart
23 questions. That's one of my favorite questions, what are
24 you asking me to do.

25 MS. CAMPBELL: I think perhaps at this point it would

1 be prudent to seat the alternate, whichever alternate is
2 pulled.

3 THE COURT: Mr., Mr. Bank.

4 MR. BANK: Your Honor, I don't know that I have too
5 much to add. It doesn't appear that she heard anything.
6 So, unless we think she's not telling us the truth, I
7 haven't heard anything that tells me that she needs to be
8 taken off the, the jury pool, but we have alternates, if
9 that's what you decide to do. We're not going to take a
10 position either way.

11 THE COURT: Thank you. Thank you, Mr. Bank.

12 MR. BANK: Yes, sir.

13 (A PAUSE.)

14 THE COURT: Mr. Bailiff, would you bring juror 227
15 back in the courtroom, please?

16 (WHEREUPON, JUROR 227 ENTERS THE COURTROOM.)

17 THE COURT: And again, Madame Bailiff -- excuse me,
18 Madame Juror. I'd just spoken to the bailiff. I want to
19 make sure I'm tracking correctly. The only conversation
20 that you recall was talking about Ms. Sturgill being tall
21 and some conversation about what button to push. Is that
22 correct?

23 JUROR: That's correct.

24 THE COURT: And no other conversation -- were others
25 talking and you may or may not heard anything, or was there

1 just no other conversation as you recollect?

2 JUROR: I didn't -- some people may have spoken to
3 each other, by I -- if they did, I didn't pay any attention
4 and was not aware of what was being said.

5 THE COURT: So ---

6 JUROR: I'm not even sure anything was said.

7 THE COURT: All right. If, if there were people,
8 others talking to each other, not, to you, you may have
9 heard but not contemplated what they said. It was just
10 kind of background noise. Is that correct?

11 JUROR: That's correct.

12 THE COURT: Okay, and there were, there were no
13 comments made that you heard by anyone, including yourself,
14 about this trial or this case?

15 JUROR: Nothing.

16 THE COURT: That's absolutely correct?

17 JUROR: That's actually correct.

18 THE COURT: All right, and given that encounter from,
19 I guess, the first floor to the third floor.

20 JUROR: Yes, sir.

21 THE COURT: Do you feel like you can still be a fair
22 and impartial juror in the trial of this case for both the
23 state and Mr. Johnson?

24 JUROR: Absolutely.

25 THE COURT: Any doubt in your mind?

1 JUROR: No doubt.

2 THE COURT: None whatsoever?

3 JUROR: No, sir.

4 THE COURT: And if there were, you would tell me?

5 JUROR: I would.

6 THE COURT: Thank you. Thank you very much.

7 Have her step back outside just momentarily again,
8 please, Mr. Bailiff. Thank you.

9 (WHEREUPON, THE JUROR EXITS THE COURTROOM.)

10 THE COURT: All right, Solicitor.

11 MS. CAMPBELL: Your Honor, our concern is the same. I
12 mean, I understand that according to her, just out of the
13 blue she looked at the person next to her and said you're a
14 tall one, aren't you. Nothing prompted that conversation
15 about she'd done a good job in closing argument.

16 THE COURT: Did I hear you, Ms. Sturgill and perhaps
17 the solicitor, say there was a victim advocate with the
18 solicitor's office on the stand?

19 MS. PINNOCK: Yes, Your Honor.

20 THE COURT: In the elevator?

21 MS. STURGILL: Unknown to me at the time, Your Honor,
22 yes.

23 THE COURT: Who was it? Do you know who that was?

24 MS. STURGILL: This, this woman up here, Your Honor.

25 THE COURT: Come around and be sworn for me, please.

TESTIFIES AS FOLLOWS:

Q. You can sit down, if you'd like. I apologize, Nataki.
Your last name has slipped my memory.

Q. I apologize, but that's just a matter of time and age.
Tell me your name, please.

Q. And you're employed with the solicitor's office?

Q. How long you been there?

Q. 19 when?

Q. '99. All right. Well, you know what the inquiry, the subject of this inquiry is. Were you on that elevator?

Q. Can you relate to me, please, what you observed, what you heard?

A. We all entered the elevator on the first floor. The juror, who I now realize was a juror, commented that the public defender was tall. I think there was a mention of the second floor. Someone said something about the second floor. I don't remember if we stopped on the second floor.

1 Q. Somebody said something about what?

2 A. Something about the second floor. I don't know if
3 someone got off, but I remember at some point Mr. Willie
4 Bilton got onto the elevator. Maybe he got on at the
5 second floor. I -- now I don't even remember, but Mr.
6 Bilton was on the elevator. There was a mention of the
7 second. The juror got off on the third.

8 There was another public defender of the elevator with
9 us, Megan Eigenbrot. At that point, that may have been
10 when the conversation started about this being Ms.
11 Sturgill's first opening argument ---

12 Q. And who ---

13 A. --- in general sessions.

14 Q. --- was this conversation between?

15 A. Myself, Ms. Eigenbrot, and Ms. Sturgill.

16 Q. All right, and go ahead. I didn't mean to interrupt
17 you.

18 A. And then we all exited on the fourth.

19 THE COURT: Do you have any questions you'd like to
20 ask this witness, Solicitor?

21 MS. CAMPBELL: No, sir.

22 THE COURT: Mr. Bank?

23 MR. BANK: No, sir.

24 BY THE COURT:

25 Q. Anything else you recall, Ms. Brown?

1 A. No, sir.

2 Q. So, the conversation you relate -- the second
3 conversation, not, not the tall conversation but the second
4 conversation was between, as you recollect, Ms. Eigenbrot,
5 Ms. Sturgill, and yourself?

6 A. Yes.

7 Q. Do you know, observed what the juror 227 may have been
8 doing at that time?

9 A. She wasn't a part of the conversation. I don't -- I
10 cannot positively say that she was on the elevator during
11 that portion. It was a very quick ride.

12 Q. But she, she may have already been off of the
13 elevator. You're just not certain. Is that a fair
14 statement?

15 A. Yes, sir.

16 Q. But she wasn't part of that conversation?

17 A. No, sir.

18 Q. Did you know she was a juror?

19 A. No, sir.

20 Q. You did not?

21 A. No, sir.

22 Q. And you, you've been in the courtroom today?

23 A. Yes, sir, but my view of the jury panel is blocked
24 from the television now.

25 Q. Were you here when they were selected?

1 A. I was here for some of it, but, you know, I was out
2 with the child witness for a portion of it.

3 THE COURT: Thank you. Thank you very much, Ms.
4 Brown.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: Get me Ms. Eigenbrot, please. Sheriff, go
7 get me Ms. Eigenbrot, please.

8 DEPUTY: Yes, sir.

9 THE COURT: That's not a subpoena order.

10 Oh, one further thing while we're sitting here
11 pondering jurors: I recall ---

12 This is from juror number 59, Mr. Conroy.

13 I recall a law enforcement officer I have met
14 through work. His name is John ---

15 And the spelling, it's somewhere close to looking like
16 Doudoukjian, somewhere close to that spelling,
17 parenthetically spelling.

18 He has two sons with autism. I think he was -- I
19 think he is with the Columbia Police Department.
20 This fact will not hinder my ability to be
21 impartial.

22 Signed name and number 59.

23 Ms. Pinnock, anything?

24 MS. PINNOCK: Your Honor, I was going to say Deputy
25 Doudoukjian works in the courthouse. He is Richland

1 County. That is not city. I don't think we have any issue
2 with that juror remaining on here.

3 THE COURT: Solicitor?

4 MS. CAMPBELL: No issue.

5 THE COURT: All right, and that was handed up to me by
6 the clerk.

7 MS. CAMPBELL: Thank you.

8 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
9 NUMBER 3.)

10 (A PAUSE.)

11 THE COURT: Oh, Ms. Eigenbrot, thank you, thank you so
12 much. Appreciate you coming up here.

13 MS. EIGENBROT: Yes, sir.

14 THE COURT: Would you come around and be sworn for me,
15 Ms. Eigenbrot, please?

16 MEGAN EIGENBROT, BEING DULY SWORN,
17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Have a seat, please.

19 EXAMINATION BY THE COURT:

20 Q. Tell me your full name, please.

21 A. Megan Eigenbrot.

22 Q. And do you recall being on the elevator after lunch
23 coming from the ground floor upstairs?

24 A. Yes.

25 Q. All right, and, and you may know the subject of this

1 inquiry. You recall who all was on the elevator? Do you
2 remember?

3 A. I rode up a couple of times on the elevator; I was
4 going back and forth from my first floor office. I know
5 one time I was on the elevator with Ms. Sturgill.

6 Q. And that was just the one time?

7 A. Yes. I, I can't remember who else was on the other
8 elevator.

9 Q. Were there others on the elevator?

10 A. Yes.

11 Q. And who? Do you recall any of the others?

12 A. No.

13 Q. No? All right. Was there -- did anyone have a
14 conversation or make a comment to Ms. Sturgill?

15 A. Oh, actually it was Nataki, one of the victim
16 advocates. We were -- I think she just told Ms. Sturgill
17 she did a good job this morning.

18 Q. That was Ms. Brown?

19 A. Yes.

20 Q. When you say Nataki?

21 A. Yes.

22 Q. All right. Were -- and she, she told Ms. Sturgill
23 that?

24 A. Yes.

25 Q. Were there any other conversations ---

1 A. I think Ms. ---

2 Q. --- that you recollect?

3 A. Ms. Sturgill just said thank you. It was her first
4 time doing opening in a general sessions case.

5 Q. Do you recall anyone making a comment besides that,
6 that you did a good job on your opening, besides that to
7 Ms. Sturgill?

8 A. No.

9 Q. None whatsoever?

10 A. No.

11 Q. Do you know if there were any jurors on that elevator?

12 A. I have no idea.

13 Q. And you, you haven't been in the courtroom, wasn't in
14 the courtroom during qualification, selection of the panel,
15 or any other time?

16 A. I was in for qualifications, Your Honor, but I was not
17 in for the jury selection on this case.

18 Q. When you say qualifications, you talking about general
19 qualifications?

20 A. Yes, sir.

21 Q. You're not talking about qualifications for this
22 trial?

23 A. Correct.

24 Q. So, you hadn't been in the courtroom?

25 A. No.

1 Q. In this courtroom?

2 THE COURT: Any questions, Solicitor?

3 MS. CAMPBELL: No, sir.

4 THE COURT: Mr. Bank?

5 MR. BANK: I wish I had some, but no, sir.

6 THE COURT: Well, I'm going to limit it to scope.

7 Thank you. Thank you very much for coming.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: Anything further, Solicitor, Mr. Bank?

10 MS. CAMPBELL: No, sir. The only thing I would say is
11 Ms. Sturgill, to her credit, she immediately reported what
12 had happened.

13 THE COURT: Of course. I would expect no less.

14 MS. CAMPBELL: I know. I'm just saying she did it
15 immediately, and her recollection is and has been that the
16 juror was there when the conversations took place.

17 THE COURT: All right. Well, I do commend Ms.
18 Sturgill for reporting it as she did, and then it being
19 brought to the court's attention, which is exactly what she
20 should have done. And, as I say, I would expect no less,
21 not only from Ms. Sturgill but for any -- from any of the
22 attorneys that are before me in this case and many, many,
23 many other attorneys, hopefully all.

24 Additionally, there's different memories involved.
25 The juror only remembers the tall comment. The second

1 conversation was between Ms. Eigenbrot, Ms. Brown, and
2 according to Ms. Eigenbrot and Ms. Sturgill, no one has put
3 that conversation about the complimentary comment with the
4 juror being involved in that conversation. And you can
5 hear conversation and not comprehend it necessarily. Not,
6 not be paying attention.

7 When I look at some of the cases, they talk about the
8 removal or non removal of a juror is in my discretion. The
9 jurors are under oath, sworn to take the oath. The juror,
10 this particular juror, she further said she can be fair and
11 impartial, is absolutely sure of that. That if she
12 couldn't be, she would relay that information to me.

13 I also look at her background and history when I
14 consider her credibility. I believe she is a retired
15 educator that worked in alternate schools in Greenville.
16 And I believe she came up one time on a question in *voir*
17 *dire* concerning being a patient at the August Burn Center.

18 So, I would decline to -- further, she stated that
19 conversation, the only one she heard was the tall
20 conversation because she was part of it. She wasn't part
21 of the other, and she says she has not related the tall
22 conversation or any conversation to the other jurors.

23 *END OF IN-CAMERA HEARING*

24 THE COURT: All right, anything further before we
25 bring in our jury panel?

1 MS. PINNOCK: Just briefly. It's our understanding
2 the state might be calling Investigator Bailey to introduce
3 the first recording of Mr. Johnson.

4 THE COURT: Yes, ma'am.

5 MS. PINNOCK: We received our copy of the redacted
6 version at 1:15. We've only been through about ten minutes
7 or so of it, and we've already found one instance where the
8 redaction was not made. I don't know -- I know they have
9 the right to call their witnesses however they like to call
10 them like. However, we would just ask, you know, for more
11 time this evening to go through the remaining audio so we
12 can make sure that everything it out and they have to fix
13 the part they haven't done already, and we've only gone
14 through about ten minutes of it since receiving it, Your
15 Honor.

16 THE COURT: How long is it, Ms. Pinnock? I don't
17 recall.

18 MS. PINNOCK: It's an hour and a half, about an hour
19 and a half give or take a few minutes. The first one is
20 longer than the second one. The first one is pushing two
21 hours; the second one is about an hour and a half.

22 THE COURT: So, that's why I got up at 4:00 this
23 morning?

24 MS. PINNOCK: Yes.

25 THE COURT: Solicitor.

1 MS. SIMPSON: And, Your Honor, if I may just to
2 expedite things? Since they found mistakes at certain
3 times, I mean, I know that when they gave me timeframes,
4 theirs were just very general. So, if they can be very
5 specific as to what time they're referring to and what it
6 is that is incorrect because I know, as I said, the
7 references we redacted were actually more expansive with
8 respect to prison and drugs than what they put in their
9 things with respect to time. So, I'm just saying as they
10 go through, we can redact much faster if they tell us what
11 is off.

12 MS. PINNOCK: Your Honor, we, we can provide -- I
13 mean, I, I can try to be as, as on point with the minutes.
14 Our issue right now is before it gets introduced, we just
15 have a chance to go back through it. We've already caught
16 one mistake within the first six minutes of the recording.
17 So, we've got almost two hours worth to finish going
18 through before his interview is in evidence.

19 MS. SIMPSON: Your Honor, at this time we'll put up
20 Investigator Bailey, and I can lay the foundation. We just
21 will not publish the actual statement at this time.

22 THE COURT: And then move on to another witness?

23 MS. SIMPSON: Yes, Your Honor.

24 THE COURT: All right.

25 MS. PINNOCK: Thank you, Judge.

1 THE COURT: Anything before we bring out -- anything
2 further before we bring in our jury?

3 MS. CAMPBELL: Can they go ahead and tell us where the
4 mistake is so we can fix it?

5 THE COURT: Do what now?

6 MS. CAMPBELL: If they'll go ahead and tell me where
7 the mistake is or what they're saying is a mistake, we will
8 fix it.

9 MS. SIMPSON: Because if it's possible, we can.

10 THE COURT: Well, I got a thought. Why don't one of
11 you from each side sit down together with it some time and
12 when you get to that point, if you agree, redact it. If
13 you don't agree, you can mark it and I'll listen to it.
14 It's not going to change, and it's not a tactical issue.
15 They say X amount shouldn't come in or this amount. I'd
16 have to rule on it anyway if you disagree.

17 MS. CAMPBELL: We can have that being done while we're
18 in court if that suits the defense.

19 MS. PINNOCK: We would have to know what witnesses
20 they're going to call so we know who has to be present to
21 cross, to question them.

22 THE COURT: I understand that.

23 MS. CAMPBELL: We can give you the next two witnesses:
24 Colin Bailey and Casey Ferrara.

25 MR. BANK: We -- and I'm sure Ms. Sturgill is happy to

1 stay a little late. Well, any one of us is happy to stay a
2 little late with Mr. Fyall today also to, to go through as
3 soon as court is finished. I mean, we'll, we'll ---

4 THE COURT: Well, how, however y'all work it out.

5 MS. CAMPBELL: That seems like a great idea, Judge.

6 THE COURT: I'm not an administrative judge. I'm a
7 trial judge.

8 You ready for the jury, Solicitor?

9 MS. CAMPBELL: Yes, sir. Could they go ahead and give
10 us that because we would like to publish this at the end of
11 the day is what we're trying to do.

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

13 MS. CAMPBELL: Because that witness is going to be
14 thinking we were going to put the statement in.

15 MR. BANK: Before -- there's no way we can listen to
16 two hours before the end of the day. Even if they tell us
17 that's correctly redacted, we need as, as our ethical
18 obligation to listen to it to make sure -- it's not that I
19 think that everybody's trying to trick me. I think we all
20 agree on what exactly needs to be redacted or not. But
21 we've got to actually hear it because if something slips up
22 and there's a mistake or something like and the jury hears
23 it, that's a problem.

24 Your Honor, we're happy to stay as late this evening
25 as we need to with any member of their team and sit down

1 and go through it. I don't know of any way that we --
2 we're going to be able to do that before 5:00 while we have
3 the attorneys in here trying to examine the witnesses who
4 are here today.

5 MS. SIMPSON: Your Honor.

6 THE COURT: Yes.

7 MS. SIMPSON: Just briefly. With respect to having to
8 go through everything, I mean, defense counsel and the
9 state have reviewed these interviews in their entirety, in
10 full, and right now we're only focused on the first
11 interview. Over the weekend, the defense emailed me the
12 references and timeframes, which were pretty specific,
13 including the ones that we initially objected to. And I
14 think if we limit it around those -- it's clear that
15 they've listened to the entire thing. I don't know they
16 need to listen to the full two hours when they have
17 actually limited the scope of what the redactions are.

18 So, we are not seeking to do interview two at this
19 time. But we'd happy to do whatever, as I said, is ---

20 MR. BANK: Your Honor, if I can also shed some light
21 on it? Part of the problem is once they start redacting,
22 the times start to change. So, when what we have
23 pre-marked as a problem at the time for the very original
24 interview -- say we have a problem, you know, one hour and
25 23 seconds. On the new redacted video, audio we just get

1 -- that's not going to be the same time, and so we're going
2 to have to listen to the whole thing through to make sure
3 because we can't -- we don't know where the adjustments are
4 happening. Does that, does that make sense? What was
5 1:43, for instance, on the original tape is not going to be
6 1:43 on the new tape because the times have changed because
7 of the redactions. So, without being able to listen to the
8 fully redacted version, I, I mean, I just can't be sure
9 that it's all done.

10 MS. SIMPSON: Your Honor, I think that we've come up
11 with a proposed solution. Even with our witness issue, we
12 have called some people here. If they are able to sit out
13 with one of us to listen to the redactions, we can correct
14 it. As I said, we want to publish it at the end of the
15 day. I can put up the witness now who will lay the
16 foundation for the introduction of the redaction, redacted
17 interview, and we'll be able to go forward with Dr.
18 Ferrara's testimony. He's, of course, the ER doctor but
19 can be here by 3. And so then hopefully by that time, we
20 should be close to being able to figure out what's going on
21 because they have had at least forty-five minutes to review
22 it. But we want to give them plenty of time to do what
23 they need to do to make sure it's accurate.

24 MR. BANK: Your Honor, we got the tape at 1:15.

25 THE COURT: You got what?

1 MR. BANK: We got the tape at 1:15, the audio at 1:15.
2 We were supposed to be back in court at 1:45. Your Honor,
3 we're, we're happy to start ---

4 THE COURT: 12:15?

5 MS. PINNOCK: What's that?

6 THE COURT: 12:15?

7 MS. PINNOCK: No, sir, 1:15.

8 THE COURT: Oh, 1:15.

9 MS. SIMPSON: We're fine just moving forward with what
10 we have.

11 THE COURT: Well, this is kind of a combination of
12 several issues that occur in humanity, in administration
13 from time to time. It's a combination of catch 18, as I
14 call it, and a Hobson's choice. I'm not going to require
15 them to go forward until they've listened to the tape and
16 it's in a pristine condition for the record. Pristine
17 condition does not mean, does not mean I may grant all of
18 the objections that they have, but a pristine condition is
19 that I'm satisfied with the tape that is introduced in the
20 record.

21 That is no reflection on you whatsoever, Solicitor,
22 none whatsoever on any of the solicitors, nor the
23 defendant. I just want to know what's going in the record.
24 I can't do anything about a two-hour conversation if
25 they've only listened to ten minutes. So, all I can do is

1 go back to the place from whence I came, which is the
2 judicial chambers, and wait. Or we can either move forward
3 with other witnesses. That's, that's all I know to do.
4 And if -- I know they had the full tape at one time, much
5 sooner than one hour and fifteen minutes, but they must
6 have the opportunity to review the entire tape.

7 MS. SIMPSON: And, Your Honor I think I'm happy to go
8 ahead and go forward with Investigators Bailey's testimony
9 at this time. I will not publish the redacted, but as far
10 as for purposes of perhaps marking a CD for ID purposes
11 subject to the substitution for pristine condition of the
12 redacted portion, but I will not actually publish it
13 through Mr. Bailey, but I do believe I can get through his
14 testimony.

15 THE COURT: All right.

16 MR. BANK: And, Your Honor, I -- we will have the
17 opportunity when it is published to then be able to
18 cross-examine Investigator Bailey at that time about the
19 published interview.

20 THE COURT: That will be up to you now. You're going
21 to be on the witness stand. I mean, you, you -- the
22 defense can serve subpoenas just like the state.

23 MR. BANK: Yes, Your Honor. When we -- and we have
24 him under subpoena. I just wanted to know whether we
25 should question, if we're going to -- questioning him about

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1 everything besides the interview, or if we're going to wait
2 to question him when it's actually published. Is that --
3 he's, he's involved in, he's involved in a couple of
4 different things in the case.

5 THE COURT: Well, the legal -- that's not a legal
6 question for me.

7 MR. BANK: Yes, sir. Well, we, we do have him under
8 subpoena, Your Honor.

9 THE COURT: Sheriff, would you ask the bailiff if he's
10 stepped out to get -- oh, here he is. Thank you. Bring
11 them on.

12 (A PAUSE.)

13 (DVD MARKED AS STATE'S EXHIBIT NUMBER 93 FOR
14 IDENTIFICATION.)

15 (STATEMENT MARKED AS STATE'S EXHIBIT NUMBER 94 FOR
16 IDENTIFICATION.)

17 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 95 FOR
18 IDENTIFICATION.)

19 (DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 96 FOR
20 IDENTIFICATION.)

21 (THE JURY ENTERS AT 2:33 P.M.)

22 THE COURT: Okay, so I'm the territorial one because
23 some of y'all have moved seats I noticed. But be that as
24 it may, again I apologize for the delay, ladies and
25 gentlemen. If you hold it against anybody, please hold it

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1 again me. At least I'm consistent on that, and I'm getting
2 a little better. It's not the parties. They were back
3 early and have been working very diligently to move the
4 case along.

5 As you recall, the state is presenting evidence in its
6 case in chief. If you'd please continue to give the
7 parties your complete and undivided attention as you have
8 done throughout the trial of this case.

9 Solicitor, you may call your next witness.

10 MS. SIMPSON: Your Honor, at this time, may it please
11 the court? State calls Investigator Colin Bailey to the
12 stand.

13 THE COURT: Investigator Bailey, come around to the
14 stand.

15 COLIN BAILEY, BEING DULY SWORN,
16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Have a seat on the stand, please.
18 State your name for the record.

19 WITNESS: Sergeant Colin Bailey.

20 DIRECT EXAMINATION BY MS. SIMPSON:

21 Q. Sergeant Bailey, where are you employed?

22 A. I'm employed with the Columbia Police Department.

23 Q. And what is your position there?

24 A. Currently I'm a sergeant with the Internal Affairs
25 Unit. At the time of this, this incident, I was an

1 investigator with the Special Victims Unit.

2 Q. And how long have you actually been with Columbia
3 Police Department?

4 A. I've been with the Columbia Police Department since
5 2005. So, that's about twelve years.

6 Q. Okay, and during that twelve years, you stated that
7 you worked in the Special Victims Unit. Have you worked in
8 a number of different areas?

9 A. Yes. Like almost all the officers in the police
10 department, I started my career in patrol, and I later got
11 promoted to investigations and then more recently promoted
12 to sergeant, and then I was moved to Internal Affairs.

13 Q. I want to go back to this timeframe back in October of
14 2015 when you were an investigator with the Special Victims
15 Unit. What were y'all tasked with, and what did your
16 duties include at that time?

17 A. With the Special Victims Unit, we were tasked with
18 investigating crimes involving domestic violence, sexual
19 assault, child abuse, missing children, runaways, missing
20 persons, abuse of vulnerable adults, and crimes of those
21 nature, including harassment and stalking.

22 Q. Okay, and as an investigator, would you be involved in
23 different investigations at different times with different
24 roles?

25 A. I would.

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1 Q. And explain that for the jury because were you
2 actually the lead investigator with this case?

3 A. No, at the time I was not the lead investigator. The
4 lead investigator for this particular case is Investigator
5 Charley, who I've worked out throughout my seven years with
6 the Special Victims Unit. I -- if I recall, this incident
7 happened right after the flood, and of course all of us,
8 all of us at the Columbia police were working twelve-hour
9 days for, for at least a week, and, and so I, I started
10 assisting Investigator Charley during that period of time.

11 Q. Okay, and I want to turn your attention to when you
12 became involved in this case. Did Investigator Charley
13 apprise you, without going into detail, of the nature of
14 the case and where the incident actually occurred?

15 A. He did.

16 Q. And where was that location?

17 A. 804 Easter Street, which is within the city limits of
18 Columbia.

19 Q. And that's ---

20 A. County of Richland.

21 Q. In Richland County you said?

22 A. It is.

23 Q. And were you aware of whose residence that was ---

24 A. Yes.

25 Q. --- at the time?

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1 A. I was. The residents was Shane Johnson, Mr. Johnson
2 sitting here; the victim in this case, [Minor] and I forgot
3 her last name but -- Ms. Kristin Campbell, I'm sorry,
4 Kristin Campbell.

5 Q. And to your knowledge, those were the individuals
6 residing at that location during this time?

7 A. Correct.

8 Q. I want to talk -- this incident actually occurred
9 prior to you becoming involved, correct?

10 A. It did.

11 Q. When did you become involved in this investigation?

12 A. I essentially -- my involvement started on the 12th.

13 Q. Okay, and how did that come about?

14 A. On the -- on October 12, 2015, after advising me of
15 the -- some of the facts of the case, Investigator Charley
16 informed me that he was going to be interviewing a Shane
17 Johnson, and he asked me to assist in that invest -- in
18 that interview.

19 Q. And at that time, were you aware of Mr. Johnson's
20 potential involvement in relationship to the victim in this
21 case?

22 A. I was.

23 Q. Okay. I'm going to show you -- and let me back up
24 just a little bit. With respect to bringing you in, was
25 the defendant already present when you arrived, or where

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1 did this interview occur?

2 A. I have no idea if he was there or what time he got
3 there. However, the interview took place at 2132 Devine
4 Street. That is the South Region headquarters, and at the
5 time -- which is in Five Points -- and at the time the
6 Special Victims Unit to which I was assigned was based
7 there.

8 Q. All right, and as far as, I guess, memorializing these
9 interviews, was this recorded in any way?

10 A. It was.

11 Q. And how, how was it recorded?

12 A. Generally we've all been issued mini recorders. So,
13 generally we use our issued mini recorder to record most
14 interviews.

15 Q. And that's with a mini recorder, that's audio,
16 correct?

17 A. Correct.

18 Q. Not video?

19 A. Correct.

20 Q. I'm going to show you what's been marked as State's
21 Exhibit 93 for identification purposes only. Have you had
22 a chance to review this interview in full?

23 A. I have.

24 Q. Okay, and does it fairly and accurately represent the
25 interview that was conducted that day?

1 A. It does.

2 MS. SIMPSON: Your Honor, at this time I just offer
3 State's Exhibit 93 for ID.

4 MR. BANK: No objection.

5 THE COURT: All right, 93 identification purposes
6 only.

7 BY MS. SIMPSON:

8 Q. And before proceeding, tell us a little bit about how
9 you conduct an interview, especially with a person of
10 interest.

11 A. Well, in this particular case, although Mr. Johnson
12 was not under arrest and he was not being held there
13 against his will, we did advise him of his rights under
14 *Miranda vs. Arizona*. We advised him that he did not have
15 to speak to us and that he, of course, could get an
16 attorney. And we have a form that we generally have we, we
17 read over with folks and have them initial parts of the
18 form to make sure that they understand that they do not
19 necessarily have to talk to the police, and they have
20 certain rights under certain case law.

21 Q. Okay, and I'm going to approach you with State's
22 Exhibit 25. Do you recognize this?

23 A. I do.

24 Q. And what is that?

25 A. This is one of our Columbia police Advice of Rights

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1 forms. On the form is my name, is signed at the bottom as
2 a witness, as well Investigator Charley, and also the
3 defendant, Mr. Johnson, has signed the, the Advice of
4 Rights form indicating that he's waiving his rights at that
5 time.

6 Q. And is this the form that was used during the
7 interview?

8 A. It was.

9 Q. And did Mr. Johnson actually acknowledge his
10 understanding throughout this in some way?

11 A. Mr. Johnson init -- we don't always do this, but on
12 this particular case, Mr. Johnson initialed each line
13 indicating that he understood what he was doing. There's
14 one line where he did not initial, but then at the very
15 end, he signed the entire document.

16 Q. Okay, and to your knowledge, is this a fair and
17 accurate reflection of what you showed him ---

18 A. It is.

19 Q. --- at the time? Could you read for the jury ---

20 MS. SIMPSON: Your Honor, at this time actually I
21 would offer State's 22 -- or 25, sorry, into evidence.

22 MR. BANK: Without objection, Your Honor.

23 THE COURT: State's 25 is into evidence without
24 objection.

25 (ADVICE OF RIGHTS FORM MARKED INTO EVIDENCE AS STATE'S

1 EXHIBIT NUMBER 25.)

2 BY MS. SIMPSON:

3 Q. Can you read to us the rights as they were advised to
4 Mr. Johnson?

5 A. Yes. Beginning at the time where we wrote down 12:45
6 it reads:

7 Before we ask you any questions, you must
8 understand your rights. You have the right to
9 remain silent. Anything you say can be used
10 against you in court. You have the right to talk
11 to a lawyer for advice before we ask you any
12 questions and to have him with you during
13 questioning. If you cannot afford a lawyer, one
14 will be appointed for you before any questioning
15 if you wish. If you decide to answer questions
16 now without a lawyer present, you will still have
17 the right to stop answering at any time. You
18 also have the right to stop answering at any time
19 until you talk to a lawyer.

20 Then the next paragraph reads Waiver of Rights and
21 underneath that it reads:

22 I have read this a statement of my rights, and I
23 understand what, what my rights are. I am
24 willing to make a statement and answer questions.
25 I do not want a lawyer at this time. I

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1 understand and know what I'm doing. No promises
2 or threats have been made to me, and no pressure
3 of coercion of any kind has been used against me.

4 And then underneath is -- there's a line that says
5 signed and then signed and printed the name of Shane
6 Johnson.

7 Q. And with respect to Mr. Johnson, were you made aware
8 of his education level?

9 A. It's my understanding he did graduate from high
10 school. He did tell us that.

11 Q. Okay, and did he appear to understand what was going
12 on?

13 A. He did.

14 Q. And did he speak with you voluntarily?

15 A. He did.

16 Q. And waive his rights voluntarily.

17 A. He did.

18 Q. Did you promise or threaten or coerce him in any way
19 whatsoever?

20 A. We did not.

21 Q. And if he'd asked for a lawyer during the questioning,
22 what would you have done?

23 A. If he would have asked for an attorney, we would have
24 stopped, certainly stopped questioning about the case,
25 answered any questions that he had but said, you know,

1 you're welcome to go. You can leave now.

2 Q. And was he deprived of any creature comforts such as
3 water, using the restroom? If he'd asked, would you have
4 let him go?

5 A. Certainly. Yes, ma'am.

6 Q. Okay, and moving on, and I'll come back to the
7 interview shortly. What was the next thing that you did in
8 this case?

9 A. On October 14, 2015, Investigator Charley called me
10 and he asked me to meet him over at 804 Easter Street.
11 Investigator Charley had secured a search warrant for the
12 home, and in that search warrant he was seeking to, amongst
13 other things, to measure the temperature of the water in
14 the, in the shower. When he called me, I believe, if I
15 recall, I was actually at home for whatever reason. I
16 might have been on lunch break and I happened to be home
17 that day, and he asked me bring any kind of -- anything I
18 have that measured temperature of the water.

19 Q. Okay, and so with respect to the execution of the
20 search warrant, who was present with you?

21 A. Present with me was Investigator Charley. We have a
22 crime scene investigator. Sutton was there. There might
23 -- I, I don't recall. There might have been a patrol
24 officer or two. Sometimes patrol officers are there during
25 search warrants, but they're not necessarily going in. I

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1 think one of my interns might have been -- one of us might
2 have brought one of the interns there, but generally the
3 street officers and the interns, they would stay by the
4 cars while we conducted the search. Forgive me. Also
5 Shane Johnson was there and Ms. Kristin Campbell was there.

6 Q. Okay. So, they were not in custody at ---

7 A. They ---

8 Q. --- this point?

9 A. They were not in custody, correct.

10 Q. And I want to back up to the interview because -- let
11 me show you what's been marked State's 94 for ID only. Do
12 you recognize this?

13 A. I do.

14 Q. And what is that document?

15 A. This is a statement -- this is the statement form that
16 Investigator Charley and Mr. Shane Johnson went over. It's
17 five pages, and at the very end Shane Johnson's printed
18 name, as well as his, his signature.

19 Q. And did this occur on the same date that y'all, you
20 all interviewed from which it was recorded as well'?

21 A. It did.

22 Q. Okay.

23 MS. SIMPSON: Your Honor, at this time I would offer
24 State's 94 for identification purposes only.

25 MR. BANK: For identification only.

1 THE COURT: State's 94, ID only.

2 BY MS. SIMPSON:

3 Q. Now, before we get to the search warrant of the house,
4 are you pretty familiar with the interview of Mr. Johnson
5 and had a chance to review it?

6 A. Yes. I'm fairly -- interview, it was almost two years
7 ago now, but yes, I, I reviewed it and tried to remember,
8 tried to recollect most of what happened.

9 Q. Okay, and during that interview, kind of what was his
10 demeanor with you?

11 A. Well, Mr. Johnson was, he was very comfortable. He
12 acted like he wanted to be there; he wanted to speak to the
13 police. There had -- he wanted to essentially clear the
14 air regarding the situation.

15 Q. And as far as where this incident happened, what was
16 your knowledge about the victim, Minor
17 being burned and where that occurred and when that
18 occurred?

19 A. It was my understanding that that had occurred at the,
20 the incident location at 804 Easter Street. It had
21 occurred in the, in the bathroom that the child has access
22 to. I mean, that would be the bathroom in the hallway of
23 the actual -- it's a shower, it's a shower tub type of
24 shower, and it had occurred on the, on the 7th of October.

25 Q. And there was no indication, based on your interview

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1 with Shane Johnson or to your knowledge, of any other
2 history of what -- as far as how these burns occurred or
3 where they occurred in the house?

4 A. Correct.

5 Q. Like not in the kitchen, on a stove, or anything of
6 that nature?

7 A. Correct.

8 Q. Now, going to the search warrant at 804 Easter Street,
9 you were present for the search throughout the home,
10 correct?

11 A. I was.

12 Q. I'm going to show you what's been marked as State's 26
13 through 38. Do you recognize these photographs, the
14 subject matter in them?

15 (A PAUSE.)

16 A. I do.

17 Q. And do they fairly and accurately represent what you
18 observed that day?

19 A. Yes. These are the, these are the photographs of the
20 outside of the home mostly, or for the -- yes, these are
21 photographs of the outside of the home.

22 MS. SIMPSON: Your Honor, at this time ---

23 A. Including their, their dog in one of the photos.

24 Q. You said their dog is on one of the ---

25 A. Correct. Yes.

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1 MS. SIMPSON: Your Honor, at this time I would offer
2 State's 26 through 38 into evidence.

3 MR. BANK: Without objection.

4 THE COURT: All right State's 26 through 38 is in
5 evidence without objection.

6 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS
7 STATE'S EXHIBIT NUMBERS 26 THROUGH 38.)

8 BY MS. SIMPSON:

9 Q. Okay, and in State's 26 and 27, what is this?

10 A. That appears to be the outside of the home, or at
11 least in the photo on the right.

12 Q. Okay. So, this is a home, not an apartment or
13 anything of that nature?

14 A. Correct.

15 Q. And moving to State's 28 and 29, what is recollected
16 -- or what is depicted in those pictures?

17 A. That's this car that was at the house.

18 Q. Okay, and it's a dark minivan?

19 A. It, it appears so.

20 Q. And again, when you all come out, do you try to do a
21 thorough documentation as far as the home interior,
22 exterior even though you may be aware of where an incident
23 might occur?

24 A. Correct. We do.

25 Q. Okay, and again, I'm going to show you State's 32 and

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1 33. What area are we looking at here?

2 A. I believe that is the backyard through the -- yeah.

3 Q. The backyard of the home?

4 A. It could be the side yard, but I, I, I, I remember
5 that they had a fairly large backyard, and that looks like
6 what that was.

7 Q. So, they're not extremely close to the neighbors?

8 A. I'd say an average distance for a city dwelling.

9 Q. And in State's 34?

10 A. That was the lawn mower that was at the house.

11 Q. And again, you don't know what evidence may become
12 relevant down the road?

13 A. Correct.

14 Q. And State's 35, this looks like the back gate, a
15 portion of the home?

16 A. Yeah. Although that doesn't immediately look
17 familiar, that, yeah, that would make sense that they, that
18 they, they had a, they had a backyard similar that, that
19 looked like that.

20 Q. And then let me go to State's 36. What portion of the
21 home and what can we see in State's 36?

22 A. That's the back of the house, and there's an air
23 conditioning unit, and just beyond that is the hot water
24 heater.

25 Q. So, the hot water heater is located outside the home?

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1 A. It is.

2 Q. And we'll get to that shortly, and again is this
3 another picture in State's 37 reflecting the front of the
4 hot water heater?

5 A. Yeah, that, that would be the, that would be the -- as
6 if you're standing in the backyard looking at the back of
7 the house, and you can see the hot water heater there on
8 the right.

9 Q. And finally in State's 38, I believe you said we see
10 the dog here?

11 A. Correct. That would be the front door.

12 Q. The entryway to the home?

13 A. Yes, ma'am.

14 Q. Did you know who that dog belonged to at the time?

15 A. I, I, I don't recall anything beyond it being --
16 belonging to Mr. Shane Johnson and his -- and, and Kristin.

17 Q. Okay. All right, I'm going to show you what has been
18 marked as State's 39 through 66 for ID -- or...

19 (A PAUSE.)

20 Q. Again I'm going to show you what's been marked as
21 State's 39 through 66 for ID, and tell me if you recognize
22 those.

23 (A PAUSE.)

24 A. These are photos of the inside of the house at 804
25 Easter Street.

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1 Q. And do they fairly and accurately depict what you
2 observed ---

3 A. They do.

4 Q. --- on that day? Okay, just so we can get a
5 perspective of the home, let's start with State's 39 and
6 40. What area of the home are we looking at there?

7 A. In the one in the -- everyone's left is just the front
8 entrance on the right. That would be the front room or the
9 living room.

10 MR. BANK: I believe they may need to be entered into
11 evidence.

12 MS. SIMPSON: Oh, I apologize. I thought I did.

13 Your Honor, at this time I would move State's 39
14 through 66 into evidence.

15 MR. BANK: That's without objection, Your Honor.

16 THE COURT: 39 through 66 in evidence without
17 objection.

18 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
19 STATE'S EXHIBIT NUMBERS 39 Through 66.)

20 BY MS. SIMPSON:

21 Q. All right. So, say that one more time? I apologize.

22 A. Yes, that would be -- the, the picture of your left
23 hand is the front entryway, and the picture on the right
24 hand is the living room.

25 Q. And then State's 41 and 42, is that just a better,

1 different view within ---

2 A. Correct. That's ---

3 Q. --- the living room?

4 A. --- the living room, and you can kind of see into the
5 kitchen in one of the photos.

6 Q. Okay. So, the living room goes into the kitchen?

7 A. Correct.

8 Q. So, actually I'm going to show you State's 43 and 44.
9 What area is depicted in those?

10 A. The kitchen.

11 Q. Kitchen area, and did you really find anything of note
12 in the kitchen area?

13 A. Not in the kitchen area, no.

14 Q. Okay. One more again. That's a ---

15 A. Another picture of the kitchen area.

16 Q. With the stove and everything depicted in it?

17 A. Correct.

18 Q. And in State's 48 and 49, what are we viewing here?

19 A. More pictures of the kitchen.

20 Q. Is that the doorway area?

21 A. Possibly the backdoor into the backyard or a backdoor
22 of some sort.

23 Q. All right, and then in State's Exhibit 50, do we see
24 the laundry room area here?

25 A. Correct.

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1 Q. And to be thorough, State's 53, what area of the home
2 is that?

3 A. I don't immediately recall. I think that is the
4 dining room and we are looking outside to the, to the
5 front, to the street.

6 Q. Okay, to the front entrance of the home, okay, and
7 then in State's 56 and 57, what do we see?

8 A. That it is the, the master bath -- bedroom, excuse me.

9 Q. The master bedroom?

10 A. Correct.

11 Q. So, and through this, did it seem as though there was
12 another child's bedroom?

13 A. There was.

14 Q. During the course of the search, but this is the
15 master?

16 A. I believe so, yes. I think the child's bedroom had a
17 different bedspread.

18 Q. Okay, and actually State's 58 and 59, what do we see
19 here?

20 A. What is just two pictures of two hallways. So, we're
21 standing in the hallway.

22 Q. And do you see the name depicted on the door at the
23 end of the hallway, whose room we would probably be going
24 into?

25 A. Yeah. That would be -- it's going to be -- and it

1 shows even better in another photo. It says Reginald.

2 Q. Now I'm going to show you State's 60 and 61. What
3 area of the home is this?

4 A. All right, this is going to be the, the master bath,
5 as is this photo here. So, these are pictures from the
6 master bedroom and walking into the master bedroom.

7 Q. Okay, and ---

8 A. It's not the incident location.

9 Q. And 62, is that that same area?

10 A. Yes, it is.

11 Q. And it appears, is this area a full bath or a half
12 bath or are you aware?

13 A. I, I don't recall.

14 Q. So, this is this master bathroom but not ---

15 A. It's not the incident location. It is not -- no one
16 suggested to me that anything happened in that room in
17 regards to this incident.

18 Q. Okay, and finally we go to -- again, I believe you
19 said we'd see it earlier. State's 63, is that what you
20 were referring to about a better picture?

21 A. Correct. Yes. It depicts a -- the photo depicts
22 Reginald's name, which appeared on his door.

23 Q. And his picture as well?

24 A. Correct, right, or at least a picture of a young
25 child.

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1 Q. And then in State's 64 and 65?

2 A. Those are pictures of Reginald's room.

3 Q. I'm going to show you what's been marked as State's
4 Exhibits 67 through 79. Do you recognize these?

5 (A PAUSE.)

6 A. Yeah. These are the pictures of the, of the bathroom.
7 I, I think we're just describing it as the incident
8 location bathroom where there is -- appears to be a child's
9 toothbrush, toothpaste. There's the tub I described
10 earlier, the shower over the tub, and in the very last
11 photo, the shower is actually in State's Exhibit 79.

12 Q. And do those accurately and fairly depict the incident
13 location as you observed it?

14 A. They did.

15 Q. At that time?

16 MS. SIMPSON: Your Honor, at this time I would offer
17 State's 67 through State's 79 into evidence.

18 MR. BANK: Without objection.

19 THE COURT: State's 67 through 79 is in evidence
20 without objection.

21 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBERS 67 THROUGH 79.)

23 BY MS. SIMPSON:

24 Q. Okay, and again I want to go through, first of all,
25 State's 67 and 68. Actually, let's just start with 67.

1 A. That, that appears to be the vanity in the, in the
2 incident location bathroom.

3 Q. And again you said it's, like, a child's toothbrush
4 and things of that nature ---

5 A. Yes, ma'am.

6 Q. --- depicted, and then in State's 68, what do we see
7 there?

8 A. That is the, the tub. You can't see the shower head,
9 but the shower head is above it.

10 Q. Okay. So, this is the tub area in the incident
11 location?

12 A. Correct.

13 Q. And you said there's a shower head above that?

14 A. There is.

15 Q. I'm going to show you State's 69 and State's 72. What
16 do we see there?

17 A. 72 is the shower head, and 69, it appears to be --
18 it's one of those removable shower heads. So, there's a --
19 the, the hose that connects the -- to the shower head.

20 Q. Okay. So, the shower head, it's not affixed
21 permanently? It can move in and out, correct?

22 A. Correct.

23 Q. With the cord?

24 A. Well, it is one of those styles of shower heads, yes,
25 ma'am.

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1 Q. But it's above the tub?

2 A. It is.

3 Q. So, the tub and the shower are together?

4 A. Correct.

5 Q. And this bathroom was fairly small, correct, even
6 though ---

7 A. It is not big, correct, yeah. It is little.

8 Q. Show you again, let me show you State's 75 and 76
9 again. Once again we're looking at the tub in these two
10 photos in the incident location. So, just different kind
11 of perspectives?

12 A. Yes, ma'am.

13 Q. Okay. Now, did you actually do something or conduct
14 some sort of -- how can I put this -- examination of the
15 shower area regarding temperatures and water and things of
16 that nature?

17 A. Correct. Investigator Charley had directed me to do,
18 do what I could to measure the temperature of the water in
19 that shower.

20 Q. I'm going to show you -- actually I'm going to show
21 you two things. Show you what's been marked as State's
22 Exhibit 92 and State's Exhibit 91. Okay, with respect to
23 State's Exhibit 92, and I'm kind of backing up. What are
24 we -- what area does this depict?

25 A. Sure. This is a -- this depicts an area of Columbia

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1 in the Greenvview neighborhood, and obviously this was taken
2 using Google Maps and the incident location, Easter Street,
3 is highlighted in the, in the photo, meaning there's --
4 when it -- when you use Google Maps to find a location,
5 some sort of marker, red marker pops up, and that's what it
6 does, does on this photo.

7 MS. SIMPSON: Okay, Your Honor, at this time I would
8 offer State's 92 into evidence.

9 MR. BANK: Without objection.

10 THE COURT: State's 92 is in evidence without
11 objection.

12 (GOOGLE MAP MARKED INTO EVIDENCE AS STATE'S EXHIBIT
13 NUMBER 92.)

14 BY MS. SIMPSON:

15 Q. And then, Sergeant Bailey, State's 91, do you
16 recognize this?

17 A. Yes. This, this exhibit here looks like it was taken
18 directly from my case notes regarding this incident.

19 Q. Okay, and does it fairly and accurately depict the
20 measurements you did and what you did?

21 A. It does.

22 Q. Okay, and would it assist you ---

23 MS. SIMPSON: Well, first of all, Your Honor, at this
24 time I would offer State's 91 into evidence.

25 MR. BANK: Without objection.

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1 THE COURT: State's 91 is in evidence without
2 objection.

3 (MEASUREMENTS MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 91.)

5 MS. SIMPSON: Your Honor, permission for the witness
6 to step down?

7 THE COURT: Yes, ma'am, he may step down.

8 BY MS. SIMPSON:

9 Q. Okay, and actually if you can stand over here so the
10 court reporter can hear you, and I will stand to the side.

11 First of all, we'll go to the map just depicted in
12 State's 92. I hope everyone can see. The incident
13 location, you said this is the Greenview area. Where is
14 804 Easter Street ---

15 A. It is ---

16 Q. --- depicted?

17 A. It is, it is, it is right here.

18 Q. Okay, and that is where you actually responded to
19 conduct the search warrant?

20 A. It is.

21 Q. Okay. Now State's 91, and I don't know if you would
22 like a pointer to actually assist?

23 A. No, I got it.

24 Q. Can you explain to the jury first of all, I guess
25 before we get to that, what you did and what your goal was

C. BAILEY - DIRECT EXAMINATION BY MS. SIMPSON

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1 with respect to going out there? I believe you were tasked
2 with getting the measurements of the temperature?

3 A. Yeah. One of the, one of the things that -- of
4 course, Investigator Charley and I had never done a water
5 temperature measurement or, or worked a case quite like
6 this involving temperatures of water. So, his mission was
7 to deduce whether or not the shower at the incident
8 location, what temperatures that shower was capable of
9 producing.

10 Q. Okay.

11 A. The water in the shower.

12 Q. And again, this is a home. So, the hot water heater
13 -- and actually let me show you so we can understand what
14 we're talking about because you also observed -- let me
15 see. Let me show you State's Exhibit 80 and 81. Do you
16 recognize those?

17 A. Yeah. That looks like the shower head in the -- at
18 the incident location and also the tub at the incident
19 location.

20 Q. And is this -- do they fairly and accurately depict
21 which you observed?

22 A. They do.

23 MS. SIMPSON: Your Honor, at this time I would offer
24 State's 80 and 81 into evidence.

25 MR. BANK: Without objection.

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1 THE COURT: State's 80 and 81 into evidence without
2 objection.

3 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 80.)

5 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
6 NUMBER 81.)

7 BY MS. SIMPSON:

8 Q. Okay. So, here you're actually running -- the water's
9 running. You all did that, correct?

10 A. Correct. We turned the water on.

11 Q. And with respect to the water heater, did you learn --
12 was it -- it was outside. Could it be controlled as far as
13 the different dials, for lack of a better way to put it?

14 A. Yeah. There was a -- the, there -- there was a water
15 heater on the outside of the house, and if a panel was
16 removed, yes, you could manipulate the, I guess, the
17 maximum temperature for the, for the house -- for the water
18 going into the house.

19 Q. Okay, and tell us what you did and what was taken
20 here.

21 A. Well, this graph represents -- the tub line is going
22 to be different times. So, we started the search warrant
23 at 1:20, and I'm using military time throughout this entire
24 thing, so at 1320. At 1345 is when I began to take the
25 measurements and I took my -- I took a series of ten

1 measurements from different heights, taking the last
2 measurements at 1408. I decided to -- because we knew
3 **Minor** was approximately 4 feet high, I decided to take
4 temperatures, and this is the temperature records here in
5 the middle. I decided to measure the temperature of the
6 water at different times at 4 feet.

7 Q. Okay. So, let's, let's start at 1, or excuse me,
8 yeah; 1:45 at the 118 degrees. I'm assuming Fahrenheit?

9 A. Yeah; that's in Fahrenheit. That would be at the, at
10 the -- when I was holding the, the thermometer at the
11 bottom. Near. Just above but not actually on the floor of
12 the tub.

13 Q. Okay, and what about 127 degrees?

14 A. That's when I was measuring the water at the 4 feet, 4
15 feet from the, from the tub, I guess pointing towards the
16 head of the shower. So, 4 feet up is when I measured, took
17 that measurement of 127.

18 Q. Okay, and you're taking these measures from the shower
19 head, not the actual, I guess, spout coming out of the
20 bathtub?

21 A. Correct. That's correct.

22 Q. Okay, and then it 143 degrees Fahrenheit, what is that
23 measurement?

24 A. That was the temperature of the water, according to
25 the thermometer I was using, at the very head of the

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1 shower. So, I held it just inches below the shower head
2 and took the temperature of the water as it basically --
3 when it first came out.

4 Q. So, when you are referencing that in State's 80, can
5 we -- can you describe what portion of that...

6 A. Yeah. I would, I would be holding it just below it.

7 Q. Just below it ---

8 A. So basically you can kind of see a line behind there.
9 That would be where the thermometer was.

10 Q. Okay, and did you run the water? Let me just clarify.
11 As far as you running the water, was it consistently for
12 this period of time from 1:45 to 2:08 straight you were
13 running the water?

14 A. It was, meaning I didn't shut it off at any time. I
15 ran the water and then immediately started taking
16 measurements. So, within mere moments of turning the water
17 on, I started taking measurements of the water temperature.

18 Q. Okay, and so again probably our highest point at the
19 bottom would be the 116 mark -- or the 118 and then 116?

20 A. Right.

21 Q. So, it actually kind of fluctuates?

22 A. So, yeah, this, this shower, very different than my
23 own. This one you've got it hot almost immediately, and
24 then temperature gradually went down over, just over a
25 twenty-five minute period of time.

1 Q. Did you actually touch the water at any point, like
2 using your own hand?

3 A. Yeah, I was wearing during -- when I was taking these
4 particular measurements here, and -- but yes, it is
5 extremely hot. So, I, I, when I saw the measurement of 143
6 and I actually could feel -- I wasn't actually touching the
7 water, but I could feel near the water it was extremely
8 hot.

9 Q. Okay. So, you didn't just stand there and hold your
10 hand underneath it?

11 A. I did not.

12 Q. The reaction was to pull it away?

13 A. Correct.

14 Q. And again, at the bottom you were just trying to
15 calibrate what you had to utilize during that ---

16 A. Yeah. I had actually brought two thermometers. So, I
17 -- obviously I wanted to make sure that the, that the
18 thermometer that I was using was somewhat accurate. So, I
19 compared it to a, another thermometer I had brought, and I
20 took two measurements at the exact same time in a cup of
21 water, and they're within 3 degrees, 2 degrees, 2 degrees.

22 Q. And so as far as the temperatures coming out of the
23 shower head, those are pretty high for a significant
24 duration of time ---

25 A. They are.

C. BAILEY - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. --- that you did it?

2 A. Yes, ma'am.

3 Q. So, it didn't quickly decrease in temperature such as
4 an apartment complex where it may run out of water, hot
5 water really fast?

6 A. Yeah, correct.

7 Q. And not get so hot?

8 A. Correct. So, yeah, after twenty-five minutes, the
9 temperature just below the shower head was at 125 degrees.

10 Q. Is there anything on here I haven't -- I'm not that
11 great with numbers, so -- that I didn't explain or ask you
12 about?

13 A. No. That's it.

14 Q. All right. You can have a seat.

15 And going to the defendant's statement, what kind of
16 stood out to you as far as how he described the water
17 temperatures as when he would be taking ---

18 A. Well.

19 Q. --- showers, or how -- what was significant about the
20 way he talked about the water temperature?

21 A. Yeah, the one thing that, that certainly stood out to
22 me -- because we were asking him a lot of questions about
23 the temperature of the water -- what does he know about the
24 temperature of the water, what does he know about the
25 maximum temperatures of water and such, and he said that he

1 only takes cold showers.

2 Q. He only takes cold showers?

3 A. Correct.

4 Q. And to your knowledge, did he ever admit that he ever
5 felt the heat of the shower?

6 A. Yeah. When, when -- he had indicated that sometimes
7 when Kristin was taking a shower, he would help adjust the
8 temperature then, but for the most part he denied knowing
9 anything about the, the, the hot water at the -- in the
10 house.

11 Q. Okay. So, he only knew about cold showers and cold
12 water?

13 A. Correct.

14 MS. SIMPSON: Beg the court's indulgence.

15 Q. And the person you interviewed regarding this incident
16 with [REDACTED] Minor, do you see him here in the
17 courtroom today?

18 A. I do.

19 Q. And can you please point him out for the jury?

20 A. Yes. It's the young man sitting with the light blue
21 shirt wearing a darker blue tie.

22 MS. SIMPSON: Your Honor, at this time let the record
23 reflect that he has identified the defendant.

24 THE COURT: So reflected. Thank you, Solicitor.

25 Mr. Bank.

C. BAILEY - CROSS-EXAMINATION BY MR. BANK

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1 MR. BANK: Thank you, Your Honor. May it please the
2 court?

3 CROSS-EXAMINATION BY MR. BANK:

4 Q. Sergeant Bailey, asking you questions about the
5 interview with Shane right now, but to be clear, he was
6 there voluntarily, as you said, right?

7 A. Yes, sir.

8 Q. If he had asked for a lawyer, the interview would have
9 stopped, right?

10 A. Right. If he had indicated he wanted a lawyer, the
11 interview would've stopped.

12 Q. And y'all made him aware of that?

13 A. We did through the Advice of Rights form, yes, sir.

14 Q. And in spite of that, you know, that fact, he decided
15 he'd still like to speak with you?

16 A. Correct.

17 Q. Now, I want to talk about some more of the pictures
18 you've taken. I was just looking at that. You were at the
19 house doing this on October 14th. Is that right?

20 A. That is correct.

21 Q. All right, and y'all had both consent to search and a
22 search warrant. Isn't that right?

23 A. That is correct.

24 Q. And who did you have consent for, both Kristin and
25 Shane?

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1 A. Yes. We -- so -- and I witnessed both of the consent
2 forms Investigator Charley presented, and it looks like I
3 filled out most of the form for him. He presented Shane
4 Johnson, the defendant in the case, as was Ms. Kristin
5 Campbell, with two Consent to Search forms, and they both
6 signed the forms.

7 Q. Okay.

8 MS. SIMPSON: And, Your Honor, I believe these are
9 mostly duplicates of what we've introduced or intend to
10 introduce, but the state has no objection.

11 THE COURT: All right. Thank you.

12 MR. BANK: May I approach the witness?

13 THE COURT: Yes, sir.

14 BY MR. BANK:

15 Q. Now, we've just been speaking about some pictures.
16 Would you mind looking through these?

17 (A PAUSE.)

18 A. Yes, sir.

19 Q. You recognize all those?

20 A. I, I, I do for the most part. The one photo that I'm
21 assuming was taken from the hot water heater is this photo
22 here. This could have been, I suppose this could have been
23 taken anywhere, so I can't vouch for the validity
24 necessarily of that photo, but it appears that these are
25 the photos of the hot water heater behind the home.

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1 Q. And those all accurately reflect what you saw that
2 day?

3 (A PAUSE.)

4 A. Yeah, for the most part, with the exception of this,
5 this photo.

6 Q. Sure.

7 A. But yes, sir.

8 Q. Could I have those for a second?

9 A. Sure.

10 MR. BANK: Your Honor, the defense moves to enter
11 Defense Exhibit 1 through 10 into evidence with no
12 objection.

13 MS. SIMPSON: I do want to look at one briefly.

14 (A PAUSE.)

15 MS. SIMPSON: No objection, Your Honor.

16 THE COURT: What numbers again, Mr. Bank?

17 MR. BANK: It's Defense Exhibit 1 through 10.

18 THE COURT: Defendant's 1 through 10 is in evidence
19 without objection.

20 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
21 DEFENDANT'S EXHIBIT NUMBERS 1 THROUGH 10.)

22 BY MR. BANK:

23 Q. Now, one picture I want to go over with you right
24 here, do you recognize where these two -- what these two
25 doors are to?

C. BAILEY - CROSS-EXAMINATION BY MR. BANK

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1 A. If I can ---

2 THE COURT: What numbers is that?

3 MR. BANK: I'm sorry, Your Honor.

4 THE COURT: That's all right.

5 MR. BANK: That's Defense Exhibit Number 2.

6 BY MR. BANK:

7 A. This is, this photo was taken in the hallway. On the
8 left is the entrance to the incident location, the incident
9 bathroom.

10 Q. Sure. So, those two doors, that's the master bedroom
11 door and the bathroom incident location door. Is that
12 right?

13 A. No. This door on the right would be -- would lead to,
14 I believe that would lead to the kitchen.

15 Q. That's fine. You said you believe that those doors
16 were -- which doors again? I'm sorry.

17 A. Well, this, this door here depicts the -- this is,
18 this is the tub. This is the shower. So, the master
19 bedroom would be ---

20 Q. Would be one more door down? .

21 A. Yeah, would be further down the hall, yes, sir.

22 Q. Okay. Could you explain to the jury -- I know you've
23 done this a little bit -- what this picture is of?

24 A. That would be the hot water heater on the outside of
25 the house.

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1 Q. Okay, and so can you tell whether this is a gas or
2 electric heater?

3 A. I cannot, not immediately by looking at it, no, sir.

4 Q. Not immediately by looking at it. Do you remember
5 what this is a picture of here?

6 A. So, this would be the -- this is the -- it is a knob
7 where I suppose an individual could adjust the master
8 temperature of the water at the house.

9 Q. Okay, and we see some settings here that go all the
10 way up to very hot. Is that fair?

11 A. Yes, sir.

12 Q. And we see the knob here almost right at very hot.

13 A. It is, yes, sir.

14 Q. And then I think I have the original picture I was
15 looking for here. Can you see the two doors next to each
16 other that we were speaking of a little earlier? This is
17 Defense Exhibit -- could you read that?

18 A. This is going to be Defense Exhibit Number 1.

19 Q. Okay.

20 A. So, this is the hallway. I believe the door
21 immediately to the right in this photo would be the
22 bathroom, the incident location. Down the end of the
23 hallway would be Reginald's room. On the right would be
24 the entrance to the master bedroom, and I -- on the left
25 would be -- they had an odd situation where you would --

1 there was, there was some sort of dining room to the left.

2 Q. Sure. Absolutely, and so the distance between mostly
3 these doors is just a couple feet. Is that fair?

4 A. Correct.

5 Q. This is a two-bedroom home?

6 A. It is.

7 Q. We have the one main bathroom that we've been speaking
8 of with the bathtub in it, right?

9 A. Yes, sir.

10 Q. And then we have this other kind of set off to the
11 back bathroom next to the, to the master bedroom?

12 A. Correct.

13 Q. It's pretty tight quarters?

14 A. It is, it is I suppose an average home for that
15 neighborhood, but yes, certainly the home is not large by
16 any, any measure.

17 Q. Absolutely. Now, when you're looking at the water
18 heater, you are able to tell the make, model, manufacturer,
19 and all that information, right?

20 A. Yes, sir. Well, through -- yes.

21 Q. That's all that information on the pictures we just
22 looked at?

23 A. Correct.

24 Q. And what did the manufacturer or dealer have to say
25 when you called them about the water heater?

C. BAILEY - CROSS-EXAMINATION BY MR. BANK

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1 A. I did not call the manufacturer or the dealer
2 regarding the water heater.

3 Q. As far as you know, did anybody in this investigation
4 call anybody with the manufacturer or the dealer ---

5 A. Sir, I'm not aware of anyone calling the manufacturer
6 or dealer for the hot water heater.

7 Q. Now, when we were talking about the testing of the
8 water, you said that you had two thermometers?

9 A. Correct.

10 Q. And where did these thermometers come from?

11 A. They came from my house.

12 Q. They came from your house?

13 A. Sure.

14 Q. Do you, do you -- are you still in possession of these
15 thermometers?

16 A. I am.

17 Q. You are? Did the -- did this office ask you about
18 your possession of these thermometers any time in the last
19 week or so?

20 A. No. No, sir.

21 Q. There's been no one from their office that has
22 approached you and asked you where these thermometers might
23 be?

24 A. There was a discussion about the fact that they were
25 not City of Columbia thermometers, that they were my own.

1 Q. Okay. So, the extent of your conversation was I still
2 have them, but they're not property of the City of Columbia
3 Police Department?

4 A. Correct. Yes, sir.

5 Q. Now, you mentioned you had to wear gloves when you
6 were holding the thermometer. Is that right?

7 A. Right. Yeah. Usually at the very beginning of any
8 search warrant, we put on gloves.

9 Q. And can you explain this thermometer to me? Is this
10 kind of like just a flat head with a -- it's a meat
11 thermometer?

12 A. It's a, it's a -- same sort of thermometer that we all
13 have in our homes. It is a meat thermometer where the, the
14 actual thermometer connects to a metal wire that connects
15 to a, sort of a prong, a metal prong.

16 Q. And whatever part of the mechanism takes the
17 temperature, you just held with your glove in the, the
18 stream?

19 A. Correct. Yes, sir.

20 Q. And do you know if there was a steady amount of water
21 coming on it or were there drips of water? Were things
22 bouncing around?

23 A. It was, it was steady enough that I felt comfortable
24 about taking the temperature of the water.

25 Q. Did you consult with anybody, any type of expert? I

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1 know you didn't talk to a manufacturer, but any type of
2 expert with any type of testing with this?

3 A. Correct. No, sir.

4 Q. I think you would agree this wasn't the most
5 scientific approach you could have taken to, to measure the
6 temperature of the water?

7 A. Yes, sir, we could agree to that.

8 Q. But even with that said, we have over -- or we have
9 four temperatures over 140 degrees even using this method.
10 Is that right?

11 A. We had -- yes. Correct, at 140 or above, yes, sir.

12 Q. Sure, sure, and as you stated, there was some
13 inconsistencies as time went on about how the temperature
14 went up or down?

15 A. Well, I didn't say that there were inconsistencies,
16 but yes, there are, there are inconsistencies. The, the
17 temperature, the very last temperature I took -- so, the,
18 so, the temperature of the water was generally going down.
19 The very last temperature I took from the location just
20 above the tub floor, it seemed to go up to 113, which it,
21 it -- which was kind of an aberration from the rest of the
22 readings that I was getting.

23 Q. And I don't mean this -- I understand you to be a --
24 you're a fine, you're a fine investigator, but you are not
25 a chemist. Is that ---

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1 A. Correct. Yes, sir. Not a chemist.

2 MR. BANK: All right, beg the court's indulgence.

3 THE COURT: Yes, sir. Of course.

4 (A PAUSE.)

5 BY MR. BANK:

6 Q. Just one final question.

7 A. Sure.

8 Q. You didn't see any burns on any of the adults' hands
9 on these cases or anything, did you?

10 A. No, I did not, no, sir.

11 MR. BANK: All right. Thank you. That's all the
12 questions I have.

13 THE COURT: Redirect, Solicitor?

14 MS. SIMPSON: No, Your Honor.

15 THE COURT: Thank you. Thank you very much.

16 WITNESS: Thank you, Your Honor.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: All right, perhaps now would be a good
19 time to take our afternoon recess. Do not discuss the case
20 during this brief recess. We'll take about fifteen
21 minutes, and I believe I have at least one juror with
22 childcare to leave by 5:30. Is that, is that right? Any
23 others? We're out of here by 5:30, that's good news?

24 All right, thank you. Thank you very much. I hope
25 you have a pleasant break.

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1 (THE JURY EXITS AT 3:34 P.M.)

2 THE COURT: Court will be in recess fifteen minutes.

3 (OFF THE RECORD.)

4 THE COURT: Yes, sir. Anything?

5 MR. BANK: Very briefly.

6 THE COURT: Yes, sir.

7 MR. BANK: I understand they're about to introduce
8 some pictures from Palmetto Health Richland. The vast
9 majority of them we don't have an objection to. There is
10 one picture that is a burn on the child's thigh, but it's
11 taken with his genitalia the other side of the picture. We
12 ask that -- the burn is not on his genitalia at all. It's
13 just on the thigh. We ask that they somehow either pick a
14 different picture that just shows the thigh or redact the
15 one they have isn't in view of the picture. Then, Your
16 Honor, we have objection to just three photos of them being
17 cumulative, and I can give you those numbers with the
18 state's exhibits if you'd like.

19 THE COURT: All right. Well, somebody show me the
20 exhibit you're objecting to.

21 MS. SIMPSON: Yes, Your Honor. With respect to the
22 one with the victim's genitalia, we do have a blacked out
23 version that we have. We just need to mark it.

24 THE COURT: All right. Show that, show that to Mr.
25 Bank, and that will be fine.

1 (COUNSELORS CONFER.)

2 MS. SIMPSON: Permission to approach?

3 THE COURT: Yes, ma'am.

4 (A PAUSE.)

5 THE COURT: All right then, Mr. Bank, which are you
6 objecting to?

7 MR. BANK: We believe State's Exhibit 4, 6, and 7 are
8 cumulative.

9 THE COURT: 4?

10 MR. BANK: 4, 6, and 7.

11 THE COURT: All right, Solicitor, 4, 6, and 7?

12 MS. SIMPSON: Yes, Your Honor, and if I may address
13 you with respect to argument as to why they are not
14 cumulative?

15 THE COURT: All right.

16 MS. SIMPSON: Your Honor, in this case we must prove
17 great bodily injury to the child. Those pictures are not
18 cumulative. That shows the back of his head is where --
19 different angles of the back and the peeling. As you're
20 aware, once he goes to the Augusta Burn Center, these are
21 actually deemed not just merely second-degree burns but
22 second and third-degree burns, with 26 percent of those
23 being third-degree burns and about 14 being second-degree
24 burns.

25 As I said, we have the burden of proof here, and those

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1 show how deeply, I think, the peeling of the skin and the
2 stages of it and where on his body throughout. One is for
3 the head, the back, the shoulders, and you can see the
4 depth at which the skin is peeling off.

5 THE COURT: Where were these photographs taken,
6 Solicitor?

7 MS. SIMPSON: Palmetto Health.

8 THE COURT: All right, Mr. Bank.

9 MR. BANK: Your Honor, our position is that pictures
10 4, 6, and 7, the images that appear on those pictures are
11 the same images that appear on pictures 3 and 5.

12 THE COURT: All right. Thank you.

13 Well, as I look at 3 and 4, there is a different
14 angle; there is a closer angle. The towel or sheet is in a
15 different view on 4 than 3. You see more going on 3 from
16 lower left -- from right towards the shoulder of the
17 victim. Then on 4 you see further down the back, either
18 between or slightly below the shoulder-blades. 5 gives
19 more of a view even further down the lower back. 6 shows
20 much more on the left shoulder of the victim, more top of
21 the left shoulder. So, I would find they are not -- they
22 may be in the same general area obviously of the body of
23 the victim, but they do show differences between 3, 4, and
24 5, and 6, and 7 shows the difference on what I believe
25 would be the right shoulder and down into the shoulder

1 area.

2 So, I would overrule the objections in this regard.
3 The state does have the burden of proving great bodily
4 injury as defined by the statute.

5 All right, anything further? Now, there was another
6 photograph that was blacked out. Is that correct?

7 MS. SIMPSON: Yes, Your Honor. We found it and it's
8 -- did we -- just mark it as the same, same exhibit number,
9 State's 15 with the blacked photo? Is that okay?

10 MR. BANK: That's fine.

11 THE COURT: What number is it?

12 MS. SIMPSON: State's Exhibit 15.

13 THE COURT: And no objection to 15?

14 MR. BANK: No objection to the, the redacted photo 15,
15 no, sir.

16 THE COURT: All right, I've received -- anything
17 further?

18 MS. SIMPSON: Nothing from the state.

19 THE COURT: I've received a note from the jury, juror
20 108, foreperson, I believe:

21 Just wanted to be certain. I have to leave at
22 4:45 p.m. to be in Chapin, South Carolina, by
23 5:30 p.m. to get my child and to take into
24 account 5 p.m. traffic.

25 So, I'm going to accommodate that juror. We're going

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1 to stop at 4:45 p.m. All right, not sure she can make it
2 to Chapin in forty-five minutes, but I'm going to
3 accommodate her.

4 Anything further before we bring in the jury,
5 Solicitor?

6 MS. SIMPSON: No, Your Honor, not at this time.

7 THE COURT: Mr. Bank?

8 MR. BANK: No, sir.

9 THE COURT: Thank you.

10 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
11 NUMBER 4.)

12 (THE JURY ENTERS AT 4:07 P.M.)

13 THE COURT: All right, then, I received that note.
14 We'll stop at 4:45. All right, Thank you. Thank you very
15 much.

16 Solicitor, you may call your next witness.

17 MS. SIMPSON: Thank you. Your Honor, may it please
18 the court? State calls Dr. Casey Ferrara to the stand.

19 THE COURT: All right, Doctor, if you would come
20 around and join us, please.

21 WILLIAM CASEY FERRARA, BEING DULY
22 SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Have a seat in the witness stand,
24 please, and state your name for the record.

25 WITNESS: Dr. William Casey Ferrara.

1 VOIR DIRE EXAMINATION BY MS. SIMPSON:

2 Q. And can you spell your last name?

3 A. Certainly. It's F-e-r-r-a-r-a.

4 Q. Dr. Ferrara, what is your profession?

5 A. Emergency medicine.

6 Q. Okay, and where do you currently work?

7 A. Palmetto Health Richland.

8 Q. And how long have you been at Palmetto Health?

9 A. Probably about a year and six or seven months.

10 Q. Okay, and you said you work in emergency medicine.

11 What exactly do you do?

12 A. So, as an emergency medicine physician, our main
13 priority is quick resuscitation of patients, to diagnose
14 and treat illness, and to admit the patient or discharge
15 them home.

16 Q. So, you work in the ER?

17 A. Yes, ma'am.

18 Q. And see a number, number of patients, correct?

19 A. Correct.

20 Q. Tell the jury a little bit about your educational
21 background and your training.

22 A. So, I've probably spent forever in school. So, I went
23 to Auburn University for undergrad. Then I actually taught
24 at a special needs school out in Colorado. Then I went
25 back to medical school after working in the emergency

W.C. FERRARA - VOIR DIRE EXAMINATION BY MS. SIMPSON

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1 department as a scribe for two years. Medical school is a
2 four-year process. Then you land in your residency, which
3 is emergency medicine at Palmetto Health Richland.

4 Q. And you mentioned that in Colorado, you actually had
5 the opportunity to work with special-needs kids?

6 A. Yes, ma'am.

7 Q. Tell the jury a little bit more about that experience
8 and what you encountered as far as special needs.

9 A. So, the school that I worked at was actually a pretty
10 extensive school for most students that could not be
11 fostered in our regular school system. They had
12 Asperger's, Fragile X, Down syndrome, autism, amongst a
13 number of other complications, and so after teaching there
14 for about a year and a half, I feel like I gained pretty
15 knowledgeable experience of different spectrums of
16 disorders with children.

17 Q. Okay, and throughout this course, not -- I know you're
18 in the ER now, but you worked pretty extensively with
19 children, correct?

20 A. Yes, sir.

21 Q. And have you been familiar with cases that were
22 indicative of abuse?

23 A. I have been.

24 Q. And injuries? How many patients would you say you've
25 treated if you can even guess?

1 State of South Carolina,) Court of General Sessions
 2 County of) Fifth Judicial Circuit
 MS. SIMPSON,)
 vs.)
 Dr. Ferrara as an expert in emergency medicine.

4 THE COURT: All right, thank you.

5 The State of South Carolina,)

6 Mr. Bank.)

7 Plaintiff,)

8 MR. BANK: Beg the court's indulgence?

9 vs.) Transcript of Record

10 (A PAUSE.))

11 Shane Isaac Johnson,)

12 MR. BANK: Your Honor, we're objecting at this time.

13 Defendant.)

14 We haven't been provided any evidence, documentation, or
 15 information by the solicitor's office about why he would

16 need to be qualified as an expert. Appellate 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

17 the scene when this happened, but I don't know if an

18 emergency room qualification as an expert is at all

19 necessary. They have a lot of information, but they've provided --

20 the information that's been provided to us.

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

22 THE COURT: Let me make sure I'm tracking.

23 Kathryn Luck Campbell, Esquire, Assistant Solicitor

24 MR. BANK: Yes, Esquire, Assistant Solicitor

25 Nicole M. Simpson, Esquire, Assistant Solicitor

THE COURT: For the State objecting to Dr. Ferrara being

qualified as an expert in emergency medicine. Your concern

Robert Louis Bank, Jr., Esquire

is whether or not that is relevant? Is that ---

Jessica E. Sturgill, Esquire

MR. BANK: Yes, the Defendant

THE COURT: Is that tracking it correctly?

MR. BANK: That's correct, Your Honor.

THE COURT: Well, I'm going to qualify him as an

expert in emergency medicine, Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

W.C. FERRARA - DIRECT EXAMINATION BY MS. SIMPSON

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1 particular question is asked that you do not think is
2 relevant, I will certainly address that at the time.

3 MR. BANK: Yes, sir, Thank you.

4 THE COURT: Ladies and gentlemen, normally when a
5 person testifies, they cannot give opinion testimony.
6 Normally they must give testimony based on what they either
7 saw, heard, or sensed by smell, or something of that
8 nature, one of, one of our senses.

9 There is an exception. When someone is qualified
10 because of education or experience or training or the like
11 in a particular art, science, craft, or profession, they
12 are permitted to give their opinions in certain areas if
13 the court qualifies them that way.

14 This witness, Dr. Casey Ferrara, will be qualified as
15 an expert witness in the area of emergency medicine to give
16 opinion testimony in that area and the basis for those
17 opinions. That does not mean that you must accept the
18 opinion or opinions, but it is evidence for you, the jury,
19 to use in any way you deem fit and appropriate.

20 Thank you. Thank you, Solicitor. You may continue.

21 MS. SIMPSON: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MS. SIMPSON:

23 Q. I want to turn your attention to October 7, 2015. Did
24 you have occasion to become involved in this case?

25 A. Yes, ma'am.

1 Q. And you've actually have a chance, or have you had a
2 chance to review all the medical records?

3 A. Yes, ma'am.

4 Q. Describe -- where were you working at that time?

5 A. So, I was in the pediatric emergency department,
6 probably midway or so through the shift, when the patient
7 was rushed in.

8 Q. And you say rushed in. Tell the jury a bit about how
9 he presented the hospital.

10 A. Okay.

11 Q. And who was with him.

12 A. Yes, ma'am. So, referring back to the records, the
13 patient was initially brought back into the emergency
14 department in his father's arms, and we were immediately
15 called over to the room because multiple nurses noticed
16 that there appeared to be a child that was in distress. So
17 when we got to the room, the patient was -- remained in the
18 father's arms. Appeared very agitated, in distress and
19 pain, and initially had a towel that was covering him.

20 So, at that time is when we were starting to kind of
21 delineate what had happened. We were told that the patient
22 was found sitting in a tub and was crying, and then that's
23 when what was initially told us by the family that they
24 came in and saw him with what appeared to be extensive
25 burns from water. In further questioning at that time when

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1 I was just asking, because you have to assess a very
2 detailed history to see kind of the extent, mechanism, what
3 would have caused these injuries because that can kind of
4 change how you would treat a patient. I asked the patient
5 was anybody else in the room, and that's when he had turned
6 and looked up at the father and said you did this to me.

7 MR. BANK: Objection, Your Honor, to hearsay.

8 THE COURT: Overruled based on 803.2.

9 MR. BANK: Yes, sir.

10 BY MS. SIMPSON:

11 Q. And backing up just a little bit. What did, what did
12 the patient tell you and who was he referring to?

13 A. So, when I was, once again when I was asking the
14 history, just trying to get detailed information and not
15 with any leading questions, I just asked the patient was
16 anybody else in the room because we were told initially no.
17 And that's when he had looked up to the father and said you
18 did this to me, and you were.

19 Q. Now, I want to back up again. You stated that the
20 mother and father came in and they said that the child was
21 sitting in the tub. Did they indicate to you, based on the
22 records, what they did as soon as they observed the burns?

23 MR. BANK: Your Honor, can we clarify if we're talking
24 about -- who exactly we're talking about getting the
25 statements from?

1 MS. SIMPSON: I said the mother and the father.

2 THE COURT: Just, just restate the question,
3 Solicitor.

4 Thank you, Mr. Bank.

5 BY MS. SIMPSON:

6 Q. Backing up to the history that was presented to you by
7 the mother and father.

8 A. Yes, ma'am.

9 Q. Correct? When they indicated that they observed the
10 child in the shower by himself, what did they state they
11 did at that time, based on your records?

12 MR. BANK: Your Honor, objection. I need to know if
13 it's the -- two people can't say something. If it's the
14 mother that said it or the father said it, I need to know
15 which one said it.

16 THE COURT: All right, be more, be more specific in
17 your question, Solicitor.

18 MS. SIMPSON: Your Honor, I'm basing it specifically
19 off the records that have been provided to defense counsel
20 which state: Mother and father came in and noticed the
21 patient was continuing to ---

22 MR. BANK: Objection.

23 MS. SIMPSON: --- sit in the shower.

24 MR. BANK: She's reading out the very thing I'm
25 objecting to.

W.C. FERRARA - DIRECT EXAMINATION BY MS. SIMPSON

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1 THE COURT: All I'm saying is, all I'm saying, if --
2 the doctor, of course, can review and, and has stated that
3 he has reviewed his medical records. If he remembers
4 specifically what has been identified is mother or
5 specifically what has been identified as father, that,
6 that's the only thing I'm -- that's the only point I think
7 Mr. Bank is making, if I'm tracking properly. That's all.

8 MS. SIMPSON: Okay, Your Honor, I think I'll
9 essentially rephrase, hopefully correctly.

10 BY MS. SIMPSON:

11 Q. Okay, with respect to gaining history, were you able
12 to gain history from both the mother and who was believed
13 to be the child's father?

14 A. Yes, ma'am. Both parties were who I was speaking with
15 when they came to the emergency department, the mother and
16 the father.

17 Q. And at that time, did they have the same story that
18 you just told me about?

19 A. At that time, that's when they said -- they came in
20 and they ---

21 MR. BANK: Objection to hearsay, Your Honor. There
22 are two different rules for whether the mother said it or
23 the father said it. I have to know which one it is.
24 There, there, there -- the hearsay exceptions are going to
25 work differently for the speaker or the declarant.

1 THE COURT: Was the mother charged?

2 MS. SIMPSON: She was, Your Honor.

3 THE COURT: For unlawful conduct?

4 MS. SIMPSON: Yes, Your Honor.

5 THE COURT: I would overrule the objection, I think
6 based on 801(d)(4) or (4)(d). I'm not sure, but I'll find
7 it.

8 But you may, you may continue, Solicitor. You may ask
9 your next question, Solicitor, or the doctor may answer his
10 question.

11 MS. SIMPSON: Thank you, Your Honor.

12 BY MS. SIMPSON:

13 Q. Again, Dr. Ferrara, what did the mother and father
14 indicate to you?

15 A. So, the mother and father did indicate that they
16 noticed the patient was continuing to sit in the hot
17 shower, and they were concerned for burn to the body and
18 brought him immediately to Palmetto Health Richland, and
19 that's in to medical chart.

20 Q. So, they stated that they immediately brought him?

21 A. Yes, ma'am.

22 Q. Upon observing that. I want to go back to when you
23 were in the room with the parent and wrapped in the towels.
24 What did the person you identified with at the time as
25 being the father say to you about the child?

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1 A. So, on arrival to the ED, the father was continuing to
2 hold the patient, reporting that the patient did not like
3 needles and initially was unwilling to allow the patient to
4 lay by himself on the hospital stretcher. And at that
5 time, the patient was known to be in significant pain.
6 Therefore, my nurses were trying to gain IV access to get
7 fluid resuscitation immediately.

8 Q. And when a person is burned to this degree, just based
9 on what you observed, are fluids important?

10 A. Yes. So ---

11 Q. Can you explain that?

12 A. There's something we use called the Parkland Burn
13 Formula, which is a weight-based assessment, an algorithm
14 of how much fluid a burn patient needs. And the biggest
15 thing about burns is that it is the time from the onset of
16 the burn to when you get fluids to when you get to a higher
17 level of care for a burn-specific unit, and the clock ticks
18 against from the immediate onset of the burn because your
19 body has a lot of breakdown of skin and proteins, can cause
20 kidney injuries. So, therefore, you try and flush the
21 kidneys as quickly as possible using an algorithm of
22 fluids.

23 Q. Okay, and additionally did you have a history
24 regarding him being autistic?

25 A. Yes. I was initially told that by the father.

1 Q. Okay, and upon observing the victim in this case,
2 [REDACTED] Minor was a decision made regarding y'all's
3 ability to treat him?

4 A. Yes.

5 Q. At Palmetto Health?

6 A. Initially because we are not a primary burn center,
7 and due to the extensive nature -- you have to go to a
8 specialized facility if you have certain percentages of
9 burns. So, our initial indication was to immediately gain
10 IV access, start fluid resuscitation, provide pain
11 medications due to the extent of the pain that the patient
12 appeared to be in, and then get to the August Burn Center
13 as quickly as possible for optimal medical treatment.

14 Q. Okay, and was there concern about the victim being in
15 flight so that he had to be transported, driven by special
16 transport?

17 A. Yes. Just due to the agitation kind of surrounding
18 the event, it was felt that it was appropriate to ride with
19 an advanced life-support pediatric team but just to take an
20 ambulance instead of flying.

21 Q. Okay, and with respect to -- I noted earlier that you
22 had reviewed the records and viewed numbers of patients
23 coming in and out of the ER. Did you have independent
24 recollection of this case as well?

25 A. I mean, relatively. It's not something you would

W.C. FERRARA - DIRECT EXAMINATION BY MS. SIMPSON

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1 forget, given this extensive nature of burns.

2 Q. Okay. Your Honor, I'm going to show -- or, Your
3 Honor. Dr. Ferrara, I'm going to show you a number of
4 pictures, and see if you recognize these, State's Exhibits
5 1 and 2.

6 A. Yes, ma'am.

7 Q. And also State's 10 and 11?

8 A. Yes, ma'am.

9 Q. And State's 16?

10 A. Yes, ma'am.

11 Q. As well as State's 12 through 14?

12 A. Yes, ma'am.

13 Q. And State's 8 and 9?

14 A. Yes.

15 Q. As well as State's 15?

16 A. Yes, ma'am.

17 Q. And State's 3 through 7?

18 A. Yes, ma'am.

19 Q. Okay, and what do those pictures as a general whole
20 depict?

21 A. So as a general depiction, extensive burns throughout
22 really the trunk, neck, face, the extremities, mostly
23 between second degree to possibly third-degree burns.

24 Q. Okay, and do they fairly and accurately depict what
25 you observed on the victim while he was under your care?

1 A. Yes, ma'am. As soon as we were able to disrobe him
2 and see the extensive nature of the burns, I do recall
3 these.

4 MS. SIMPSON: And, Your Honor, at this time we would
5 offer these exhibits into evidence.

6 MR. BANK: Subject to prior objections.

7 THE COURT: Let me make sure I'm tracking the prior
8 objections was as to State's 4, 5, and 7.

9 MR. BANK: Yes, sir.

10 THE COURT: And the other one is no longer a prior
11 objection based on the redaction.

12 MR. BANK: Yes, sir.

13 THE COURT: And I can't remember the -- I can't recall
14 the other one.

15 All right, thank you. It looks like State's 1 through
16 16, Solicitor?

17 MS. SIMPSON: I believe that is correct.

18 THE COURT: In evidence subject to previous objections
19 during this trial, which was on 4, 5, 7.

20 MS. SIMPSON: Thank you, Your Honor.

21 THE COURT: All right.

22 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
23 STATE'S EXHIBIT NUMBERS 1 THROUGH 16.)

24 MS. SIMPSON: Permission for the doctor to step down?

25 THE COURT: Yes, ma'am. Of course.

W.C. FERRARA - DIRECT EXAMINATION BY MS. SIMPSON

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1 BY MS. SIMPSON:

2 Q. Okay, I'm going to show you -- oh.

3 A. I'm sorry. I apologize.

4 Q. We're not finished. Sorry.

5 I'm going to show you what's been introduced as
6 State's Exhibit 1 first. Tell the jury what we see here.

7 A. So, these are pretty extensive burns covering, like I
8 discussed, almost the entirety of the thorax and the face.
9 At this point looks like second and third-degree burns,
10 which are very extensive.

11 Q. And then with respect to State's Exhibit 2. Sorry.

12 A. That's okay. So, again these are burns that are
13 encompassing the majority aspects of the upper left and
14 upper right extremity, and almost the entirety of the
15 anterior thorax and including the neck.

16 Q. And here where we see, is his skin actually coming
17 off?

18 A. The skin is sloughing off.

19 Q. Okay, and you said sloughing?

20 A. Yes, ma'am.

21 Q. So, we're seeing flesh and tissue underneath?

22 A. Yes.

23 Q. The skin. Okay, next I want to show you what's been
24 marked as State's Exhibit 3. What do we see here?

25 A. So, these are extensive burns to the posterior thorax

1 that include the ears, superior aspect of the neck, and
2 there's multiple burns on the patient's head as well as the
3 scalp.

4 Q. And so those burns are kind of bubbling up under his
5 scalp?

6 A. Yes, ma'am.

7 Q. With hot water burns, do they kind of progress? How
8 does that differ from, say, like a grease fire burn?

9 A. It's somewhat difficult to say, but generally with all
10 burns like this there will be a progression, and probably
11 most of those blisters that are noted on the scalp will end
12 up sloughing off and showing bright areas of burned skin
13 under that as well. There can be a progression.

14 Q. And again in State's Exhibit 4, what area are we
15 looking at here?

16 A. So, this is the posterior aspect of the upper back.
17 Again you see areas where the skin is sloughing. The
18 midline is the older skin, and all the areas under it is
19 pretty much the second to third-degree burns.

20 Q. So, over his body is different ---

21 A. Yes ma'am.

22 Q. --- degrees of burns? And that's depicted by kind of
23 the coloration and what you can see as far as tissues or
24 blood vessels?

25 A. Correct, the skin breakdown.

W.C. FERRARA - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. And State's Exhibits -- it's actually 5 and 6?

2 A. So, again this is showing extensive burns to the
3 posterior thorax with again the skin sloughing, rather
4 significant injury patterns.

5 Q. And as you said, your hospital is not equipped based
6 on the severity of this to really be able to ---

7 A. To treat on a long-term basis.

8 Q. Long-term basis, and it was clear that, based on these
9 injuries, long-term treatment was going to be needed?

10 A. Yes, ma'am.

11 Q. I'm going to show you what's been marked as State's
12 Exhibit 15. An area has been blacked out, but what are we
13 observing here?

14 A. These are again second-degree burns to the -- it's
15 looks like the left medial aspect of the thigh.

16 Q. And then here in State's Exhibits 8 and 9?

17 A. So, these are second-degree burns to third-degree
18 burns on the distal aspects of the extremities, concerning
19 because they are circumferential in nature, which can cause
20 contractures.

21 Q. Okay, those are a lot of big words, so kind of explain
22 in layman's terms what you ---

23 A. So, needless to say with these burns alone, this would
24 be someone that would be transported to Augusta Medical
25 Center with just these because they're circumferential on

1 the wrist, which is over an extension and inflection to
2 where if you did not have appropriate burn care, you can
3 have chronic contractures, which means that your hands and
4 arms can get stuck in certain positions if not
5 appropriately treated.

6 Q. So, there could be permanent impairment ---

7 A. Yes ma'am.

8 Q. --- of his arms and hands, and the skin is actually
9 degloving, I guess, is the ---

10 A. Degloving and sloughing off again.

11 Q. And I'm going to show you State's Exhibit 12 and 13
12 again.

13 A. Yes, this again shows the skin sloughing. Second,
14 possible third-degree burns to the upper extremities. Once
15 again, this is over a joint, which is concerning for
16 contractures and loss of movement of upper extremities.

17 Q. So, wouldn't these also potentially get him
18 transported to the ---

19 A. Yes, ma'am.

20 Q. --- burn center as well?

21 A. Those alone would.

22 Q. Now, here in State's Exhibit 16, what do we see?

23 A. So, this is a small area of blistering with actually
24 weeping wounds is what you can see exhibited with again
25 second-degree burns to the lower portion of the abdomen.

W.C. FERRARA - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. So, as far as the burning goes, most of the
2 significant burning was to the back side ---

3 A. Yes, ma'am, interior and posterior ---

4 Q. --- and inner thigh and the arm?

5 A. --- thorax and the superior aspects of them.

6 Q. But there are still burns, and what did you call it?
7 Weeping?

8 A. Weeping of the wounds that you can see.

9 Q. Finally, Doctor, I'm going to show you what's been
10 entered into evidence as State's Exhibits 10 -- let me
11 start with just 10.

12 A. Yes, ma'am. So, this had multiple areas of blistering
13 and once again skin sloughing. The majority of that skin
14 on the shoulder will mostly likely end up sloughing off and
15 look like the other extensive nature of the burns that are
16 second degree to third degree.

17 Q. Okay, and then finally in State's Exhibit 11, the
18 shoulder area here what looks like ---

19 A. This is one of the significant areas because it
20 actually somewhat looks better, but that's actually not a
21 good thing because he has lost all of the superior
22 epidermis.

23 Q. And what is superior ---

24 A. So, that's ---

25 Q. --- epidermis?

1 A. --- just the most outer part of skin. The other areas
2 where you've seen the sloughing, there was still some skin
3 there. At this point there's none. The most superficial
4 aspect of the skin on his shoulder, that's been burned off.

5 Q. All right. Thank you. You can have a seat.

6 (A PAUSE.)

7 Q. So, so, with respect to these injuries that you
8 observed and kind of the history that the mother and father
9 gave you, were they consistent with the history that was
10 given?

11 A. It was somewhat ---

12 Q. Or concerning?

13 A. It was somewhat concerning because this danger of
14 injury, someone was sitting in a shower. You would expect
15 more lower extremity burns as well. Given the nature of
16 the second to third degree like we discussed, it was
17 immediate that this patient needed to go to a higher level
18 of care.

19 Q. Okay, and as a result of some of these concerns and
20 you being a doctor in the hospital, were other agencies
21 called out?

22 A. Yes, because it's our job to be an advocate for
23 anybody that comes into the hospital, whether that be an
24 elderly patient or a pediatric patient, when you're
25 concerned for abuse. That's one of the main things we need

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1 to look out for, to be able to protect patients when they
2 cannot protect themselves. So, at that point it felt like
3 it was necessary to contact -- I believe it was either DSS
4 or the police department just to make them aware that there
5 was concern for suspicion of abuse.

6 MS. SIMPSON: Okay, beg the court's indulgence.

7 THE COURT: Yes, ma'am.

8 MS. SIMPSON: Thank you, Dr. Ferrara.

9 WITNESS: Yes, ma'am.

10 THE COURT: Thank you, Solicitor.

11 Mr. Bank.

12 MR. BANK: Thank you, Your Honor. May it please the
13 court?

14 CROSS-EXAMINATION BY MR. BANK:

15 Q. Doctor, how are you doing today?

16 A. Doing well, sir.

17 Q. Now, we had a statement that you recalled about or
18 characterized that Shane was unwilling to let the child lay
19 by himself or something along those lines. Is that right?

20 A. Yes, sir.

21 Q. Now to be clear, Shane and Kristin, the mother and
22 father, were the ones that brought him to the hospital. Is
23 that right?

24 A. Correct.

25 Q. They weren't brought by ambulance, right?

1 A. No, sir,

2 Q. And when somebody's brought to the hospital, it's
3 typical that they're going to be looked at by a doctor or
4 nurse, right?

5 A. Correct.

6 Q. And it's typical in the ER that that patient would
7 then be asked questions, right? Now -- and so your answer
8 to that last question was ---

9 A. It is typical that we would ask questions.

10 Q. Now, there's some references to Shane being father or
11 daddy. Is that fair?

12 A. Right. That's what we had presumed.

13 Q. Okay, and that's really what my question was. Is that
14 something in the ER? You see a male and female adult and
15 make an assumption that that's the father as you make the
16 assumption that the female is the mother?

17 A. Correct, in that setting.

18 Q. And this was -- the ER is typically a chaotic setting?

19 A. Can be.

20 Q. Now, one thing I think you probably heard me
21 complaining about earlier when we were talking about
22 statements and history by the parents, and are you able,
23 thinking back on it since there no specificity in your
24 report about whether the individual statements came from
25 either the father or the mother, or you just recall that

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1 they were made by one of the two?

2 A. Based on the records, it's -- what I was discussing
3 was that both family members were saying that, so.

4 Q. Oh. Okay. Now, there was a question about there
5 being some history of autism noted in the report. Is that
6 correct?

7 A. Yes, sir.

8 Q. Now, why is that something that's important to note in
9 the history?

10 A. Because as emergency physicians, it's our job to take
11 a detailed history and physical examination. So we ask,
12 whether it comes to family medical history, surgical
13 history, social history, which is immunization status. Are
14 there any smokers in the household, anything like that
15 comes into play. Surgical history, medications, and so
16 when asking that, you ask a past medical history. That is
17 divulged.

18 Q. Would it be fair to say, however, than autism is
19 referenced in -- multiple times through your dictations,
20 whereas those other histories you just mentioned aren't
21 repeated multiple times in your dictation?

22 A. It may have been in there once or twice with regards
23 to the autism.

24 Q. And my question is, is that because autism may be a
25 factor that's more important than those other factors in

1 this type of setting or?

2 A. No. That's just a strict documentation.

3 Q. Is there any concern with social interactions with
4 people that are diagnosed with autism may be any different
5 than others?

6 A. I wouldn't call it different.

7 Q. You wouldn't call -- you don't think it's fair to say
8 that people diagnosed with autism may have different social
9 interactions?

10 A. It kind of depends on what you term social
11 interactions.

12 Q. Is it fair to say that people diagnosed with autism
13 also have, may have very level -- pain tolerance levels
14 that may be different from somebody who's not diagnosed
15 with autism?

16 A. That would be difficult to assess. I couldn't tell
17 you someone's pain receptors and how they work personally.

18 Q. Sure, and I don't mean to ask specifically about
19 Reginald, but in general is that a concern as an emergency
20 room doctor that someone with autism may have a different
21 tolerance because of their diagnosis of autism?

22 A. No, I don't think that would necessarily affect your
23 pain tolerance level.

24 Q. So, it's your opinion that a diagnosis of autism does
25 not, cannot, or not -- can -- does not affect pain

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1 tolerance?

2 A. I don't think pain is dependent on any disorder like
3 that.

4 Q. And finally, Doctor, it looks like in your notes that
5 is list -- Reginald is listed as being seen at about 9:20.
6 Is that right?

7 A. I'd have to see what time the record said. That may
8 be the case.

9 Q. Would it refresh your recollection if I brought up
10 the, the report?

11 A. You can bring up what you'd like.

12 Q. Sure.

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

14 THE COURT: Yes, sir. Of course.

15 BY MR. BANK:

16 A. Which part are you referring to?

17 Q. The, the one at the ---

18 A. The top part?

19 Q. One ---

20 A. 2120.

21 Q. I believe one at the bottom part says something along
22 the lines of: Seen MD. That would be medical doctor,
23 right?

24 A. Uh-huh.

25 Q. And what is the time on that?

1 A. We have 9:20 or 2120 is at the top of this document.

2 Q. Okay, and is there typically a time gap in between
3 when the actual entry into the emergency room is versus
4 when they see a doctor?

5 A. As far as I know, kind of depends on the severity, and
6 this patient, I believe, was brought right back as soon as
7 they got to the emergency department.

8 Q. Okay.

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

10 I don't have any further questions. Thank you,
11 Doctor.

12 THE COURT: Redirect?

13 MS. SIMPSON: No, Your Honor, and may this witness be
14 excused?

15 THE COURT: Any objection?

16 MR. BANK: No objection.

17 THE COURT: Thank you for being with us this
18 afternoon, Doctor.

19 WITNESS: Yes, sir.

20 THE COURT: You may step down. You may be excused.

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: You got a four-minute witness, Solicitor,
23 five minutes?

24 MR. FYALL: No, Your Honor.

25 THE COURT: All right, thank you. Thank you,

1 Solicitor.

2 All right, ladies and gentlemen, perhaps now would be
3 a good time to take our evening recess. Please remember my
4 instructions. Do not discuss the case with others, anyone:
5 family, friends, anyone else. Do not read, watch, listen
6 to any news accounts about the case. Do not do any
7 independent research or any research on the Internet. Keep
8 an open mind. Do not begin your deliberations until you've
9 heard all the evidence, testimony, closing arguments by the
10 attorneys, instruction on the law by the court, and then
11 directed by the court to begin your deliberations with your
12 fellow jurors in your jury room.

13 Show of hands. Who didn't switch seats today? Okay,
14 well, I knew y'all didn't. I got a label for that, by the
15 way. I thought everybody changed seats except our forelady
16 and our alternates. Is that right? Everybody else did?
17 Well, thank y'all very much. Thank y'all very much.

18 With that being said, ladies and gentlemen, 9:30 in
19 the morning, 9:30 in the morning, and I hope you all have a
20 pleasant evening. Thank you. Thank you very much.

21 (THE JURY EXITS AT 4:41 P.M.)

22 THE COURT: Anything, Solicitor?

23 MS. SIMPSON: Nothing further from the state.

24 THE COURT: Mr. Bank? Solicitor?

25 MS. CAMPBELL: If they could just stay around so we

1 can get this whole redacted issue?

2 MR. BANK: Absolutely.

3 THE COURT: All right. Thank you. Anything, anything
4 further, Solicitor?

5 MS. CAMPBELL: No, Your Honor. As far as the second
6 interview, the only thing I'm double checking is references
7 to justice for Minor The rest of it will go in and be
8 redacted.

9 THE COURT: Well, the reference, the reference --
10 well, let me, let me hear from you. I believe it's Ms.
11 Pinnock.

12 MS. PINNOCK: Your Honor, just so -- obviously you're
13 agreeing to everything, including the domestic violence and
14 everything else we've objected to.

15 MS. CAMPBELL: I need to go and listen to the domestic
16 violence, but I think as far as the statement goes, we can
17 agree to that.

18 The other issue you have is in your motions you said
19 not to mention anything about domestic violence. The only
20 reason I bring this to the court's attention is just to
21 make you aware one potential witness for the state is the
22 codefendant, Kristin Campbell. In her statements and --
23 that were recorded, or at least one of them, she repeatedly
24 refers to the reason that she didn't do things or reasons
25 that things happened was because she was scared of Shane

1 because they had a history of domestic violence. And so I
2 don't know. We don't need to take that up tonight. I just
3 wanted to make the court aware that that would be,
4 depending on a lot of this, their cross-examination. But
5 one reason that she didn't take the child immediately, she
6 says, and the reason she gives -- I can give you her
7 statements to review -- is because she was scared of the
8 defendant.

9 THE COURT: Ms. Pinnock.

10 MS. PINNOCK: Yes, Your Honor, just briefly, and we
11 can get into this further at a later time. But the issue
12 that we have with, with the entire topic coming in is the
13 state's attempting to go into a undocument -- alleged prior
14 bad act by Mr. Johnson to justify why their witness gave
15 multiple statements. We have not brought it up; we have
16 not offered any information.

17 If we, you know, start questioning her and confronting
18 her about the reasons as to why she gave conflicting
19 statements, I think at that point it would be appropriate,
20 but just going into a prior bad act allegations against Mr.
21 Johnson with no basis other than trying to, you know,
22 explain why their client gave them inconsistent statements
23 I think would be inappropriate unless we opened the door to
24 it.

25 Then there's another argument, you know, that we had,

1 but I don't think -- it's our position that that would not
2 be appropriate for the state to go into without us bringing
3 it up in some way.

4 MS. CAMPBELL: And the only reason we would go into it
5 at all is because she doesn't take the child in
6 immediately, and she does lie to the police initially
7 because she says that Shane got with her and told her they
8 needed to get their stories straight, and that she was
9 scared of him. We didn't make -- we didn't bring this into
10 this, you know. That's what she says as far as that.

11 MS. PINNOCK: I guess we can argue about it now. If
12 Your Honor is inclined to listen to the, to the recordings,
13 the person, only person who brings up the issue of domestic
14 violence is the lead investigator, and then all of a sudden
15 you have all this domestic violence happening that nobody
16 has any information on in her statement, Judge.

17 And again, trying to explain and justify to the jury
18 why their own witness gave inconsistent statements by
19 alleging Mr. Johnson has done something to her is bringing
20 in a prior allegation, a prior bad act allegation against
21 him through nothing other than -- try to bolster their own
22 witness's credibility in front of the jury.

23 I don't know how the cross is going to go at this
24 point. We don't know what she's going to testify to on
25 direct exactly or how she's going to explain, you know, her

1 side of the story at this point. But, Your Honor, if the,
2 if the -- if we open the door to any, you know, domestic
3 violence allegations or, you know, accusing her of, of
4 lying on the stand to -- you know, when she's up there
5 testifying or, you know, making up these reasons that she's
6 changing her story, I think at that point would be
7 appropriate, you know, for them to go into information.
8 But until then, I can't see any exception to 404(b) that
9 would allow them to go into these prior bad acts based on
10 what their reasoning is.

11 THE COURT: Thank you. Thank you, Ms. Pinnock.

12 It's very difficult to rule on evidence, particularly
13 which would be *Lyle* evidence, based on, could be based on
14 both motives, both Kristin, Kristin Campbell's and Mr.
15 Johnson's. I hadn't heard enough to be in my evidentiary
16 comfort zone for the nexus on direct between, quote,
17 domestic violence, unquote, and this incident.

18 MS. CAMPBELL: And, Your Honor, perhaps before we put
19 that witness up, we could make a proffer that might make it
20 helpful for everyone.

21 THE COURT: And, and it may be admissible. It may
22 become -- if there is such a thing as more inadmissible, it
23 may become more inadmissible.

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: Just on the tenuousness of what that is.

1 Of course with that being said, it the witness, if you ask
2 a witness why did you lie and, and, and the witness answers
3 I lied because the defendant threatened me and told me
4 whatever -- as one witness told a lawyer one time, why you
5 don't like my client? Said no, I ain't like your client
6 since he beat me and hid his cocaine in my room and got me
7 locked up, which it wasn't a drug case. So, if her
8 testimony is in the vacuum of I didn't tell the truth to
9 the police because he told me you better get your story
10 straight -- I'm not saying he did or didn't. I'm just
11 making...

12 MS. CAMPBELL: I understand.

13 THE COURT: Saying it like I bought it, so to speak,
14 and I'm afraid of him. But I don't, I don't think that ---

15 MS. CAMPBELL: And there's no ---

16 THE COURT: --- necessarily connects the dots to
17 domestic violence.

18 MS. CAMPBELL: To prior instances. We don't mean to
19 go into that.

20 THE COURT: Right.

21 MS. CAMPBELL: It might be easier just to take it up
22 as we go on.

23 THE COURT: Right, and, and I, I mean, I think -- I
24 don't know the case like y'all do obviously, but I know
25 Detective Charley brought it up, which in the investigation

1 of the case obviously when you have a person injured like
2 this, you would go into all aspects of the, the environment
3 within the household and the movements of the parties. It
4 just doesn't fit those classic prior bad act cases at this
5 point.

6 MS. CAMPBELL: Okay.

7 THE COURT: And may not, may not, but it could be for
8 a different purpose, all right? So, it's -- this is a
9 motion *in limine*, I guess, and if we have to go into it *in*
10 *camera*, I'll be glad to do so.

11 MS. CAMPBELL: Thank you.

12 MS. PINNOCK: Thank you, Judge.

13 THE COURT: All right, anything else?

14 MS. CAMPBELL: No, sir.

15 THE COURT: Now, do y'all want -- I need to get with
16 y'all at 9 in the morning on the redaction?

17 MS. CAMPBELL: Based on our history of not being able
18 to agree to a redaction, it probably wouldn't be a bad
19 idea.

20 THE COURT: It would be good that I do it?

21 MS. CAMPBELL: Yes, sir, if you don't mind.

22 THE COURT: I'd be delighted, Ms. Campbell, Mr. Bank.

23 MR. BANK: We'll, we'll start working on the second
24 interview tonight also.

25 THE COURT: All right. Well, y'all set your clocks to

1 about 0400 hours, and y'all will be able to get rid of --
2 y'all will be done with it by about, oh, I don't know,
3 0730. I timed it.

4 All right, thank y'all. Thank y'all very much. Y'all
5 have a pleasant evening.

6 (WHEREUPON, THE CASE IS AT EASE.)

7 WEDNESDAY, APRIL 5, 2017

8 (COURT RESUMES AT 9:39 A.M.)

9 THE COURT: Good morning. I have this note from one
10 of the members of the jury panel, juror number 197. It
11 says:

12 I feel I may have the flu. It started yesterday
13 afternoon. I thought with medication I'd get
14 through the day. Now I'm feeling I can't make
15 it.

16 I know my preference.

17 MS. CAMPBELL: Certainly don't want the rest of the
18 jury getting the flu.

19 THE COURT: I think I took my list back to the back
20 this morning.

21 Madame Clerk, which juror is that?

22 MS. CAMPBELL: She's the alternate.

23 CLERK OF COURT: She's the first alternate.

24 THE COURT: The alternate?

25 CLERK OF COURT: The female alternate, yes, sir.

1 THE COURT: All right. Do y'all object if I just talk
2 with her outside? I wish you would. I could have someone
3 else talk to her, but be that as it may, I'll talk with her
4 outside and I'll be right back, okay?

5 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
6 NUMBER 5.)

7 (OFF THE RECORD.)

8 THE COURT: I excused juror number 197. She did
9 appear under the weather, so to speak, and related to me
10 and Judge McFaddin what her symptoms were. And as y'all
11 pointed out -- I didn't have my list -- she was the
12 alternate. Said they made her stand in the corner today,
13 which I'm familiar with that process.

14 Anything before we bring in -- anything additional,
15 additional before we bring in our jury, Solicitor?

16 MS. CAMPBELL: Your Honor, I believe our first witness
17 this morning is [REDACTED] Minor . We're going to briefly *voir*
18 *dire* him as far as competency.

19 THE COURT: All right. If you would call your
20 witness, please, Solicitor.

21 THE COURT: [REDACTED] Minor . Does he need to swear or
22 just take an oath as far as...

23 THE COURT: Ma'am?

24 PROFFER

25 [REDACTED] Minor BEING DULY

1 SWORN, TESTIFIES AS FOLLOWS:

2 CLERK OF COURT: Have a seat up there in the witness
3 stand, okay?

4 VOIR DIRE EXAMINATION BY MS. CAMPBELL:

5 Q. Hi, Minor You okay?

6 A. Yes.

7 Q. And what's your name? Can you say it?

8 A. Yes.

9 Q. What is it?

10 A. Minor

11 Q. Minor

12 A. Yes.

13 Q. And how old are you?

14 A. Eight.

15 Q. Do you know when your birthday is?

16 A. Yes.

17 Q. When is your birthday?

18 A. [REDACTED]

19 Q. [REDACTED]

20 A. Yes.

21 Q. Do you have any brothers or sisters?

22 A. No.

23 Q. Where do you go to school?

24 A. Greenview.

25 Q. Greenview, and what grade are you in there?

1 A. Second.

2 Q. What's your teacher's name?

3 A. Ms. Henry.

4 Q. Ms. Henry?

5 A. Yes.

6 Q. Where do you live, Minor

7 A. Easter Street.

8 Q. On Easter Street. Do you know the difference between
9 right and wrong, Minor

10 A. Yes.

11 Q. Do you know what a lie is?

12 A. Yes.

13 Q. Is it right or is it wrong to tell a lie?

14 A. Wrong to tell a lie.

15 Q. What happens to you if you tell a lie, Minor

16 A. You get in trouble.

17 Q. You can get in trouble?

18 A. Yes.

19 Q. Do you know what a promise is?

20 A. Yes. A promise is you promise something.

21 Q. You promise something?

22 A. Yes.

23 Q. And what happens if you break a promise? Is it good
24 to break a promise?

25 A. It's bad to break a promise.

1 Hey, what she got that thing for on her mouth?

2 Q. She's taking down what you're saying.

3 A. Oh.

4 Q. It's okay. You saw the court reporter has something
5 on her mouth. Is that what you just asked me about?

6 A. Yes.

7 Q. Okay. It's okay. It doesn't hurt her. You okay with
8 it?

9 A. Yes.

10 Q. What happens if you -- is it good to break a promise?

11 A. Bad to tell a promise.

12 Q. It's bad to break a promise?

13 A. Yes.

14 Q. Do you know what it means to tell the truth?

15 A. Yes.

16 Q. And would you promise to tell the truth today?

17 A. Yes.

18 Q. And do you remember what happened to you when you got
19 burned?

20 A. Yes.

21 Q. And can you tell the truth about that?

22 A. Yes.

23 Q. Thank you. I don't have any -- Ms. Pinnock is going
24 to ask you some questions, okay?

25 A. Okay.

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1 Q. I'll be right over here.

2 A. I can't believe you're talking to the real judge.

3 Q. I know. That's the judge right there.

4 A. I know. Can I -- I can't believe I'm talking to the
5 real...

6 Q. He is the real judge. He's not going to talk to you
7 yet, okay? He may talk to -- he may ask you some questions
8 in a minute, okay?

9 A. Okay.

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

11 Ms. Pinnock.

12 MS. PINNOCK: Thank you, Your Honor. If it please the
13 court?

14 VOIR DIRE EXAMINATION BY MS. PINNOCK:

15 Q. Hey, Minor I can barely see you. How are you?

16 A. Good.

17 Q. Good. You said you were in the second grade?

18 A. Yes.

19 Q. And where do you go to school?

20 A. Greenview.

21 Q. Greenview. Do you like your teacher?

22 A. Yes.

23 Q. Do you have any favorite TV shows?

24 A. Not really.

25 Q. Do you have any favorite sports teams? You don't

1 know? Do you get to go outside and play any sports?

2 A. Yes.

3 Q. You do? What do you like to go outside and play? Do
4 you play soccer?

5 A. Yes.

6 Q. You do? Do you play football?

7 A. All the sports.

8 Q. You play all the sports. What's your favorite?

9 A. Anything.

10 Q. Anything? What do you like to do when you get home
11 from school?

12 A. Do my own things.

13 Q. What, what do you do that are your own things? Do you
14 have a tablet?

15 A. Yes.

16 Q. You do? What do you like to do on your tablet?

17 A. Don't know.

18 Q. Okay. Do you like to draw pictures?

19 A. No.

20 Q. You don't like to draw pictures? Do you like
21 stickers?

22 A. No.

23 Q. I can't hear you, sweetie.

24 A. No.

25 Q. No? Do you -- what about the Power Rangers? Do you

1 like the Power Rangers?

2 A. Yes.

3 Q. You do? Who's your favorite Power Ranger? Which
4 color?

5 A. The gold one.

6 Q. The gold one. What kind of superpower powers does the
7 gold Power Ranger have?

8 A. Gold.

9 Q. Gold powers?

10 A. Yes.

11 Q. Do you know -- can you tell me the colors of the other
12 Power Rangers?

13 A. No.

14 Q. Well, do you know if there is an orange Power Ranger?

15 A. No, there'S no orange.

16 Q. There's no orange? Is there a blue Power Ranger?

17 A. Sometimes.

18 Q. Is the blue Power Ranger a boy or a girl?

19 A. A boy.

20 Q. It's a boy. What about the red Power Ranger?

21 A. Boy.

22 Q. It's a boy. The yellow one, is there a yellow Power
23 Ranger?

24 A. Yeah.

25 Q. Is that a girl or a boy?

- 1 A. You know, some are, some are boys and some are girls.
- 2 Q. Is the gold one a boy or a girl?
- 3 A. Boy.
- 4 Q. Do you watch on TV when you get home from school?
- 5 A. Yes.
- 6 Q. Yes. Minor if I told you -- well, what do the Power
7 Rangers do?
- 8 A. Save the world.
- 9 Q. They save the world. Who do they save the world from?
- 10 A. Villains.
- 11 Q. From villains. Is it a lot of villains?
- 12 A. Yes.
- 13 Q. Okay, and do they have special powers, or do they
14 just...
- 15 A. Special powers.
- 16 Q. Do you know what kind of special powers the gold one
17 has?
- 18 A. No.
- 19 Q. Okay. Minor you said you didn't have any brothers
20 and sisters. Do you remember Hayden?
- 21 A. Hayden?
- 22 Q. Uh-huh.
- 23 A. Who is Hayden?
- 24 Q. You don't remember Hayden? Do you remember Kaylee?
- 25 You don't remember Kaylee? You don't remember playing with

1 Hayden and Kaylee on Easter Street?

2 A. Oh, I do.

3 Q. You do?

4 A. They were my brother and sister back then.

5 Q. Okay, but they're not your brothers and sisters
6 anymore, and do you still live on Easter Street?

7 A. Yes.

8 Q. Who do you live with?

9 A. My mommy and daddy.

10 Q. You don't live with your grandmother anymore?

11 A. No.

12 Q. When did you start living with Mommy and Daddy again?

13 A. Maybe about 2014.

14 Q. In 2014 you went back with Mommy and Daddy?

15 A. Yes.

16 Q. Does Daddy live here in South Carolina now?

17 A. No.

18 Q. Where does Daddy live?

19 A. In Easter Street in California.

20 Q. He lives on Easter Street in California?

21 A. Yes. Me and my daddy about to go to California.

22 Q. Oh, y'all are going to move to California?

23 A. Yeah.

24 Q. Well, that will be fun. Are you going to go to the
25 same school if you move to California?

1 A. Yeah.

2 Q. Okay.

3 A. California is, like, miles away here.

4 Q. Yeah, it is a long way away from here, isn't it? Who
5 told you you were going to move to California?

6 A. Momma.

7 Q. Do you know when she told you that? Do you remember
8 when? Was it a long time ago?

9 A. Yes.

10 Q. Okay. Have you talked about moving to California with
11 your grandma?

12 A. Yes.

13 Q. Okay. Is she going to move with you, or are you just
14 going to move with your mommy and daddy?

15 A. I have to go with my mommy and daddy. She doesn't
16 want to come.

17 Q. Okay, because she lives here, right?

18 A. Yes.

19 Q. Now, Minor you said that it's wrong to tell a lie.
20 What happens if you -- what happens to somebody if they
21 tell a lie?

22 A. They get in trouble.

23 Q. They get in trouble. Who are you going to get, who
24 are you going to get in trouble with?

25 A. My mom.

1 Q. Your mom?

2 A. Yes, my mom.

3 Q. If somebody, if somebody asks you a question, if I
4 asked you how old I was -- how old am I?

5 A. Forty-two.

6 Q. Do you know how old I am?

7 A. No.

8 Q. Do you know that you can say you don't know the answer
9 to something if you don't know the answer?

10 A. Yes.

11 Q. You do?

12 A. Yes.

13 Q. So, if I asked you how old -- can you look up, Minor
14 How old is he, the guy standing right here? How old is he?

15 A. Eighteen.

16 Q. He's eighteen. So, I'm forty-two and he's eighteen?

17 A. I don't know.

18 Q. Oh, okay. Do you have any pets or anything?

19 MS. CAMPBELL: I'm sorry, what did he just say? He
20 didn't know?

21 MS. PINNOCK: I don't think he said anything.

22 MS. CAMPBELL: He said I don't know.

23 MS. PINNOCK: Okay.

24 BY MS. PINNOCK:

25 Q. Do you have any pets?

1 A. Yes. I have five pets.

2 Q. You have five pets. What kind of pets do you have?
3 Do you have a dog?

4 A. Two.

5 Q. You have two dogs. Are they boy dogs or girl dogs?

6 A. Both of them are girls.

7 Q. They're both girls. Do they stay inside your house or
8 outside your house?

9 A. Well, one stays inside and one stays outside.

10 Q. Oh yeah? Do you get to walk your dogs?

11 A. Sometimes.

12 Q. Do you have to feed your dogs?

13 A. Sometimes.

14 Q. What happens if you don't feed your dog?

15 A. He going to eat me.

16 Q. He doesn't -- I'm sorry?

17 A. He going to eat me.

18 Q. Your dog could eat you if you don't feed him?

19 A. Yes.

20 Q. And we don't want the dog to eat you. So, is it very
21 important to feed your dogs?

22 A. Yes.

23 Q. Who else helps take care of your dogs?

24 A. My mommy and daddy.

25 Q. And do your dogs live at Easter Street with you?

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1 A. Yes.

2 Q. They do?

3 Minor you said that you remembered what happened to
4 you. I don't want to talk about that right now, but you
5 remember where you lived when you got burned?

6 A. Yes.

7 Q. Where did you live?

8 A. Easter Street.

9 Q. And who lived in the house with you?

10 A. Mommy. Daddy.

11 Q. I'm sorry? I didn't hear you, honey.

12 A. Mommy and Daddy.

13 Q. Mommy and Daddy.

14 MS. PINNOCK: Beg the court's indulgence.

15 THE COURT: Yes, ma'am.

16 (A PAUSE.)

17 MS. PINNOCK: Thank you, Your Honor.

18 Thank you, Minor I don't have any more questions
19 for you right now, okay?

20 WITNESS: Okay.

21 THE COURT: All right, Solicitor?

22 MS. CAMPBELL: We don't have anything further.

23 THE COURT: Thank you. Thank you, Minor You may,
24 you may step down.

25 (THE WITNESS EXITS THE STAND.)

END OF PROFFER

1
2 THE COURT: All right, Solicitor.

3 MS. CAMPBELL: Your Honor, I believe under *State vs.*
4 *Leeds*, the witness has to have the capacity to observe, to
5 remember, to relay, and recognizes the duty to tell the
6 truth. I believe the purpose of this hearing I believe is
7 on the duty to tell the truth. I believe that he was asked
8 a number of questions and made observations. He was
9 accurate. Even when he was asked to look at a person and
10 gauge their age, he was looking at a person and observing
11 how old he thought they were. He then said he didn't know
12 exactly how old they were. When he was asked about telling
13 the truth or a lie and if he could promise to tell a truth
14 or a lie, clearly he had the capacity to do that. He was
15 also asked if he remembered what happened to him, and he
16 said he did. He was asked multiple questions about Power
17 Rangers and other things; he was able to relay that
18 information. Your Honor, we feel like under the totality
19 of the circumstances that he is qualified to testify
20 competently.

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

22 Ms. Pinnock.

23 MS. PINNOCK: Thank you, Your Honor. If it please the
24 court? Your Honor, at this time we would renew our request
25 to have the private evaluation done. Some of the things

1 that Dr. Raley expressed when we were doing the original
2 hearing, Your Honor, I think were evident again on the
3 stand.

4 One of the biggest concerns for me was the very
5 singular -- you know, the multiple one-word answers that
6 were provided to, to the questions that were asked. Your
7 Honor, that goes directly to our ability to cross-examine
8 **Minor** about the details of was -- what happened that
9 evening. It's the -- I believe he phrased it as a concrete
10 answer, which is what his concerns were. When he reviewed
11 the materials that he went through, he said that is
12 something that -- the reason it concerned him was did not
13 -- at this point, because he had never evaluated the child,
14 he did not know his ability to expound on answers and to
15 explain things clearly in order to express a, a complete,
16 clear thought, Your Honor.

17 So, I do believe that was present again here. It was
18 a lot of question and then one-word responses to those
19 questions, Your Honor. So, I don't believe -- you know,
20 without the evaluation, without the professionals involved,
21 you know, our concern is the same. You know, Reginald's
22 ability to answer yes or no and provide these one-word
23 answers doesn't any -- you know, in, in our, in my opinion,
24 Your Honor, doesn't in any way allow us to further expound
25 upon what those statements were. So, I don't believe that

1 anything has changed as far as that, Judge.

2 And as far as some of these concerns we had from his
3 testimony today, he was unable to nail down, nail down
4 timeframes for anything. You know, Ms. Campbell brought
5 this up with the guessing answers. You know, part of the
6 ability to be competent as a witness is to be able to
7 answer I don't know something and not guess.

8 Now, he did come back and later on say that he did not
9 know, you know, when I asked him my age. He said, well,
10 yeah, I don't know. He still offered that original answer
11 as an answer to the question. And knowing the difference
12 between when you should be offering answers when it's a
13 fact that you are aware of versus when you should be saying
14 I don't know or not offering an answer, Your Honor,
15 concerns us.

16 There was, there was testimony also, Judge, regarding
17 impossibilities with -- I guess the best example I can
18 offer back to the court, he did give testimony, you know,
19 when moving to California. Where are you going to live in
20 California, what school he's going to go to in California,
21 you know, who, who he was going to be living with at that
22 point. You know, all of those things were -- he did not
23 have the ability to clearly answer.

24 You know, Judge, I'm not saying that he should be held
25 to the standard of an adult, but I think that there are

1 differences when dealing with children and their ability to
2 answer questions and their ability to be cross-examined.
3 And with his prior diagnosis, Your Honor, that just raises,
4 you know, the concern again that we had presented the
5 testimony and the records to you about -- was it last week
6 -- last week, Your Honor. So, we just, we believe still
7 that before there can be a ruling on his competency to
8 testify as a witness, that the evaluation should happen by
9 a trained professional who can, you know, tell us, based on
10 what his diagnosis is, whether or not they think he can be
11 on the stand as a competent witness.

12 THE COURT: Thank you. Thank you, Ms. Pinnock.

13 Any, any response as far as the psychological
14 evaluation?

15 MS. CAMPBELL: No, Your Honor. We would stand by your
16 ruling as far as that.

17 THE COURT: All right, and I would preface my remarks
18 before I get to the psychological evaluation, that looking
19 at the case law, having the opportunity now to see the
20 witness, observe the witness, listen to the responses of
21 the witness, it does appear that he has a very good concept
22 of the difference between a truth and a lie. That he
23 understands a lie is wrong, and that he would get in
24 trouble. And I believe, as he phrased it, he would get in
25 trouble with his mother, and I think he responded in that

1 regard several times.

2 Also his testimony was he recalled -- I paraphrase --
3 that he remembered what had happened to him and would be
4 able to -- he didn't use these words but would be able to
5 relate the event that occurred to him on the -- if he were
6 called to testify. Again I paraphrase what he says. I
7 just draw that inference therefrom.

8 As far as the timeframe, I can't quite conjure, I
9 can't quite clamp down on the name of the case, but there
10 is a number of cases generally in the criminal sexual
11 conduct with minor field, particularly one out of Aiken
12 County, that timeframe is not relevant even in indictments.
13 Therefore, whether or not a child and/or an adult knows a
14 timeframe -- you know, you hear, well, it happened in 2015,
15 2014. That to me does not detract from his ability to tell
16 the truth or a lie.

17 I don't know if he was correct or incorrect in his
18 answering the questions about Power Rangers. He was
19 correct -- I'll know that before the end of the day, by the
20 way. He was correct in where he went to school, who his
21 teacher was. Also responded, I believe, that he liked his
22 teacher in that regard.

23 I take this -- and I don't quite know if I'm correct
24 or incorrect in this because I hadn't totally heard or
25 don't recall any prior testimony, that I take it and I

1 believe I did hear part of this without the names of some
2 of the statements *in camera* that Mr. Johnson had two
3 children and Ms. Campbell had one child. And, therefore,
4 in the child's mind, they would not be his brother and
5 sister. Perhaps they were. Perhaps he embraced them as
6 such when they lived together, but because or he thought
7 that Mr. Johnson was his daddy, therefore his children
8 would have been his brother and sister without all the
9 technicalities of marriage or not marriage. So -- and he
10 came back around on that, too. He said, well, they're not
11 my brother and sister now. So, I take it also that was
12 correct.

13 There was some things, also that he enjoyed sports. I
14 did hear that and that appears to be truthful from the
15 statements I listened to *in camera* as to Mr. Johnson.

16 So, looking at *State vs. Green*, the fact that Minor
17 is eight years old at the time of the trial and was younger
18 -- seven, I believe -- does not make him incompetent to
19 testify. As the court said:

20 There is no fixed age which an individual must
21 attain in order to be competent to testify. The
22 question of competency is to be determined by the
23 trial judge. His determination will not be
24 reversed unless a clear showing of abuse of
25 discretion can be made.

1 That case cites *Wheeler vs. United States*, which is a
2 16 Supreme Court 93-18-95, a five-year-old witness to a
3 murder of the father:

4 The witness was not by reason of his youth as a
5 matter of law absolutely disqualified. It
6 depends on the capacity and intelligence of the
7 child, his appreciation of the difference between
8 truth and falsehood, as well as the duty to tell
9 the former. He also said I'll tell the truth
10 about what happened back then, and the trial
11 judge should notice his manner, his apparent
12 possession, or lack of intelligence, and may
13 resort to any examination which tends to disclose
14 his capacity and intelligence, as well as his
15 understanding of the obligation of the oath.

16 Although I did not question [Minor] as has been done
17 in many cases before, discussion in chambers between the
18 prosecutors and the defense, there was the agreement that
19 the prosecutor would question him and the defense would get
20 the opportunity to cross-examine him. And if I wanted to
21 ask any follow-up questions, I will do so. So, that was
22 the procedure that was used and agreed upon.

23 So, I think he is competent to testify. I think he
24 can -- has the ability to perceive a past event. Whether
25 or not he's moving to Easter Street, California, or not,

1 that's a difference in a child's life between a past event
2 and a future event. When you're talking about a future
3 event, and y'all have heard me say this so many times I get
4 -- I drive myself crazy. I can predict anything but the
5 future. You're told something. I think I remember as a
6 child I thought Christmas would never get here. Now they
7 just fly by. Be that as it may, you know, you are -- you
8 know, nothing wrong with questioning him about a future
9 event. We're talking about whether or not he can relate a
10 past traumatic event that occurred to him in his life.

11 So, looking again at the factors under *Michael H.*, 602
12 S.E. 2d. 729, I have already reviewed the nature of
13 examination required, the nature of examination requested,
14 and the intrusiveness inherent in that examination. Taking
15 into account the victim's age, the resulting physical
16 and/or emotional effects of the examination on the victim,
17 the probative value of the examination, concrete versus
18 non-concrete answers -- that just goes to the form of the
19 answers that are given in cross-examination. And there's
20 no, there's no right or wrong to manner in which a witness
21 responds to questions.

22 There's a whole -- every human being, every witness is
23 different. Just, just like yesterday, for example, with
24 Dr. Ferrara. On the witness stand, questions are asked
25 many times by attorneys, perhaps this will refresh your

1 memory, and they will take a document up there and show
2 them. Will you look at it? Yes. That doctor's response
3 was, well, you can do whatever you want. And so you get
4 different responses from different adult witnesses, and
5 it's the same.

6 I do not think, in my discretion, considering all
7 those factors outlined in *Michael H.*, that a psychological
8 examination would assist this court. So, I would overrule
9 that motion in that regard.

10 Anything before we bring in our jury, Solicitor?

11 MS. CAMPBELL: No, sir.

12 THE COURT: Ms. Pinnock?

13 MS. PINNOCK: Your Honor, respectfully we would just
14 object to the finding of competence.

15 THE COURT: Of course.

16 MS. PINNOCK: And based on our prior written
17 memorandum, testimony presented to the court, and all other
18 prior arguments.

19 THE COURT: You can certainly have that memorandum
20 marked.

21 MS. PINNOCK: Yes, sir. I believe it is already.

22 THE COURT: It's already marked?

23 MS. PINNOCK: Yes, sir.

24 THE COURT: All right. Thank you. Thank you, Ms.
25 Pinnock.

1 All right, anything else before we bring in our jury?

2 MS. PINNOCK: No, sir.

3 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
4 NUMBER 6.)

5 (THE JURY ENTERS AT 10:14 A.M.)

6 THE COURT: Good morning.

7 JURY: (*en masse*) Good morning.

8 THE COURT: Welcome back, ladies and gentlemen. Again
9 I apologize for the delay. I had a matter to take up
10 outside of your presence which has now been resolved. The
11 parties were here. Again not, not on time but early,
12 working very diligently to move the trial along.

13 We have lost one of your number; I have released one
14 of your fine alternates. She told on y'all that y'all made
15 her stand in the corner this morning. I think that was a
16 wise choice, but I certainly hope she feels better, and she
17 was -- wished that she could have pressed on.

18 Again, ladies and gentlemen, we're continuing the
19 trial of the case by the presentation of evidence and
20 testimony by the state in its case in chief. If you'd
21 please continue to give the parties your complete and
22 undivided attention.

23 Solicitor, you may call your next witness.

24 MS. CAMPBELL: May it please the court?

25 THE COURT: Yes, ma'am.

1 MS. CAMPBELL: State calls Minor .

2 THE COURT: All right, if you'd come around, please.

3 Minor BEING DULY

4 SWORN, TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Have a seat on the witness stand.

6 State your name for the record.

7 DIRECT EXAMINATION BY MS. CAMPBELL:

8 Q. Can you say your name, Minor .

9 A. Yes.

10 Q. What's your name?

11 A. Minor

12 Q. And, Minor how old are you?

13 A. Eight.

14 Q. And do you go to school?

15 A. Yes.

16 Q. Where do you go to school?

17 A. Greenview.

18 Q. Greenview, and what's your teacher's name at
19 Greenview?

20 A. Ms. Henry.

21 Q. Ms. Henry. What grade are you in?

22 A. Second.

23 Q. And where do you live?

24 A. Easter Street.

25 Q. Minor do you know the difference between right and

Minor

- DIRECT EXAMINATION BY MS. CAMPBELL

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1 wrong?

2 A. Yes.

3 Q. Would you know the difference between a truth and a
4 lie?

5 A. Yes.

6 Q. And is it good to tell a lie?

7 A. It's bad to tell a lie.

8 Q. It's bad to tell a lie, and what happens to you when
9 you tell a lie, Minor

10 A. Might get in trouble.

11 Q. Who would you get in trouble with?

12 A. My mom.

13 Q. So, can you promise here today to tell the truth?

14 A. Yes.

15 Q. Do you know who they are? Okay, everybody is just
16 going to listen to what you tell them. Are you going to
17 tell the truth?

18 A. Yes.

19 Q. Okay. Minor I want to talk back about when you got
20 -- do you remember when you got burned?

21 A. No.

22 Q. You don't remember? Can you tell them about what
23 happened when you got burned?

24 A. Yes.

25 Q. Okay. Where did it happen? Where were you when you

1 got burned?

2 A. In the shower.

3 Q. In the shower. At whose house?

4 A. My mom's house.

5 Q. At your mom's house, and do you -- did this happen a
6 long time ago?

7 A. Yes.

8 Q. Yes?

9 A. Yes.

10 Q. Do you like talking about this, Minor I know.

11 Okay, just a few more questions, okay?

12 Who was there when you got burned? Who burned you?

13 A. Shane.

14 Q. Shane?

15 A. Yes.

16 Q. And how did Shane burn you?

17 A. Turning the hot water.

18 Q. He turned on the hot water?

19 What are you doing, Minor You got your ball?

20 A. Yeah.

21 Q. Okay.

22 A. I dropped it.

23 Q. Okay, and I know you don't like to talk about this.

24 He burned you with the hot water?

25 A. Yes.

Minor - DIRECT EXAMINATION BY MS. CAMPBELL

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1 Q. And where were you when you got the hot water burned
2 on you?

3 A. In the shower.

4 Q. Did you do this to yourself?

5 A. No.

6 Q. Did it hurt?

7 A. Yes.

8 Q. Do you know why Shane burned you with the hot water?

9 MS. PINNOCK: Objection, Your Honor. Calls for
10 speculation.

11 THE COURT: Just rephrase the question, Solicitor,
12 please.

13 BY MS. CAMPBELL:

14 Q. Did Shane tell you? Did you know why Shane burned you
15 with the water?

16 A. No.

17 Q. And was anybody else in the house that day?

18 A. Well, it wasn't my daddy in the house. He was, he was
19 living in California.

20 Q. Your real daddy was living in California?

21 A. Yes.

22 Q. But Shane was the one in the bathroom with you?

23 A. Yeah.

24 Q. And he's the one that burned you?

25 A. Yes.

1 Q. Where was your mother?

2 A. In her room.

3 Q. In her room?

4 A. Yes.

5 Q. Do you remember going to the hospital?

6 A. No.

7 Q. Did you end up being in the hospital for a long time?

8 A. Yes.

9 Q. Did you tell the doctors who burned you?

10 A. Yes.

11 Q. Did you tell the people at the ARC when you went and
12 got interviewed who burned you?

13 A. Yes.

14 Q. And, Minor just one more question. Who burned you?

15 A. Shane.

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

17 THE COURT: Yes, ma'am.

18 (A PAUSE.)

19 BY MS. CAMPBELL:

20 Q. Does Shane live with you and your mom anymore?

21 A. Yeah, he doesn't live with me and my mommy anymore.

22 Q. He doesn't?

23 A. Yeah. Back then, back then she was Mommy -- my mom's
24 ex-boyfriend.

25 Q. Okay, but he doesn't live with you anymore?

Minor - CROSS-EXAMINATION BY MS. PINNOCK

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1 A. Uh-uh.

2 Q. Okay.

3 MS. CAMPBELL: Thank you.

4 THE COURT: Thank you, Solicitor.

5 Ms. Pinnock.

6 MS. PINNOCK: Beg the court's indulgence?

7 THE COURT: Of course. Yes, ma'am.

8 (A PAUSE.)

9 MS. PINNOCK: Thank you, Your Honor. May it please
10 the court?

11 THE COURT: Yes, ma'am, of course.

12 CROSS-EXAMINATION BY MS. PINNOCK:

13 Q. Hey, Minor I can't see you. I'll move closer,
14 okay?

15 A. Okay.

16 Q. Minor you just said that you remembered talking to
17 people at the ARC, right?

18 A. ARC?

19 Q. Where you were interviewed before?

20 A. Uh.

21 Q. You don't remember that? You don't remember talking
22 to Ms. Smith, Heather Smith, and you drew pictures on the
23 board? You don't remember that? Okay.

24 So, Minor do you remember saying that Shane was
25 sitting in the bathroom in the bathtub with you?

1 A. No.

2 Q. You don't remember saying that?

3 A. Wait. I didn't, I didn't even say that.

4 Q. You never said that?

5 A. No.

6 Q. Okay. So, did you tell Ms. Smith that Shane had
7 dunked you in the bathtub? Do you remember saying that?

8 A. What?

9 Q. You don't -- you didn't say that?

10 A. Don't remember saying that.

11 Q. Okay. Do you remember -- you do remember when you met
12 with, with Ms. Luck, right?

13 A. No.

14 Q. You don't remember coming into her office and talking
15 to her?

16 A. No.

17 Q. Minor do you remember, do you remember working on
18 your -- look up, sweetie. Do you remember working on your
19 project with your mom at your house?

20 A. Yes.

21 Q. Okay, and you remember your mommy telling you it was
22 time to take a shower?

23 A. No.

24 Q. You don't remember her saying that?

25 A. No.

1 Q. Okay.

2 MS. PINNOCK: Beg the court's indulgence.

3 THE COURT: Yes, ma'am. Of course.

4 (A PAUSE.)

5 MS. PINNOCK: Thank you, Your Honor.

6 Thank you, Minor

7 WITNESS: Okay.

8 THE COURT: Thank you, Ms. Pinnock.

9 Solicitor?

10 MS. CAMPBELL: Nothing further, Your Honor.

11 THE COURT: Thank you. Thank you, Minor You may,
12 you may step down.

13 (THE WITNESS EXITS THE STAND.)

14 MS. CAMPBELL: Your Honor, may he be excused if he
15 wants? May he be excused?

16 THE COURT: Any objection?

17 MS. PINNOCK: No, Your Honor.

18 THE COURT: Yes. Yes, ma'am, he may. How long is
19 your next witness, Solicitor? I know we haven't been out
20 here with the jury very long.

21 MR. FYALL: It's pretty brief, Your Honor.

22 THE COURT: All right. Call your next witness,
23 please. Thank you.

24 MR. FYALL: State calls crime scene investigator Brian
25 Sutton.

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1 THE COURT: Tell me that name again.

2 MR. FYALL: Sutton, Your Honor.

3 THE COURT: All right, thank you.

4 Yes, sir, come around for us, please, and be sworn.

5 MS. PINNOCK: Your Honor. Your Honor.

6 (A PAUSE.)

7 MS. PINNOCK: Your Honor, I'm sorry. I apologize.

8 For the record, I would renew our previous motions and
9 objections.

10 THE COURT: Of course.

11 MS. PINNOCK: At this time.

12 THE COURT: So noted. Thank you, Ms. Pinnock.

13 MS. PINNOCK: Thank you.

14 BRIAN SUTTON, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Have a state in the witness stand,
17 please. State your name for the record.

18 WITNESS: I'm Investigator Brian Sutton with the
19 Columbia Police Department.

20 DIRECT EXAMINATION BY MR. FYALL:

21 Q. Good morning, Investigator Sutton. How are you?

22 A. Doing well, sir.

23 Q. Can you tell us how long you've worked with CPD?

24 A. Almost four years.

25 Q. How long have you been a crime scene investigator?

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1 A. Approximately two.

2 Q. And what are your duties as far as that's concerned?

3 A. I am charged with the physical -- with the collection
4 of physical evidence, primarily through the preservation
5 and just securing it and trying to identify it.

6 Q. All right. My understanding is you are fresh off the
7 night shift, correct?

8 A. Yes, sir.

9 Q. I'll try to get you out of here. What was your
10 involvement in this case?

11 A. I primarily just served to assist Investigator Bailey
12 and Investigator Charley with the conduction of the search
13 warrant. I photographed the scene itself.

14 Q. All right. So, all the photographs in this scene were
15 taken by you?

16 A. Yes, sir, of the scene of the search warrant.

17 Q. For the record, I'm going to hand up to you what's
18 been marked as State's Exhibit 82, exhibits 82 through 90.
19 Can you tell me if you recognize those?

20 (A PAUSE.)

21 A. Yes, sir, I do.

22 Q. All right, did you take those pictures?

23 A. I did.

24 Q. Do they accurately reflect the scene from that day?

25 A. Yes, sir.

1 MR. FYALL: Your Honor, at this time I'd offer State's
2 82 through 90 into evidence.

3 MS. STURGILL: May I look at them again, Your Honor,
4 before? Thank you.

5 THE COURT: You hadn't seen them?

6 MS. STURGILL: I think I saw them yesterday.

7 THE COURT: All right.

8 MS. STURGILL: I just want to make sure they're the
9 same ones.

10 THE COURT: It's 82 ---

11 MS. STURGILL: Thank you.

12 THE COURT: 82 through 90, Solicitor?

13 MR. FYALL: Yes, Your Honor.

14 (A PAUSE.)

15 MS. STURGILL: No objection, Your Honor.

16 THE COURT: Thank you, Solicitor. State's -- excuse
17 me. Thank you, Ms. Sturgill. 82, State's 82 through 90 is
18 in evidence without objection.

19 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
20 STATE'S EXHIBITS 82 THROUGH 90.)

21 BY MR. FYALL:

22 Q. All right, I'm going to show you 82 and 83.

23 A. Yes, sir.

24 Q. Can you tell me about those?

25 A. They are photographs of the rear of the house on

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1 Easter Street. It is a photograph of an exterior water
2 heater. One is covered with a lid on it, and then
3 Investigator Bailey and I removed that cover in conduction
4 with the search warrant to expose the actual water heater.

5 Q. All right, and when you took these, you had sort of a
6 brief understanding of why the search warrant was being
7 executed, some background information about the incident?

8 A. Yes, sir.

9 Q. All right, and that's what led you to take pictures of
10 the water heater?

11 A. Yes, sir.

12 Q. I'm going to show you State's 84 and 85. What are
13 those?

14 A. These are photographs of the same water heater but
15 close-up photographs of the thermostat mechanism for the
16 water heater itself.

17 Q. All right, and what's the dial on the, on the
18 thermostat?

19 A. I'm sorry, could you repeat that, sir?

20 Q. How high is the thermostat turned up on the water
21 heater?

22 A. Based on that indication, quite high. I believe it's
23 alphabetically numbered A through C with it color-coded as
24 you get closer to C to be more red in depth to indicate a
25 hotter temperature.

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1 Q. All right, and if you look at that, how close is that
2 to the hottest temperature?

3 A. Quite close.

4 Q. All right, I'm going to show you State's 88 and 89.

5 A. Yes, sir.

6 Q. Now, what's that?

7 A. These are photographs of that same water heater that's
8 been exposed. It's, it's danger signs stipulating that
9 burns could be caused with this ---

10 Q. I'm going to take ---

11 A. --- water heater.

12 Q. --- 88 from you.

13 A. Yes, sir.

14 Q. All right. Where it said danger, can you read what it
15 says about the water temperature?

16 A. Danger. Hot burn. It's got a depiction of a hand
17 with red scalding, it would appear. It says:

18 Water temperature over 125 degrees can cause
19 severe burn instantly or death from scalds.
20 Children, disabled, and elderly are at high risk
21 of being scalded. See instruction manual before
22 setting temperature of water heater. Fill water
23 before ---

24 Q. That's good.

25 A. --- bathing or showering. Temperature-limiting

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1 valves are available. See manual.

2 Q. All right, and lastly State's 90, what does that
3 indicate?

4 A. This is that same water heater. It is the company,
5 the branding of the water heater itself.

6 Q. Does it say what type of water heater it is?

7 A. It provides a model number and the...

8 Q. Right there, what does that say?

9 A. Gas water heater.

10 MR. FYALL: Beg the court's indulgence.

11 THE COURT: Yes, sir. Of course.

12 MR. FYALL: No further questions.

13 THE COURT: Thank you.

14 Ms. Sturgill.

15 MS. STURGILL: No questions for this witness, Your
16 Honor.

17 THE COURT: Thank you. Thank you very much. Thank
18 you for being with us this morning, Officer. You may step
19 down.

20 WITNESS: Thank you, sir.

21 THE COURT: Any objection to the officer being
22 excused? The state?

23 MR. FYALL: None from the state.

24 THE COURT: Defense?

25 MR. BANK: No, sir. No objection.

1 THE COURT: All right, he may be excused.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: All right, how long is your next witness,
4 Solicitor?

5 MS. CAMPBELL: Longer.

6 THE COURT: That would be the lengthy witness?

7 MS. CAMPBELL: A longer witness, yes, Your Honor. It
8 would be another medical witness.

9 THE COURT: Another what?

10 MS. CAMPBELL: Medical. A doctor.

11 THE COURT: All right. Step up here just a minute,
12 Solicitor. I'm tracking but I'm not sure I'm on the right
13 track. Solicitor and Mr. Bank.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 THE COURT: All right, what I was trying to process,
16 ladies and gentlemen, is administratively the number of
17 witnesses that would get us to the lunch hour and the
18 length. So, I think one of them would be rather lengthy.
19 So, I think we're going to take a recess now for about
20 fifteen minutes. I know you haven't been out here too
21 terribly long yet, but we may be sitting for a while when
22 we come back out.

23 Again, any time you need a break, witness or no
24 witness, all you got to do is raise your hand. Thank you.
25 Thank you very much. You may now go with your bailiff.

/

1 (THE JURY EXITS AT 10:33 A.M.)

2 THE COURT: All right, court will be in recess fifteen
3 minutes.

4 (OFF THE RECORD.)

5 THE COURT: Anything from the state before we bring in
6 our jury, Solicitor?

7 MS. SIMPSON: Nothing from the state, Your Honor.

8 THE COURT: Defense?

9 MS. PINNOCK: Yes, Your Honor.

10 THE COURT: All right.

11 MS. PINNOCK: It's our understanding, Judge, that the
12 state is planning on calling a Dr. Lamb to testify. We
13 were not provided anything on this witness. We've just
14 received a copy of the medical report that was done at the
15 Assessment Resource Center in November of 2015. We've got
16 that just about fifteen minutes ago, twenty minutes ago.
17 So, Your Honor, we would object to, first off, this witness
18 testifying at all because we were not given any sort of
19 notice about what they'd be called testify to.

20 As far as standing, she is a medical doctor. I can
21 only assume they're going to be trying to qualify her as
22 some sort of expert. We asked for the CVs of all the
23 state's potential experts before the trial started. We've
24 been provided nothing, which is why we have no notice as to
25 what would be testified. Your Honor, we would object to

1 her testifying for, for any purpose for this trial. We
2 believe it would -- it is a Rule 5 *Brady* violation.

3 MS. SIMPSON: And, Your Honor ---

4 THE COURT: A rule what?

5 MS. PINNOCK: Rule 5, Your Honor, discovery violation.

6 THE COURT: That's what I thought you said.

7 MS. PINNOCK: Yes, sir.

8 THE COURT: I just didn't hear it. Thank you.
9 Yes, Solicitor.

10 MS. SIMPSON: Thank you. May it please the court?

11 Your Honor, with respect to the discovery violation, I
12 would adamantly oppose that the violation occurred. The
13 week -- well, prior to this we scheduled, my office
14 scheduled a discovery meeting with defense to go over the
15 entirety of the discovery that we had. I actually brought
16 my notebook. Lamar Fyall was present, as well as Tracy
17 Pinnock and I believe Mr. Bank.

18 We went through tab by tab ARC report, and I separated
19 the medical exam, and they indicated they had those things..
20 There were a number of things they didn't have with respect
21 to the cell phone forensic report. They claimed not to
22 have a search warrant. Those things were all provided, but
23 we sat down and went through my notebook specifically in
24 front of me.

25 Additionally, Your Honor, with respect to their own

1 motion for the psychiatric evaluation of Reginald Walker,
2 Jr., during the course of that motion, Heather Smith from
3 the Assessment Resource Center testified -- and this is
4 prior to trial -- that prior to her interview, he had been
5 medically examined by their doctor and went pretty
6 extensively into the fact that they had to bandage him,
7 regarding the nature of his injuries, and then re-bandage
8 him, and that's why he was in pain and agitated.

9 And, Your Honor, I know counsel has done numerous
10 cases with the Assessment Resource Center and is familiar
11 that they issue reports as well as medical exams. But
12 prior to this, had they made it known to me that they did
13 not have it -- there were clearly points at which they
14 should have said they don't have it, but it was our
15 understanding that they did. At the very least once Ms.
16 Smith had testified, it was clear that Reginald Walker,
17 Jr., had been medically examined at the ARC, and that is
18 typical when we provide -- it's the ARC report and a
19 medical exam is also done.

20 While I don't -- I was not present for this discovery
21 sheet, as I said, we always meet beforehand to go over it.
22 We went through my notebook, which contained both the ARC
23 report as well as the medical exam, and they were allowed
24 to review my notebook, look at the stuff, see if it was, in
25 fact, the documentation that they had.

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

2 Ms. Pinnock.

3 MS. PINNOCK: Yes, Your Honor. Just very briefly to
4 respond to that. I'm unaware of where in the rule it says
5 that we are responsible for asking for every single piece
6 of information that could exist in their file. We did sit
7 down with Ms. Simpson and go through the file. I made a
8 handwritten list at that point of all the items that we
9 were missing, and medical exam was never brought up. We
10 told her that we had the ARC report, which we did get the
11 ARC report. It's a three-page report, Your Honor. That
12 was provided to Mr. Bank on February 12, 2016. We have the
13 receipt I can make a part of the court record that that is
14 the date that that information was turned over to us, but
15 there was no mention of any medical report when we met. If
16 it had been, a copy would have been made at that point.

17 We were just handed this information. Their own
18 witness's testimony about the exam being done does not then
19 absolve them of their responsibility to make sure we have
20 that information.

21 So, Your Honor, the meeting happened. The medical
22 report was not brought up. Now like I said, we're in a
23 position where they're about to put a medical doctor on the
24 stand, and I'm assuming again that they're going to attempt
25 to qualify her as something, and we have no information,

1 you know, until a few minutes ago about what this person
2 would potentially testify about because -- based on the
3 report we were, we were provided in court. So, Your Honor,
4 we would object to the entirety of the testimony.

5 Your Honor, I guess I do have kind of a separate issue
6 with this witness that I think I'll address depending on
7 your ruling on my first objection.

8 THE COURT: All right.

9 MS. CAMPBELL: Your Honor, can I put one other thing
10 on the record?

11 THE COURT: Yes, ma'am.

12 MS. CAMPBELL: When we were at the -- when you called
13 us up to the bench right before the break and he said who's
14 going to testify, I said Dr. Lamb. And Mr. Bank then said,
15 oh, she didn't see him until he was at the ARC. He
16 acknowledged he knew about her seeing him, and that was at
17 the bench in front of you, Judge. That she didn't see him
18 until a month later I believe was his quote.

19 THE COURT: Yes, sir, Mr. Bank.

20 MR. BANK: Thank you, Your Honor, and I would like to
21 make this a court exhibit. I'm going to hand -- Your
22 Honor, may I approach the court reporter? Or I guess I'll
23 hand it up to you.

24 THE COURT: Yes, sir.

25 MR. BANK: I just provided a copy to the state. What

1 I've just handed up is the receipt that we have listing the
2 information from ARC that I received from their office,
3 which consists of the ARC forensic interview report, which
4 is three pages which we've just acknowledged we have. That
5 has to do with his actual interview and then the actual
6 interview on disk. You'll see what's missing is anything
7 about medical report.

8 Now, because of the hearing from last week, we
9 understand there was some type of evaluation because of Ms.
10 Heather Smith's testimony. But we were never made aware
11 that there was actually a report that came from that. I
12 don't know what they would have even evaluated him for,
13 whether it was something that they typically do or don't
14 do. I have no idea. But, Your Honor, just because we're
15 aware, were aware that she evaluated him because of the
16 testimony last week doesn't mean that we were under any
17 impression that there was actually a report made from it.

18 Whether that's something typically done or not, I
19 don't know. I don't think that there's anything typically
20 being done in this case. So, I, I don't know that we can
21 rely on what's typically done as some type of burden on the
22 defense, what we should know to ask for.

23 MS. SIMPSON: Your Honor, if I may respond to the
24 court's exhibit he just handed up? As you know, we have a
25 continuing duty to disclose discovery ---

1 THE COURT: All right, Solicitor, I don't mean to cut
2 you off, but I'm going to cut you off. I've heard enough.

3 MS. SIMPSON: Okay.

4 THE COURT: To quote the late Honorable Walter
5 Bristow, I've heard enough.

6 MS. SIMPSON: Thank you, Your Honor.

7 THE COURT: Do you now have Dr. Lamb's report?

8 MS. PINNOCK: Yes, Your Honor.

9 THE COURT: Do you now have Dr. Lamb's CV?

10 MS. PINNOCK: No, sir.

11 THE COURT: Do you have a CV of Dr. Lamb, please?

12 MS. CAMPBELL: Yes, sir, and I apologize. I provided
13 her CV recently to the same office, to the same lawyer in
14 another case, *State vs. Ashley Cheatham*. So, I just
15 assumed that.

16 THE COURT: All right, but you now ---

17 MS. CAMPBELL: I have a copy for her.

18 THE COURT: Let me slow myself down. All right, now
19 you have Dr. Lamb's CV, correct?

20 MS. PINNOCK: Yes, sir.

21 THE COURT: All right, and I do know. I've read the
22 rules once. Under Rule 5(b)(e), I understand the
23 continuing duty to disclose. Also under (b)(d)(2) if this
24 were a failure to comply, and I'm not finding that
25 specifically: The court may order such party to permit

1 discovery or inspection.

2 Discovery has now been permitted. All has been turned
3 over that were not turned over previously to the defense.
4 I'm granting a continuance as to Dr. Lamb's testimony. You
5 may call Dr. Lamb either in the morning or late this
6 afternoon, not now. That will give them the opportunity to
7 review both her CV and the report.

8 Anything further before I bring in the jury?

9 MS. SIMPSON: No, Your Honor.

10 MS. PINNOCK: No, Your Honor. I would just like to
11 put my other issue ---

12 THE COURT: Yes, ma'am.

13 MS. PINNOCK: --- when it's time for Dr. -- when they
14 attempt to recall Dr. Lamb.

15 THE COURT: All right.

16 MS. PINNOCK: Thank you.

17 THE COURT: Thank you, Ms. Pinnock.

18 MS. CAMPBELL: Your Honor, we're going to make sure
19 this works before they get in here.

20 THE COURT: Say again?

21 MS. SIMPSON: We're going to publish.

22 MS. CAMPBELL: We're going to publish the interview.

23 THE COURT: All right.

24 MS. CAMPBELL: At this time with the court's
25 permission.

1 THE COURT: All right. Thank you.

2 (A PAUSE.)

3 THE COURT: You didn't hand up the court reporter a
4 copy of this?

5 MR. BANK: No, Your Honor. I can -- I'll make a copy
6 at the next break.

7 THE COURT: So, you want me to give her mine? Okay.

8 MR. BANK: That will be fine if you don't mind.

9 (DISCOVERY CHECKLIST MARKED INTO EVIDENCE AS COURT'S
10 EXHIBIT NUMBER 7.)

11 THE COURT: All right, we ready?

12 Bring us our jury.

13 (THE JURY ENTERS AT 11:08 A.M.)

14 THE COURT: All right, welcome back, ladies and
15 gentlemen. We're continuing the trial of the case by the
16 presentation of evidence and testimony by the state. If
17 you would please continue to give the parties your complete
18 and undivided attention.

19 Solicitor, you may call your next witness.

20 MS. SIMPSON: Thank you, Your Honor. May it please
21 the court? At this time we would seek to publish State's
22 93 pursuant to Your Honor's pretrial rulings to the jury
23 that was discussed during Investigator Bailey's testimony.

24 THE COURT: All right, thank you, Solicitor.

25 Any, any objections, Mr. Bank?

1 MR. BANK: No, Your Honor. I believe ---

2 THE COURT: Subject to previous objections?

3 MR. BANK: Yes, Your Honor.

4 THE COURT: All right. Thank you. Thank you, Mr.
5 Bank.

6 You may publish, Solicitor.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER 93 IS PLAYED FOR
8 THE JURY. AUDIO IS NOT TRANSCRIBED.)

9 MS. SIMPSON: Your Honor, if I may for one second? I
10 want to make sure everyone can hear well. We actually have
11 a device that does get louder. I don't know if any of the
12 jurors are having issues hearing, and they're nodding that
13 they are. So, if we can take the disk out?

14 THE COURT: Of course.

15 MS. SIMPSON: And we'll switch that so they can hear
16 better.

17 THE COURT: Yes, ma'am.

18 MS. SIMPSON: My apologies for the delay.

19 THE COURT: All right.

20 (A PAUSE.)

21 THE COURT: Put it back to where it was.

22 (WHEREUPON, PLAY OF STATE'S EXHIBIT NUMBER 93
23 RESUMES.)

24 THE COURT: Solicitor, will you cut the tape off for
25 me, please?

1 (A PAUSE.)

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

3 MR. FYALL: Yes, Your Honor.

4 Madame Forelady, ladies and gentlemen of the jury
5 panel, I've notified during the course of listening to the
6 tape that the county is closing down all non-essential
7 government offices at 1 p.m. today. So, I'm going to take
8 back your lunch orders, number one. Number two, I'm going
9 to release you from your jury service for the remainder of
10 the day. I ask you to please be back ---

11 (A PAUSE.)

12 THE COURT: Well, I'm still getting conflicting
13 reports. I understood the order couldn't be picked up
14 until 1:15. Now I'm being told that the individual
15 restaurant will not cancel the order. So, they're going to
16 be here sometime. I don't know when. You're welcome to
17 wait and take them with you.

18 I don't know the answer to that question, but I'm
19 going to release you from your jury service for the
20 remainder of the day. Ask you to please be back promptly
21 at 9:30 in the morning. You may ---

22 Yes, ma'am?

23 MS. CAMPBELL: I'm sorry, Your Honor. Could we talk
24 about a scheduling issue?

25 THE COURT: Ma'am?

1 MS. CAMPBELL: Could I just approach about a
2 scheduling issue?

3 THE COURT: Yes, ma'am.

4 MS. CAMPBELL: Thank you.

5 (OFF-THE-RECORD BENCH CONFERENCE.)

6 THE COURT: I'll ask you to please be back promptly at
7 9:00 in the morning. Is that, is that good for everybody,
8 and of course check, check the news and the alerts. I can
9 predict anything but the future. As far as I know, as far
10 as I know we'll be open tomorrow for business as usual.

11 Please remember do not discuss this case with anyone.
12 Do not read, watch, listen to any news reports. Do not do
13 any independent investigation or any investigation on the
14 Internet. Hope you, hope y'all have a pleasant evening,
15 and please be safe. See you promptly at 9 in the morning.

16 Again, you can wait around on your lunch, if you like,
17 because they would not cancel it. I'll leave that up to
18 your own discretion. Thank you. Thank you very much for
19 your focus and attention.

20 (THE JURY EXITS AT 12:48 P.M.)

21 THE COURT: Anything further from the state,
22 Solicitor?

23 MS. CAMPBELL: No, sir.

24 THE COURT: Defense, Mr. Bank?

25 MR. BANK: No, sir. Well, actually, since we have the

1 afternoon, we might start working on redacting the second
2 interview.

3 MS. CAMPBELL: We'll work with them.

4 MR. BANK: I know that we're still waiting on the
5 domestic violence ruling to see how that progresses. Is
6 there any way or would you feel comfortable making a ruling
7 on as just to Minor

8 MS. CAMPBELL: We'll go ahead and take all the
9 references of domestic violence out of the second interview
10 as well.

11 THE COURT: Why don't y'all take it up and get it ---

12 MR. BANK: Sure.

13 THE COURT: --- get it compressed or boiled down. I
14 should be here a while. I mean, I don't know how long it's
15 going to take you but...

16 MR. BANK: Yes. Well, we'll ---

17 THE COURT: I don't have anywhere to go, Mr. Bank.
18 I'll be back here. You know, y'all just let me know. If I
19 get ready to leave, I'll get my law clerk or somebody to
20 let y'all know.

21 MR. BANK: Yes, sir.

22 THE COURT: Okay. All right, can I let my court
23 reporter go?

24 MR. BANK: Yes.

25 THE COURT: And at least if we can meet in chambers

1 and kind of figure out what my rulings would be.

2 MR. BANK: Yeah, I have no objection to her leaving.

3 THE COURT: All right. Thank y'all. Thank y'all very
4 much.

5 MS. CAMPBELL: Thank you, Your Honor.

6 (WHEREUPON, THE CASE IS AT EASE.)

7 THURSDAY, APRIL 6, 2017

8 (COURT RESUMES AT 9:34 A.M.)

9 THE COURT: Good morning. Please be seated. Good
10 morning, Madame Court Reporter, Sheriff, Madame Clerk.
11 Solicitor.

12 MS. CAMPBELL: Your Honor, we went back in chambers
13 briefly. I was talking about a case called *Caldwell*, and I
14 actually found it.

15 THE COURT: Is it the same one?

16 MS. CAMPBELL: This is Spartanburg County, Richard
17 Caldwell.

18 THE COURT: Richard, Ricky. That's not too far off.
19 Wonder if they're related.

20 MS. CAMPBELL: And, Your Honor, I believe there's been
21 an objection to the diagnosis by the defense of this ---

22 THE COURT: I'm sorry?

23 MS. CAMPBELL: There's an objection by defense from
24 the diagnosis by the intensevist from the Augusta Burn
25 Center, and we wanted to proffer just his diagnosis and the

1 reason for it. We can do that very quickly.

2 THE COURT: All right. So, you want to offer Dr.
3 Cartie *in camera*?

4 MS. CAMPBELL: *In camera*, Your Honor, just for that
5 limited purposes. I think we would agree to that.

6 THE COURT: Is that correct? Is that your
7 understanding, Mr. Bank?

8 MR. BANK: Yes, Your Honor, and I think while he's up
9 there, since we have a new case about hearsay, we can ask
10 him about what his hearsay statement is because we'll
11 probably have an objection to that.

12 MS. CAMPBELL: We can do that as well.

13 THE COURT: And that's this *Caldwell* case?

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: All right. I'll, I'll look at it.

16 All right, you may, you may call the doctor.

17 And thank you for being with us today, Doctor. I
18 apologize about yesterday. Some things even a court order
19 won't solve, you know.

20 PROFFER

21 RICHARD CARTIE, BEING DULY SWORN,
22 TESTIFIES AS FOLLOWS:

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

25 WITNESS: My name is Dr. Richard Cartie.

R. CARTIE - PROFFERED EXAMINATION BY MS. CAMPBELL

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1 PROFFERED EXAMINATION BY MS. CAMPBELL:

2 Q. Dr. Cartie, where are you employed?

3 A. Currently I am the director of Pediatric Critical Care
4 Services for the Joseph M. Still Burn Center in Augusta,
5 Georgia, at Doctors Hospital.

6 MS. CAMPBELL: And, Your Honor, for purposes of this
7 hearing, I don't think we need to go into his
8 qualifications.

9 MR. BANK: I think for the purpose of the hearing we
10 do need to know what he's going to be qualified as.

11 BY MS. CAMPBELL:

12 Q. Have you been qualified before as an expert in certain
13 areas?

14 A. I have.

15 Q. In what areas have you been qualified, sir?

16 A. I have been qualified as an expert witness in
17 pediatrics, pediatric critical care, pediatric burn care,
18 pediatric burn critical care, child abuse care, and child
19 abuse critical care.

20 Q. Doctor, in this case you saw [REDACTED] Minor . I believe
21 he was transported to your hospital back on October the 7th
22 of 2015?

23 A. He was.

24 Q. And did you -- were you one of his primary physicians
25 over the course of the next month or approximately a month

R. CARTIE - PROFFERED EXAMINATION BY MS. CAMPBELL

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1 he was in ---

2 A. I was.

3 Q. And did you ever come to a diagnosis in this case as
4 far as the burns that were exhibited on Minor body?

5 A. I did.

6 Q. And what was your diagnosis, sir?

7 A. The diagnosis was that the burns were the result of a
8 intentional child abuse injury.

9 Q. And is that a diagnosis you've come to on certain
10 occasions?

11 A. It is.

12 Q. And can you explain to the judge your reasons for that
13 and how it's an appropriate diagnosis in this case?

14 A. So, the diagnosis of child abuse is a medical
15 diagnosis, and we utilize certain aspects of the physical
16 exam, clinical findings, or the history in order to make
17 that diagnosis. Certain things such as injuries that would
18 not be appropriate for the age of a child such as a
19 fracture of the leg in an infant. Rib fractures in an
20 infant would be the result of an intentional child abuse
21 injury. Injuries or finding that don't match the
22 developmental age of the child are also considered into the
23 diagnosis of a child abuse injury. If the story provided
24 by the caregiver or parent does not match or is not
25 consistent with the findings, the physical findings that we

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1 observe, that's also a contributing factor to the diagnosis
2 of child abuse.

3 Finally, certain types of injuries are what we would
4 call indicators are absolute indicators of child abuse,
5 such as things like retinal hemorrhages in a child in the
6 absence of a motor vehicle accident or fall. Those are
7 things that would point to a diagnosis of child abuse.

8 Q. And is this a diagnosis that's recognized in the
9 medical field?

10 A. It is.

11 Q. And where is it recognized typically?

12 A. So, the *IDC-9 Coding Manual*, which is now as of the
13 last year the *ICD-10 Coding Manual*, provides physicians
14 with the, all the different types of diagnoses that can be
15 entered into a record, typically for billing purposes but
16 also to help delineate the different assets and aspects of
17 a diagnosis. The child abuse diagnosis has an ICD-9 code
18 of 995.5 with some add ons, and the current ICD-10 I
19 believe is a T76 code, with some additional add ons for
20 various modifiers.

21 Q. So, this is a diagnosis that's recognized in your
22 field by your peers and others?

23 A. It is.

24 Q. During the course of treating -- when **Minor** first
25 presented, did you attempt to get a history from him of

R. CARTIE - PROFFERED EXAMINATION BY MR. BANK

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1 what had happened to him?

2 A. We did.

3 Q. And what information did he give to you?

4 A. He told myself as well as the medical staff that he
5 had been put into the shower and burned, sprayed with hot
6 water while he was in the shower, and he was not allowed to
7 get out.

8 Q. And did he indicate any, any type of injuries or force
9 that was on his body in addition to the water?

10 A. He commented that he had gotten hit in the head. He
11 was not specific as to whether it was a shower handle or
12 somebody hitting him, but he said that he had been hit in
13 the head.

14 Q. And I asked, I told you earlier not to say who he said
15 did this to him, but did he indicate to you who did this to
16 him?

17 A. He did.

18 Q. Who was that?

19 A. It was the boyfriend of the mother.

20 MS. CAMPBELL: Thank you, Doctor. I don't have any
21 further questions.

22 THE COURT: Mr. Bank.

23 MR. BANK: Thank you, Your Honor.

24 PROFFERED CROSS-EXAMINATION BY MR. BANK:

25 Q. I'm going to start at the hearsay instead of the

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1 diagnosis because I think that will be quicker. Did
2 Reginald, when he said who did this to him, characterize
3 the person as his father or daddy or something along those
4 lines?

5 A. I do not recall.

6 Q. You do not recall, and when you said that the
7 statement was made to the nurses and to yourself, when was
8 that statement made to you? Do you recall?

9 A. So, the child was admitted to us. One moment while I
10 pull out the records.

11 (A. PAUSE.)

12 A. So, the child was admitted to us just before -- I'm
13 sorry, just after midnight on the 8th. So, he came to us
14 kind of in the overnight hours. I saw him very shortly
15 after his arrival to us. It would have probably been
16 around, I would have to say around 1:00 in the morning when
17 I came in to examine him.

18 Q. And so that would be the general timeframe where you
19 believe he would have said this to you?

20 A. That's correct. That's when I was interacting with
21 him.

22 Q. Sure. Do you remember Investigator James Charley
23 reaching out to you by email to clarify some of these
24 statements at any point?

25 A. I do not recall.

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1 Q. You don't recall?

2 A. I would have to look at my, look at my email records.

3 Q. Would it refresh your recollection if I was able to
4 show you an email?

5 A. It would.

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

7 THE COURT: Yes, sir. Of course.

8 BY MR. BANK:

9 A. Okay.

10 Q. Do you recognize that email, sir?

11 A. Yes. That was, that was from me.

12 Q. Okay, and does that email indicate something different
13 about the timing of when you may have heard these
14 statements yourself personally?

15 A. The, the child had reported whether his daddy or
16 stepdad did it to the nurses. That was a difference in
17 what he initially told them when he came in.

18 Q. Okay, and I guess -- and it's a little hard for me to
19 tell from the email, but your position is that email was
20 just a clarification about this part of the statement you
21 just testified to or?

22 A. That was a clarification on exactly what was
23 documented in the nurses' notes.

24 Q. All right. That email does state that you didn't
25 actually get the statement. You didn't actually hear the

1 statement from him, though. Isn't -- am I reading that
2 incorrectly?

3 A. No. That states that they were the ones who got those
4 specific statements from him.

5 Q. Okay. So independent of that, you've gotten other
6 statements from ---

7 A. That's -- I, I, I interacted directly with the child.
8 That's correct.

9 Q. Okay. I just wanted to clarify that email.

10 Now, getting to -- bear with me. Getting to
11 qualifications, specifically ones about child abuse care,
12 you stated on direct examination that that is an area that
13 is consistent with the general scientific community.

14 A. That's the way I understand it, correct.

15 Q. That's the way you -- and are there any publications,
16 peer reviews you can kind of go through with us, a peer
17 review that's on your work in this area of scientific child
18 abuse?

19 A. No.

20 Q. And could you explain, I guess, the control procedures
21 used to verify whether your findings of child abuse are
22 accurate or not? So, if you made the finding of child
23 abuse, how do you decide whether that was something that
24 was verifiable or accurate?

25 A. I'm not sure I understand the question.

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1 Q. Sure. If, if you make a finding like you did in this
2 case that this is intentional child abuse, is there any way
3 to verify or have somebody peer review your work to see
4 whether that is actually accurate, that's actually what
5 happened, that it is, in fact, child abuse?

6 A. I'm not sure that a -- it, it would be like trying to
7 say that the diagnosis of pneumonia would be peer reviewed,
8 which isn't really something that is done in the medical
9 community. It's -- you know, there are certain criteria
10 that are established by experts in the field how one meets
11 the diagnosis of child abuse, and those are what we adhere
12 to when we make the diagnosis or consider the diagnosis.

13 Oftentimes the diagnosis is unclear and not well
14 delineated, whether it be by history or by findings. I
15 have certainly been involved in those situations plenty of
16 times before.

17 Q. And the way you apply this method, you stated, is by
18 way of physical review, lab review, and history. Is that
19 correct?

20 A. Those are, those are the contributing factors that we
21 consider, yes.

22 Q. Now in this case, as in any cases, history, when we
23 say the word history, that means statements from whoever
24 might have knowledge about the situation. Is that fair?

25 A. That's correct.

1 Q. That can include statements from the child, and that
2 can include statements from other witnesses. Is that
3 correct?

4 A. That's correct.

5 Q. Now, Doctor, is it necessary to make -- was it
6 necessary in this case to make a finding of child abuse to
7 be able to treat Reginald?

8 A. Not, not completely. There were certain, certain
9 things we had to do as part of the workup because of the
10 diagnosis of child abuse. But as far as treating the
11 burns, there was nothing that we had to do different with
12 regards to the burn treatment.

13 Q. Okay, and so would it be fair to say that if we were
14 given a diagnosis without the history part, that the
15 diagnosis could be limited to child burn -- or, I mean,
16 burns on a child? Is that fair?

17 A. In the absence of any kind of history from, from the
18 child or the caregivers, yes.

19 Q. And, and that would not have affected the, the -- your
20 ability to treat him over the long term?

21 A. That's correct.

22 Q. Now, when you were examining these burns, was there
23 any way to tell whether Reginald was intentionally held
24 down, whether it was an accident? Was there anything
25 indicative of -- just the physical injuries you saw -- that

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1 made you know this is intentional by the way -- you know,
2 however the burns got on him?

3 A. The, the burns were second and third degree or second
4 and deep second degree in nature. He had significant
5 blistering. It was a large burn. As to the, the absolute
6 indicators of the burn indicating any kind of child abuse,
7 in the absence of history, there was, there was not a lot
8 of, there was not a lot of indicators that we would
9 normally look for in a child -- in a classically described
10 child abuse burn.

11 Q. All right. Now, there was some comment about an
12 injury to the -- or a possible potential injury to the
13 head. Was there ever any finding of any physical injuries
14 to the head?

15 A. All the scans and x-rays we did showed no injury, no
16 head injury.

17 Q. And there's obviously some delay between when the
18 burns happened to when he got to you for maybe good and bad
19 reasons. Maybe a delay to the original hospital, and then
20 just understandable delay to get to you in Augusta. Is
21 that what your understanding was?

22 A. That, that's typical of referrals that we get, yes.

23 Q. And did -- was there any additional injuries or change
24 in treatment that happened because of any delay that you
25 were able to see?

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1 A. No.

2 Q. Okay.

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

4 (A PAUSE.)

5 MR. BANK: That's all the questions I have, Dr.

6 Cartie.

7 THE COURT: Thank you.

8 All right, Solicitor, any redirect?

9 MS. CAMPBELL: No, sir.

10 THE COURT: All right. Thank you. Thank you very
11 much, Doctor. You may step down.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: All right, this is your objection, Mr.
14 Bank?

15 MR. BANK: Yes, sir.

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

17 MR. BANK: Thank you. We have several objections.

18 I'll kind of lay them out, then go through them one by one.

19 THE COURT: Yes, sir.

20 MR. BANK: First, whether he can be qualified as an
21 expert in the field of child abuse, we don't believe that
22 that is a recognizable scientific area.

23 He's -- our second objection, Your Honor, is that this
24 isn't going to be anything that helps the trier of fact.

25 He doesn't meet 702.

1 THE COURT: Excuse me. Does not help the trier of
2 facts? Is that the second one?

3 MR. BANK: Not assist the trier of facts, and these
4 are all within our kind of a general 702 objection that he
5 doesn't, he doesn't qualify under 702.

6 We also have an objection, regardless of his
7 qualification, about whether he's allowed to say that this
8 diagnosis is a burn by intentional child abuse, and then we
9 would have also a general 403 objection to his testimony as
10 well.

11 As to the 702 objection, we don't think that his
12 testimony that he believes that this is a, a indication of
13 child abuse, if anything that's going to help ---

14 THE COURT: I never heard him say he believes. Heard
15 him say that was his diagnosis. Now, that may be mincing
16 words. If I heard it incorrectly, correct me.

17 MR. BANK: I believe you're correct that it was
18 diagnosis, Your Honor, but other than it will assist the
19 trier of fact, that is the jury's job to decide what the
20 ultimate issue is on that fact. And so I think it's
21 improper for ---

22 THE COURT: I agree.

23 MR. BANK: Whether the science is reliable, the area,
24 the field of child abuse, he acknowledged that there's no
25 publication or peer review that he can point to. He wasn't

1 able to provide any control measures or methods to
2 understand whether these findings that are made are
3 actually accurate or whether they're checked by anybody
4 else. And so, Your Honor, we just don't think that it
5 matches 702.

6 If he wants to be qualified as a pediatrician in the
7 care and treating of burns, we wouldn't have any problem
8 with that. It's when we start shifting into this idea that
9 there's this area of scientific child abuse and he can make
10 a finding on that.

11 You know, Your Honor, and that kind of boils into our
12 second argument which we cited in chambers, which is *State*
13 *vs. Chambers* which is ---

14 THE COURT: Chambers?

15 MR. BANK: *Commander*, excuse me.

16 THE COURT: *Commander*, yes, sir.

17 MR. BANK: And the concern we have with *Commander* is,
18 as the court's aware, *Commander* said that it was all right
19 for an autopsy to have a finding of a homicide, but the
20 court specifically said that they wanted it to be limited
21 to situations for testimony that wouldn't make up the mind
22 for the jury, that wouldn't get into the *mens rea* of the
23 defendant. There wouldn't be a legal conclusion. If I can
24 quote straight from the case: However, expert testimony on
25 issues of law is usually inadmissible.

1 And then the general rule that's provided is as
2 follows:

3 Consequently, we adopt a rule whereby an expert
4 in forensic pathology opinion testimony as to
5 cause and manner of death is admissible under 702.

6 ---

7 THE COURT: Where are you reading? What page? You
8 reading from *Commander*?

9 MR. BANK: I'm reading from *Commander*, about two
10 paragraphs up from section 2, the jury, the jury
11 instruction.

12 THE COURT: Oh, okay. All right. All right, I'm on
13 page -- looks like -- well, I don't know what page it
14 looks: A jury charge is correct. Is that where you're
15 reading from?

16 MR. BANK: I'm reading on the paragraph that starts:
17 Consequently, we adopt. It's two paragraphs about the
18 second section which is titled Jury Instruction.

19 THE COURT: I'm clearly not tracking, Mr. Bank. Will
20 you show me?

21 MR. BANK: Absolutely.

22 MS. CAMPBELL: Your Honor, does he have another copy
23 of that case so I can track, too?

24 MR. BANK: Sure.

25 (A PAUSE.)

1 THE COURT: Thank you. Thank you, Mr. Bank.
2 Consequently?

3 MR. BANK: Consequently, we adopt a rule whereby an
4 expert in forensic pathology opinion testimony as
5 to cause and manner of death is admissible under
6 702, South Carolina Rules of Evidence, so long as
7 the expert does not opine on the criminal
8 defendant's state of mind or guilt or testify on
9 matters of law in such a way that the jury is not
10 permitted its own conclusion concerning the
11 criminal defendant's guilt or innocence.

12 Your Honor, our concern is his diagnosis of burns
13 caused by intentional child abuse. The entire thing that
14 we're arguing in this case is whether this is an accident
15 or whether it's intentional child abuse. That's what was
16 spoken about in opening. That's what we've spoken about
17 through this testimony, and for him to give an opinion that
18 this is intentional child abuse I think is completely
19 improper and completely makes the decision for the jury.

20 THE COURT: Well, your real issue is intentional, not
21 whether or not it's child abuse.

22 MR. BANK: I believe ---

23 THE COURT: But it's intentional because the
24 pathologist could say it's a homicide.

25 MR. BANK: I agree to a degree. I think intentional

1 is an obvious, obvious problem, but we still have a concern
2 with child abuse.

3 THE COURT: Because it goes to the *mens rea* of the
4 actor, whoever the actor may be. That's, that's your
5 argument.

6 MR. BANK: That's right.

7 THE COURT: Sure.

8 MR. BANK: And our whole position is this is not child
9 abuse. This is an accident. This is regardless of whether
10 it was Shane or Kristin, whoever it might be, the defense
11 has clearly been this was an accident. It could have
12 happened in the shower. And for there to be a medical
13 diagnosis that this is child abuse and the defense is
14 wrong, this cannot be an accident in his medical opinion,
15 this is not an accident is completely unfair. It violates
16 his rights to due process, a fair trial, a fair defense,
17 make your way down the list. That is the decision the jury
18 is supposed to make. That's what we've been arguing about.

19 They -- that's how they framed it in opening. In
20 their opening, they got up and said this is a case about
21 child abuse, and now they want to put up an expert to say
22 that in his medical opinion, this is child abuse. That
23 violates 702, it violates *Commander*, and we also think that
24 it violates 403. It's incredibly prejudicial. It's not
25 probative, Your Honor.

1 But the jury can decide, you know, the degree of burns
2 and, and how quick it happened and how hot the water was,
3 and he can offer all of that. He can talk about burns; he
4 can talk about the treatment. I understand that. They
5 have an obligation to show great bodily injury. We're not
6 really fighting that. I understand that. For them to call
7 it child abuse I think just goes way over the line.
8 Intentional child abuse is even further, but child abuse
9 even just in itself is a problem.

10 THE COURT: You almost quoted President Trump,
11 crossing many lines.

12 MR. BANK: I can think of one parent that would happy
13 one by that and one parent that would not be happy about
14 that.

15 THE COURT: Thank you, Mr. Bank.
16 Solicitor.

17 MS. CAMPBELL: Your Honor, we would agree that I don't
18 think he can use the word intentional child abuse. I think
19 he can opine as to what it is.

20 He makes the argument that none of his findings are
21 peer reviewed and, in fact, they have hired an expert to
22 peer review his findings, which is somewhat ironic. And,
23 Your Honor, we feel like his argument goes to the weight,
24 not to the admissibility.

25 As far as what we plan on qualifying the doctor, we

1 intend to qualify him as a critical care doctor with a
2 specialty in treating burns or burn injuries. And then as
3 far as his diagnosis, it is supported by actually not only
4 documents but the controlling document as far as what the
5 diagnosis should be that certain doctors are able to give,
6 as he testified.

7 Your Honor, again I think it's argument, and we would
8 instruct the doctor not to use, but I think his argument
9 goes to the weight, not the admissibility. He can
10 cross-examine and, in fact, has indicated to us he plans on
11 bringing in a doctor that may have a different opinion,
12 although we don't know because they haven't given us a
13 report.

14 Your Honor, one thing. I believe in the *Commander*
15 case, they said it was appropriate in that the pathologist
16 in that case termed it as a homicide as long as it was
17 explained, which it would be the same way here.

18 THE COURT: Yes, ma'am. Thank you.

19 (A PAUSE.)

20 THE COURT: I'll be back to you in just a second.

21 MR. BANK: Yes, sir.

22 (A PAUSE.)

23 THE COURT: All right. All right. Yes, sir, Mr.
24 Bank.

25 MR. BANK: Thank you, Your Honor. Just a couple of

1 points, one in reply and one that I forgot to point out
2 originally.

3 THE COURT: Yes, sir.

4 MR. BANK: In regards to the homicide case.

5 THE COURT: To the what case? I'm sorry.

6 MR. BANK: To the homicide case, the ruling in
7 *Commander*.

8 THE COURT: Yes, sir.

9 MR. BANK: One of the things that distinguishes that
10 is that there was an actual statute obviously that the case
11 talks about being in place with what pathologist does, what
12 homicide does and all of that, and this is a little --
13 obviously a different situation than that.

14 And the second thing that I wanted to point out that's
15 just another concern under all of our objections is his
16 testimony that the diagnosis of child abuse relies almost
17 substantially, if not just the entire weight of it, on the
18 history. He said in terms of the injuries he's seeing on
19 the child -- you know, if we look at ---

20 THE COURT: Well, that history can cut both ways.

21 MR. BANK: It can.

22 THE COURT: You know, the child could give a history
23 and the doctor could -- a doctor could look at the -- or a
24 patient, not even a child, and say how did this happen,
25 and, and it could cut both ways and say, well, it didn't

1 happen like the, the history that was given by the victim,
2 whether adult or child. But I -- that's well, that's well
3 taken.

4 Obviously -- and, of course, in the pathologist's
5 information, they're not talking to the patient. They're
6 talking to third parties, whether it be -- generally
7 police, generally either talking to the police or looking
8 at police incident reports. They're getting -- that's
9 where they're getting their history. They bury all their
10 patients.

11 MR. BANK: Exactly.

12 THE COURT: Pathologists, or their patients are
13 already buried before they get to them, I should say.

14 MR. BANK: But I think that's actually the point I'm
15 trying to make is that in those circumstances, they are
16 able to compare it with a physical injury to see whether
17 it's consistent or not.

18 Here we can't tell. There's nothing within this
19 injury that we can tell whether it was an accident or
20 intentional that would be consistent either way.

21 THE COURT: I understand.

22 MR. BANK: If you look at, you know, *State vs. Kromah*,
23 which is really a case ---

24 THE COURT: *State vs.* who?

25 MR. BANK: *Kromah*.

1 THE COURT: Yes, sir.

2 MR. BANK: Which is obviously a case more about
3 forensic interviews.

4 THE COURT: Yes, sir.

5 MR. BANK: There were several experts qualified to
6 talk, and talk about child abuse. But in those cases, in
7 that case they were talking about reasons the injuries they
8 could tell were intentional. There was, you know, was a
9 jagged blunt force injury, or it was something that was --
10 the actual injury indicated that there was something
11 intentional.

12 We haven't heard anything here to show that this
13 diagnosis comes from anything but history. The history
14 isn't being used to confirm the diagnosis or used to
15 confirm the physical injury. The physical injury is going
16 to be burn no matter what. And from that alone we won't
17 ever be able to tell whether it's accident or intentional
18 or abuse or whatever word we're going to use. He's just
19 using history to base his whole opinion that it's child
20 abuse, and that's what the differences is in the cases that
21 we're seeing.

22 THE COURT: All right. Anything ---

23 MR. BANK: No, sir.

24 THE COURT: Anything further?

25 MR. BANK: No, sir, nothing further.

1 THE COURT: Nothing further?

2 MR. BANK: Nothing further.

3 THE COURT: And I'm not trying to invite. I'm just
4 asking, Mr. Bank.

5 MR. BANK: Sure. No. So, our objection is that he
6 not be (A) qualified as a child abuse expert and (B) that
7 he not be permitted to give an opinion this was child
8 abuse.

9 THE COURT: Anything further, Solicitor?

10 MS. CAMPBELL: No, sir.

11 THE COURT: All right. Well, I've read *Council*. I
12 went back to *Council* and I've read, I've read *Commander*
13 also, and I want to make sure I'm tracking.

14 As far as whether or not being offered as an expert in
15 various areas of the medical profession, whether or not
16 child abuse would be a recognized area, I assume you would
17 want me to look at *Council*, *State vs. Council*.

18 MR. BANK: Yes, sir.

19 THE COURT: Which tracks *State vs. Jones* and *Daubert*
20 and, of course, the rules as to expert testimony. And, of
21 course, *Council* says:

22 While the court does not adopt *Daubert*, we find
23 the proper analysis for determining admissibility
24 of scientific evidence is now under the South
25 Carolina Rules of Evidence 702. Must find that

1 the evidence will assist the trier of fact, the
2 expert witness is qualified, and the underlying
3 science is reliable. The judge should apply the
4 Jones factors to determine reliability. Under
5 the Jones standard, the publications and peer
6 review of the technique, prior application of the
7 methods to the types of evidence involved in the
8 case, the quality control procedures used to
9 ensure reliability, and the consistency of the
10 method with recognized scientific laws and
11 procedures.

12 It would appear to me that the testimony -- and may be
13 additional testimony and this is just a motion *in limine* --
14 that the doctor gave as far as under to the IC-9 and the
15 IC-10 that the diagnosis of child abuse is a recognized
16 diagnosis under a physician's coding manual that is entered
17 into the record, and that there are standards for that.
18 Under 9 it was IC-9 and then 99.5 was the child abuse
19 diagnosis, and under IC-10 it was T76. And as I understood
20 the doctor's testimony, there were subdiagnoses or
21 additional types of diagnoses under both of those broad
22 diagnoses in that regard.

23 I, I will find there is scientific reliability with
24 the Jones factors involved in that, given that it was a
25 standard manual used within the field of medicine.

1 I think what we're dealing with is similar to what
2 Judge Johnson dealt with in *Commander*. That you have -- I
3 think that's Dr. Clay Nichols testifying. It didn't give
4 his first name, but I assume that's who it was, the
5 pathologist. You have a medical definition of homicide and
6 you have a legal definition of homicide. Judge Johnson
7 went back to the medical -- excuse me, the legal definition
8 in *Black's Law Dictionary* versus, versus the, the medical
9 definition within the field of pathology.

10 (A PAUSE.)

11 THE COURT: And there was, as Mr. Bank points out, a
12 statute, 17-5-530(a), 530(b):

13 Where therein must be some manner of death as to
14 natural, accidental, homicide, or suicide. And
15 in that context, the testimony of Dr. Nichols
16 meant an individual died from homicide means
17 simply that he or she died by the act,
18 procurement, or commission of another without
19 regard to the criminality of the killing or
20 culpability of the killer, and there's a
21 different definition of a homicide, and there may
22 be ---

23 And, of course, when you look at the indictment, he's
24 charged with the statutory crime, Mr. Johnson, of
25 inflicting great bodily injury upon a child, and it is

1 statutorily defined in that regard.

2 When I look at 702 -- before I do that and the history
3 given, *Commander* does talk about history:

4 In Dr. Nichols's statement, there is some
5 confusion as to what role the history actually
6 plays in the part of the autopsy. Many people
7 feel the autopsy is nothing more than a
8 dissection of a person and looking at the tissues
9 underneath the microscope. The history is vital
10 and a mandatory part of all autopsies. It's such
11 a mandatory part that I must document in every
12 autopsy I do where the history came from and who
13 gave it to me, and without a history, the autopsy
14 in and of itself is invalid. The two are not
15 separable; they are part of one another. The
16 autopsy includes the history as well as all other
17 anatomical and laboratory findings.

18 As I say, that, that appears to be the same in the
19 field of -- other fields of medicine, whether it's
20 pediatrics or general surgery or some people even go to
21 gerontologists or whatever they are. I haven't figured
22 that out yet. Be that as it may, regardless, I don't think
23 we put percentages on what is history, what is observation,
24 what is diagnosis, what is training, what is experience.

25 Dr. Cartie -- I may pronounce that wrong -- again has

1 been qualified as an expert in pediatrics, pediatric
2 criminal -- critical care, pediatric burns, pediatric burns
3 critical care, child abuse, child abuse critical care, and
4 another field that I can't, I can't figure out what my note
5 says. So, he would clearly be an expert in each and all of
6 these fields.

7 But when I look at 702, I would decide that his
8 scientific, technical, and other specialized knowledge will
9 assist the trier of fact. Further, he may state his
10 opinions and the basis of his opinions. And further, I
11 looked up *Alice Postel Wilkins*, which was a battered wife
12 case, I believe, and it is -- it was, it was an objection
13 as to ultimate issue by the expert, but I think the expert
14 in that case was a battered person and the wife's expert.
15 But when I look at 704:

16 Testimony in the form of an opinion or inference
17 otherwise admissible is not objectionable because
18 it embraces an ultimate issue to be decided by
19 the trier of fact.

20 I think the doctor, depending on what the testimony is
21 in front of the jury if he is qualified as an expert, may
22 testify as to the diagnosis of child abuse, not
23 intentionally child abuse, and I pondered in my mind is
24 there such a thing as unintentional. I don't know. I
25 don't know. I guess you could be a child abuser by your

1 neglect or by your negligence towards a child in feeding,
2 nurturing, such as that, such as that.

3 I also, in looking at the 403 analysis which Mr. Bank
4 brought up and *State vs. Council* brings up, I find that it
5 is relevant. 403 directs the court to use its discretion:

6 That evidence may be excluded if its probative
7 value is substantially outweighed by the danger
8 of unfair prejudice, confusion of the issues, or
9 misleading the jury.

10 And it goes on to some other issues.

11 I think it is highly probative. It is clearly
12 prejudice. In criminal cases, typically it should be
13 relevant and if it's not prejudice, it's not necessary.
14 Shouldn't even be offered, in my mind, but I rely on the
15 ultimate holding. But the discussion by Justice Few in
16 *State vs. Collins* and then the ultimate holding in *State*
17 *vs. Collins* by the Supreme Court prior Justice Few being on
18 the court and those various definitions, I find that the
19 probative value is not substantially outweighed by the
20 danger of unfair prejudice. It is opinion testimony by a
21 witness with definitional terms within his field of
22 expertise. Not, and he's not being offered as an expert in
23 the field of law. Don't think he'd ever offer himself as
24 an expert in the field of law.

25 Did I address -- I think I addressed all your issues.

1 And of course the intentional is clearly out. I think it
2 is a recognized scientific area. I have addressed
3 *Commander* and how it may interfere with the trier of fact.
4 He's allowed to say child abuse but not intentional, and I
5 have done a 403 analysis.

6 Anything further before we bring in the jury, Mr.
7 Bank?

8 MR. BANK: One, just to address the hearsay issue.

9 THE COURT: Yes, sir.

10 MR. BANK: I believe she handed up a case.

11 THE COURT: Oh, did you? Yes, sir.

12 MR. BANK: My understanding is the state is going to
13 try to get in part of the hearsay that who -- the identity
14 of who caused the scalding, hit the child in the head.

15 THE COURT: You got a copy of your case?

16 MR. BANK: It's, it's the case that Ms. Campbell
17 handed up to you.

18 THE COURT: Are y'all both relying on the same case?

19 MR. BANK: I'm addressing her case.

20 THE COURT: Oh. All right. Thank you. Thank you,
21 Mr. Bank.

22 MR. BANK: I think their position is that because
23 Reginald has already said who did this, that other hearsay
24 statement from another person is now allowed because
25 there's been prior testimony.

1 My concern is that Reginald's testimony, as I recall
2 it, was Shane did this to me and the testimony by Dr.
3 Cartie is that he doesn't recall whether it was father,
4 dad, he, Shane, or whatever it might be. So I don't know
5 that there actually has been testimony by the child
6 matching exactly what Dr. Cartie recalls the hearsay to be.
7 And so our position is that that case doesn't apply and
8 that the identity of Shane should still be excluded in Dr.
9 Cartie's testimony.

10 MS. CAMPBELL: Respectfully, Your Honor, I disagree
11 with his assessment. He said that it was the mother's
12 boyfriend was who he indicated did it. Additionally, he
13 then crossed him on some statements by nurses, who was
14 clarifying. Additionally, Your Honor, when I questioned
15 the child, I asked him specifically did you tell your
16 doctors who did this to you. He said yes.

17 And regardless, Your Honor, the declarant, who is the
18 victim, has testified and was available for
19 cross-examination.

20 THE COURT: Point, point, please, Solicitor, to where
21 this issue is. Is it footnote 1?

22 MS. CAMPBELL: Footnote 1.

23 THE COURT: Footnote 1.

24 (A PAUSE.)

25 THE COURT: And say, say what you said again about Mr.

1 -- well, that wouldn't be Mr. Bank -- Ms. Pinnock, the
2 question you were referring to in cross-examination of

3 **Minor**

4 MS. CAMPBELL: It was in my direct examination.

5 THE COURT: Your direct? All right.

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: Tell me what you're referring to.

8 MS. CAMPBELL: I asked him, and we can go back and
9 look at it, Your Honor. I recall -- maybe I did this in my
10 sleep, but I recall asking him the question did you tell
11 your doctors who did this to you, and he said yes, or what
12 happened to you. He said yes. I believe that was in my
13 direct examination of the child.

14 And further, Your Honor, on her cross-examination she
15 followed up, I believe, on some type of question in which
16 she elicited the response from him that Shane is my mom's
17 ex-boyfriend.

18 THE COURT: Well, it is -- and of course that's part
19 of the history, but is -- I know how to say this when I'm
20 not in a robe in court, so let me think of how to say it,
21 and I'm very seldom not in a robe and not in court, I might
22 add.

23 As part of his diagnosis, does the doctor -- I don't
24 mean does he not really care, but does he care who the
25 perpetrator is to confirm his diagnosis? Are y'all, y'all

1 just offering this as separate and distinct ---

2 MS. CAMPBELL: This is separate and distinct.

3 THE COURT: --- from the history?

4 MS. CAMPBELL: --- from the history, and I think
5 defense counsel and I both agree that what he said happened
6 to him, of course, is under the 804 ---

7 THE COURT: Yeah, it's just who the perpetrator was.

8 MS. CAMPBELL: It's who the perpetrator was, and his
9 identity is the only thing, Your Honor, we feel like comes
10 in now that he has testified, and he also testified that
11 he's told the doctors who did this to him. I'm just
12 quoting the case.

13 THE COURT: Yes, ma'am. Well, and this case is,
14 number one, we have a fact that testimony is hearsay:

15 The fact that the testimony is hearsay is
16 unimportant if the declarant testifies and is
17 available for cross-examination.

18 Anything further, Solicitor?

19 MS. CAMPBELL: No, sir.

20 THE COURT: Anything further, Mr. Bank?

21 MR. BANK: No, sir.

22 (A PAUSE.)

23 THE COURT: All right, I don't think -- here's my
24 ruling. Reginald did testify that he told the doctor who
25 the perpetrator was. He did not testify in front of this

1 jury as to who it was he told the doctor that was. So,
2 that's not in the record. I will allow the doctor to
3 testify that the victim told the doctor who the perpetrator
4 was, but he may not testify as to who [Minor] told
5 the doctor that was because that's not in evidence.
6 That's, that's, that's not that in evidence. That's,
7 that's -- I realize he was subject to cross-examination,
8 but he didn't testify fully and completely as to who he
9 said the perpetrator was. All right.

10 MS. CAMPBELL: Yes, Your Honor, and then he will talk
11 about what injuries [Minor] described happening.

12 THE COURT: Of course.

13 MS. CAMPBELL: Okay.

14 THE COURT: He can testify that he told him, [Minor]
15 told him who [Minor] says did it.

16 MS. CAMPBELL: He just can't say ---

17 THE COURT: He can't testify who that was because
18 [Minor] didn't, [Minor] didn't testify to that.

19 MS. CAMPBELL: Okay.

20 THE COURT: That makes sense to me.

21 MS. CAMPBELL: Thank you.

22 THE COURT: Anything further? I'm going to take a
23 short recess. You can talk with your doctor as far as
24 that's concerned.

25 Anything further, Mr. Bank?

1 MR. BANK: Not at this time.

2 THE COURT: All right. Thank you. Let's take about
3 ten minutes before we bring the jury in. Thank you.

4 (OFF THE RECORD.)

5 THE COURT: Bring in the panel, please.

6 (THE JURY ENTERS AT 10:52 A.M.)

7 THE COURT: Good morning, ladies and gentlemen of the
8 jury. Again I apologize for the delay. It is very
9 difficult, perhaps y'all think impossible, for me to manage
10 your time. It's very important, very important to me. I
11 realize y'all are not volunteers, that y'all are the last
12 true draftees in America at this point in our history, and
13 it's not the fault of the parties. It's just very hard to
14 predict what may be occurring within a particular period of
15 time and how long it's going to take, but I appreciate your
16 focus and attention and your dedication to our system of
17 justice.

18 With that being said, I do have a few other questions.
19 I typically do this with all jurors. Has any member of the
20 jury panel read, watched, or heard any news accounts about
21 the case, should there have been any? If so, please stand.

22 Has any member of the jury done any research on any
23 issues presented or any parties involved in the trial of
24 the case or any issues you think might be important in
25 deciding the case? If so please stand.

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1 Has any member of the jury had any, had any
2 conversations or discussions with anyone, including your
3 family members or any others, fellow jurors, about the
4 case? If so, please stand.

5 Has there been any discussions whatsoever, comments or
6 otherwise, about the case by any member of the jury panel
7 while in your jury room? If so please stand.

8 All right, no one stands in response to any of those
9 questions. Thank you. Thank you very much.

10 Solicitor, you may call your next witness.

11 MS. CAMPBELL: May it please the court? The state
12 calls Dr. Richard Cartie.

13 THE COURT: All right, Doctor, if you'd come around
14 and join us, please.

15 RICHARD CARTIE, BEING DULY SWORN,
16 TESTIFIES AS FOLLOWS:

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

19 WITNESS: My name is Dr. Richard Cartie.

20 *VOIR DIRE* EXAMINATION BY MS. CAMPBELL:

21 Q. Dr. Cartie, where are you employed?

22 A. Currently I am the director of Pediatric Critical Care
23 Services for the Joseph M. Still Burn Center in Augusta,
24 Georgia, located at Doctors Hospital.

25 Q. And as the director of that unit, what, what do your

1 duties include?

2 A. So, I take care of both critically ill and non
3 critically ill children that are admitted to our burn
4 center for the duration of their burn care. I manage their
5 medical therapy. I have some procedural responsibilities,
6 and I work closely and directly with the surgeons as they
7 provide their wound care.

8 Q. Can you tell this jury a little about your education
9 and training?

10 A. Sure.

11 Q. In the medical field?

12 A. I graduated from the University of Rochester with an
13 undergraduate degree in biology and psychology in 1991. I
14 remained there for my medical degree at the University of
15 Rochester and graduated with an MD in 1995. I then went on
16 to my pediatric residency at East Carolina University in
17 Greenville, North Carolina. Completed my three years of
18 pediatric residency there, and then went on to do a
19 critical care fellowship in pediatrics initially at
20 Georgetown University in Washington, DC, and transferred
21 part way through to Children's Hospital of Los Angeles in
22 Los Angeles, California, and completed my fellowship in
23 2001.

24 Q. And are you board certified in any areas?

25 A. I am. I am board certified in pediatrics and

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1 pediatric critical care.

2 Q. And how long have you been at the burn center?

3 A. I have been at the burn center for nine and a half,
4 almost ten years.

5 Q. In pretty much the same role?

6 A. Pretty much the same role. I have recently been --
7 I've taken over the inpatient pediatric services for just
8 general pediatric care but for the, for the most part I do
9 predominantly burns.

10 Q. And have you been qualified before as an expert in
11 either critical care or burn treatment?

12 A. I have.

13 Q. In what areas have you been qualified before?

14 A. I've been qualified in court as an expert witness in
15 pediatrics, pediatric critical care, pediatric burn care,
16 pediatric burn critical care, child abuse care, and child
17 abuse critical care.

18 Q. And is a critical care doctor, is that also known as
19 an intensivist sometimes?

20 A. Yes.

21 MS. CAMPBELL: Your Honor, at this time we'd offer him
22 as an expert in critical care with expertise in burn
23 treatment.

24 THE COURT: Critical care and what, Solicitor?

25 MS. CAMPBELL: Specialty in burn treatment for

1 purposes of this case.

2 THE COURT: Mr. Bank?

3 MR. BANK: We don't have an objection to that specific
4 qualification.

5 THE COURT: All right. Thank you.

6 Madame Forelady, ladies and gentlemen of the jury,
7 again normally a person cannot give opinion testimony.
8 Normally when a person testifies, they must testify as to
9 either what they saw, heard, sensed by smell, or something
10 of that nature. One of our, one of our senses.

11 However, there is an exception when someone is
12 qualified because of education, training, experience, or
13 otherwise in a particular art, science, field, or
14 profession. This -- they are permitted to testify as
15 experts in that field if the court qualifies them that way.
16 This witness, Dr. Cartie, will be qualified in the areas
17 of ---

18 Again, Solicitor, what areas?

19 MS. CAMPBELL: As a critical care doctor, an
20 intensivist, whose specialty is in the treatment of burns.

21 THE COURT: All right, in those area as the solicitor
22 stated before you to give opinion testimony in those areas
23 and the basis for holding those opinions. That does not
24 mean that you must accept the opinions, but it is evidence
25 for you, the jury, to use in any way you deem fit and

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1 appropriate.

2 Thank you. Thank you very much, Solicitor. You may
3 continue.

4 DIRECT EXAMINATION BY MS. CAMPBELL:

5 Q. And, Doctor, is it unusual for you to get cases
6 referred to your burn unit from South Carolina, Georgia, or
7 different states?

8 A. No.

9 Q. And, in fact, you've had cases referred from Columbia,
10 medical university in Charleston, all over the state. Is
11 that correct?

12 A. That is correct.

13 Q. As well as different places in Georgia and other
14 states?

15 A. We cover a large majority of the Southeast U.S.

16 Q. I want to turn your attention to the evening of
17 October 7th. Did you become aware that a child was being
18 transferred for your care?

19 A. I was made aware, yes.

20 Q. From Columbia, and what was the name of that child?

21 A. The child's name was Reginald Walker.

22 Q. And approximately what time was it when you first came
23 in contact with him that evening?

24 A. So, the child was admitted to our institution just
25 after midnight from the 7th to the 8th October. I saw him

1 somewhere around 1 a.m. at the time of his admission to our
2 burn unit.

3 Q. How did he present when you first came in contact with
4 him?

5 A. So, he was initially was brought in through what we
6 call our debridement room, which is our initial receiving
7 room where we are able to initially stabilize children and
8 adults that have suffered significant burn injury, and then
9 move them to their inpatient room, whether it's on the
10 regular floor or in the intensive care unit.

11 Q. As part of your information gathering when you're
12 first examining a patient such as this, is it important for
13 you to get some kind of a history?

14 A. It is.

15 Q. Why is that important, sir?

16 A. We utilize the history to find out, especially in
17 burns, what the causative agent was. That will help us
18 give an initial idea of how deep the burns will or won't
19 be. It will give us an idea whether we need to worry about
20 other types of injuries. Obviously a house fire will lead
21 us to have markedly different concerns verses a scald
22 injury.

23 Q. And when you say a scald injury, what does that mean?

24 A. So, a scald injury is a result of a, a hot liquid
25 being exposed to the skin.

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1 Q. And in this case, what type of injuries did you
2 observe?

3 A. So, Reginald presented with the history of having been
4 burned with hot water, and his injuries upon observation
5 were consistent with a scald type of injury.

6 Q. Did you get a history from the mother of the child?

7 A. I did not.

8 Q. Was that gotten by other people?

9 A. Other, other physicians and staff were able to get a
10 history from the mother.

11 Q. Did you get a history from the child himself?

12 A. I did get a history from the child.

13 Q. And what information was he able to give you?

14 A. So, the child reported to me that he had been put into
15 the shower and sprayed with hot water as a form of
16 punishment for ---

17 MR. BANK: Objection, Your Honor.

18 THE COURT: Rule? What rule?

19 MR. BANK: Hearsay at to -- can we approach, Your
20 Honor?

21 THE COURT: Yes. Yes, sir.

22 (OFF-THE-RECORD BENCH CONFERENCE.)

23 THE COURT: Thank you. Thank you, Mr. Bank.

24 BY MS. CAMPBELL:

25 Q. And, Doctor, did he -- you can't say because of the

1 rules. Who, who, did he tell you who did it to him? You
2 can't say.

3 A. He did.

4 Q. Did he indicate he had been sprayed with hot water?

5 A. He did.

6 Q. And did he also indicate that he had received any
7 other type of possible injury to his person?

8 A. He stated that he might have been hit in the head. He
9 wasn't sure whether it was from a hand or fist or whether
10 it was from the shower, but he did report he may have been
11 hit in the head.

12 Q. And as a result of the reports from the hits to the
13 head, did you do any further follow up to check on that?

14 A. Yes. A CT scan was done of the head which was
15 negative for any injuries, as well as a skeletal survey
16 which showed no fracture.

17 Q. So, the hits did not actually break any bones?

18 A. That is correct.

19 Q. That night, can you tell the jury what treatment was
20 given to the child when he came in contact with you?

21 A. So, the child had initially a burn that was
22 approximately 40 percent of what we call the TBSA. That's
23 the total surface area. So, 40 percent of his skin was
24 involved with a burn. The burns appeared to be second
25 degree, possibly deeper, and he was given extensive

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1 aggressive IV fluids in order to maintain his circulating
2 blood volume.

3 When you have a large burn such as that, there's a lot
4 of fluid that leaks out both from the burns themselves as
5 well into the tissue just from the injury itself. There's
6 a normal amount of swelling that takes place that we have
7 to compensate for with excessive fluid administration.

8 He also received pain control in the form of both IV
9 and medicines to be given by mouth, and he was -- he had
10 some labs initially done. He had a central line placed,
11 which is a large IV that goes into a larger blood vessel
12 that allows for more rapid fluid administration, as well as
13 the ability to draw labs without having to repeatedly stick
14 the child with a, with a needle.

15 Q. After this initial assessment and everything, were
16 other doctors also consulted as to surgical repair?

17 A. The burn surgical service saw him first thing in the
18 morning to evaluate him for his operative procedures.

19 Q. Did he require surgery as a result of the burn to his
20 body?

21 A. He required multiple surgeries throughout the course
22 of his hospitalization and beyond that.

23 Q. And during the time that he was in -- how long was he
24 in the hospital with you?

25 A. He was in the hospital for almost a month. I believe

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1 he was discharged on the 4th of November or the 5th.

2 Q. And during that time, he was in your care?

3 A. He was.

4 Q. Doctor, the injuries that he received, how would you
5 characterize them?

6 A. Severe.

7 Q. And if he had not receive the treatment that I'm
8 getting ready to talk about, could it have cost his life?

9 A. These burns, given their size, involvement, and depth,
10 would have been life-threatening without any treatment.

11 Q. You mentioned that the next morning he saw the
12 surgical team. Did he undergo a number of surgeries over
13 the next month?

14 A. He did.

15 Q. And I believe it was a total of seven different
16 surgeries?

17 A. I believe that's correct.

18 Q. Can you describe to the jury, once the surgeries were
19 performed, what the findings were and kind of how those
20 were treated and how it progressed?

21 A. So, he first went the next day, I believe, later in
22 the afternoon to have his burns initially cleaned off -- we
23 called debrided -- and covered with a temporary skin
24 covering. The burns are cleaned in the operating room
25 under sterile circumstances. The debridement involves

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1 basically scraping off the dead skin and cutting away any
2 tissue that also seems to be nonviable or dead. The burns
3 are then covered with a skin substitute, typically
4 processed cadaver skin or pigskin or a biological
5 substitute. Most commonly it's cadaver skin, and all that
6 does is act as a temporary scab, if you will, to decrease
7 the amount of fluid that leaks out, decreases the risk of
8 infection, and also can decrease pain significantly just by
9 having that open tissue covered. The burns are then
10 dressed, and we continue with the care, the resuscitation,
11 the fluids, the nutrition as burn wounds continue to evolve
12 is the term we use. When you have burns that are second
13 degree, they will sometimes evolve into a third-degree burn
14 that will require skin grafting in the future.

15 Q. And in this case, you mentioned that -- and you used
16 the word cadaver skin was used to -- as a temporary bandage
17 almost, and that's a ---

18 A. Very much like a temporary bandage.

19 Q. And where you're saying cadaver, that's a dead
20 person's skin?

21 A. That's correct.

22 Q. And that was actually done in this case?

23 A. That is correct.

24 Q. And once that initial assessment was made, what
25 percentage of his body was third-degree?

1 A. So, he wound up with a total of 42 percent of his skin
2 involved once the exact measurements were done in the
3 operating room. Of that 42 percent, 26 percent was a
4 third-degree burn requiring grafting.

5 Q. So, 26 percent of skin required skin grafting?

6 A. That is correct.

7 Q. Is that a significant amount?

8 A. That is certainly what we would consider a good size
9 burn. That would be very much nontrivial. It would be a
10 pretty good size burn.

11 Q. Once he was in your care, did he again have to have
12 multiple surgeries from different parts of his body?

13 A. So, over the course of his hospitalization, he would
14 have had multiple trips back to the operating room to
15 reassess how his skin and wounds were healing. If there
16 were areas that appeared that they were not going to be
17 viable, not going to survive, those areas were cleared and
18 cleaned away. Some of those areas started to heal and form
19 new skin. As his own progresses through the healing
20 process, the tissue starts to improve, and we get to a
21 point where we will consider placing the skin grafts.

22 The skin grafting procedure, we take skin from another
23 part of the body, typically the thigh. The top layer of
24 skin is shaved off, and that layer of skin is used to cover
25 the open wounds where the third-degree burn occurred.

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1 Third-degree burn will not heal on its own. Your skin
2 cells are gone. We have to provide some other source of
3 skin cells in order for that to heal. That procedure was
4 done. I believe he had one additional dressing change
5 procedure to take out some staples after that, but at that
6 point then he had good healing of his skin grafts, and he
7 was progressed to moving towards a discharge time.

8 Q. During the course when he was with you, did he develop
9 any type of disease or bacterial infection that you had to
10 treat as well?

11 A. He was placed on antibiotics to cover for general
12 sorts of infections. I do not believe he had any
13 significant bacterial infection of his wounds or of his
14 other systems.

15 He was on the ventilator for a period of time after
16 his surgery, which would not be unusual given the burn
17 size. Oftentimes the fluids and the extent of the burn
18 necessitate us taking over breathing; it certainly allows
19 us to provide adequate nutrition through a feeding tube.
20 Generally the amount of nutrition you need for the healing
21 process is more than most people would be able to take in
22 on their own. So, the feeding tube allows us to really
23 accelerate the calories we provide to optimize the wound
24 healing process. And then they are allowed to eat once
25 they get off the, the ventilator.

1 Q. And he was on the ventilator for -- it wasn't just a
2 few hours. It was days or weeks?

3 A. He was on, he was on for just about two weeks.

4 Q. You mentioned that his skin grafts luckily in this
5 case healed well, but will he have scars from this?

6 A. All of the areas that were skin grafted will have
7 scarring.

8 Q. And is he still receiving -- and he's still having
9 more surgeries?

10 A. So, the scar management for him will basically last a
11 lifetime. As he grows, as the scars change with time, as
12 he changes with time, there will would need to be
13 additional procedures potentially performed to help with
14 his scars, both from a cosmetic and a functional standpoint
15 for what he is or isn't able to do as he grows.

16 Q. And are there specific areas of the body that are
17 particularly problematic as he grows older and the scar
18 tissue, I don't know, whatever it does?

19 A. So, scar tissue is, is very noncompliant. It doesn't
20 stretch very well. So, any part of the body that has to
21 move on a regular basis such as a joint will be more prone
22 to problems when you have scars that restrict the motion of
23 that joint.

24 In children this is especially problematic because
25 children will adapt to a new normal much quicker than an

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1 adult. If you have a child lose a pinky, they will be able
2 to write the following week; they adapt very quickly.
3 Adults, if you or I were to lose part of our pinkie, our
4 handwriting would be horrible for the next six months until
5 we were used to it. So, we actually intervene with scar
6 management, whether it be with surgery or laser therapy, to
7 prevent scars from restricting the normal motions of the
8 child, especially as they grow and as they develop and as
9 they do more.

10 Q. In this case, this child, did you become aware that he
11 was somewhere on the high functioning of the autism
12 spectrum?

13 A. He, he was reported to us at the time of admission
14 that he had a diagnosis of autism. Through the course of
15 his hospitalization, his behavior, his activities, and his
16 verbalization led us to believe that he certainly had some
17 behavioral issues, some of which was obviously brought on
18 by much of the medications and pain that he had to deal
19 with through his hospitalization. But that he also
20 potentially had some mild developmental issues, but for the
21 most part he was a well-functioning child that seemed to be
22 reasonably appropriate for his age as far as his
23 development goes.

24 Q. And during the course -- you also mentioned that part
25 of your role is the pain management. What type of pain

1 does a burn like this cause?

2 A. So when the burn initially happens, it is extremely
3 painful. That pain subsides just a little bit after the
4 problem occurs, but when you have open wounds, open
5 blisters, any time those areas are touched, scraped, messed
6 with, it is very uncomfortable, especially in children.

7 Once the burns are covered, the pain does decrease to
8 a great extent, and in general for smaller burns, most
9 children can be managed with just pain medication by mouth,
10 sometimes even as simply as ibuprofen or Tylenol. With
11 larger burns, repeat surgery, cutting away tissue, that
12 results in a lot more discomfort both from the surgical
13 procedures and the repeat nature of the, of the procedures
14 themselves injuring tissue.

15 Q. And during the course of your treatment to this child,
16 did his reaction to pain seem to be the normal range?

17 A. He seemed to respond normally to both what was
18 uncomfortable and when we would provide pain medication.

19 Q. And during your treatment, had you noticed he'd been
20 particularly stoic or didn't have a reaction to pain, you
21 would have noted that?

22 A. It would have been, it would have been noted, correct.

23 Q. And his responses seemed within the normal pain range
24 as any child that had been burned like this?

25 A. He seemed very appropriate for the child that I had

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1 taken care of with this size of an injury.

2 Q. Doctor, in your experience is it possible -- or your
3 expertise -- to get burned like this, say, in a bathtub or
4 a shower, say?

5 A. So, the burns from this child -- the burns on this
6 child were predominantly confined to his upper body. He
7 has burns to his hands, his arms, his torso, both front and
8 back, as well as his scalp, his neck, and some of his face.
9 The central portion of his face around his forehead, his
10 eyes, his nose, those seemed to be relatively spared. The
11 deeper burns seems to be in the upper part of his torso,
12 his shoulders, his neck, his chest, and his upper back.

13 Q. And specifically did you note burns to the back of the
14 hands that were significant?

15 A. The burns to the back of his hands were also deep.

16 Q. And is it able -- depending on how hot the water is,
17 these are able to be sustained by a shower?

18 A. That is correct.

19 Q. And can you say with any certainty exactly how long he
20 would've had to have been in the shower with the water?

21 Does it depend on the temperature?

22 A. It depends on both temperature and time for how deep
23 burns are.

24 Q. Let me ask you this. Would the child have stayed
25 under -- I'll get back to that. Would the child have

1 reacted to get away from the water?

2 MR. BANK: Objection, Your Honor. Asks for what the
3 child would do.

4 THE COURT: Excuse me?

5 MR. BANK: Speculation, Your Honor.

6 THE COURT: If, if it is in your area of expertise,
7 Doctor, you may answer that question as a medical doctor,
8 as a pediatrician, and as having been offered as an expert.

9 BY MS. CAMPBELL:

10 A. Can you repeat?

11 Q. Yes. As far as these being self-inflicted, in your
12 opinion is that possible with these burns?

13 A. That is not possible.

14 Q. And why is that, Doctor?

15 A. A child, a, a relatively normally responding child
16 upon contact with a hot surface -- liquid, flame -- would
17 immediately attempt to get away from that source of pain.
18 This child would -- was certainly a, a normal, functional
19 seven-year-old at the time and was fully capable of getting
20 himself out of a -- of an uncomfortable or painful
21 situation such as hot water.

22 Q. And in your opinion, how would the water have
23 descended or gotten on him as far as your observation of
24 the injuries both to the back of hands, the face, and
25 everything around?

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1 A. I see no way for him to have sprayed himself with hot
2 water to the extent and distribution that his burns were.
3 This would have been done by someone else, or he was put in
4 a situation which he was not able to get away from the hot
5 water.

6 MR. BANK: Your Honor, we just renew our objection.

7 THE COURT: All right. So noted. Overruled.

8 BY MS. CAMPBELL:

9 Q. And do you have any opinion as far as how the facial
10 area was spared?

11 A. It appears that he was able to get his face covered or
12 protected somehow with either his hands, his forearms, or
13 some way to prevent the water from contacting it to any
14 great extent.

15 Q. And the backs of his hands also sustained severe
16 injuries?

17 A. They did.

18 Q. In getting the history and considering what you
19 observed as far as what happened to him, was the burns you
20 observed consistent with the history the child gave you?

21 A. So, the burns that we saw were consistent with what
22 the child reported to us: that he was sprayed in the shower
23 with hot water.

24 Q. And do you have a medical diagnosis that you came to
25 in this case, sir?

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1 MR. BANK: Subject to our prior objection, Your Honor,
2 and an additional objection as to the scope of what he's
3 qualified as at this point.

4 THE COURT: Well, he, he's a medical doctor. So
5 noted. Overruled.

6 BY MS. CAMPBELL:

7 A. The child sustained a 42 percent second and
8 third-degree burn from the, from the result of child abuse.

9 Q. Doctor, while he was -- did you also receive some
10 photographs of his burns that were initially taken at
11 Richland Memorial Hospital?

12 A. I did.

13 Q. And in addition, were there additional photographs
14 taken once he was in your unit?

15 A. We had extensive photographic pictures taken during
16 his hospitalization.

17 Q. And I want to show you what's been marked as State's
18 Exhibits -- excuse me -- 17 and 18, 19 and 20, 21, 22, 23,
19 and 24 and just ask if you can look at those first.

20 (A PAUSE.)

21 Q. Do you recognize those photographs?

22 A. I do.

23 Q. And are those photographs of the wounds that you
24 observed when he was in your unit?

25 A. Those are photographs taken of Reginald when he was in

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1 the operating room for his initial debridement procedure in
2 which the burns were cleaned off and then covered with the
3 cadaver skin.

4 MS. CAMPBELL: Your Honor, at this time we would offer
5 them into evidence, I believe without objection.

6 MR. BANK: Without objection.

7 THE COURT: That's 17 through 24?

8 MS. CAMPBELL: Yes, sir.

9 THE COURT: State's 17 through 24 in evidence without
10 objection.

11 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
12 STATE'S EXHIBIT NUMBERS 17 THROUGH 24.)

13 BY MS. CAMPBELL:

14 Q. And taking them first, 17 and 18, how typically are
15 the wounds treated in -- when they're on both sides when he
16 goes in the operating room?

17 A. When you have both front and back involvement,
18 depending on the extent of how much the back is involved,
19 oftentimes it will necessitate the child being rolled over
20 onto their belly during part of the surgical procedure.
21 The back is then cleaned off, covered, and the child then
22 has partial dressings put on, rolled back over onto his
23 back so that they can continue with the front half of the
24 debridement procedure.

25 Q. I show you what's been marked as State's Exhibits 23

R. CARTIE - DIRECT EXAMINATION BY MS. CAMPBELL

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1 and 24. Do you recognize those?

2 A. Yes.

3 Q. And what do those show, sir?

4 A. Those are views of Reginald while he is face down in
5 the operating room. His burn wounds have been cleaned off
6 and covered with a cadaver skin substitute. It does appear
7 that they have not done his -- I'm, I'm sorry, they had --
8 they also have placed onto his scalp and the back of his
9 neck as well. The cadaver is stapled into place, covering
10 the open burn wounds.

11 Q. And there appears, what appears to be a black netting
12 on that?

13 A. That actually is the cadaver skin. It is what we call
14 meshed. It is basically perforated through the actual skin
15 and stretched out just a bit so it does look like, almost
16 like a fine fishnet stocking. That allows the cadaver skin
17 to cover, protects the wound, as well as allow drainage of
18 fluid to come through and be absorbed by the dressing
19 material.

20 Q. I now show you State's Exhibits 19 and 20. What areas
21 do those show?

22 A. Those show the upper part of an arm, I believe. No,
23 I'm sorry. Upper part of a leg and the forearm and hand of
24 the right arm.

25 Q. Show you what's been marked as State's Exhibits Number

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1 17 and 18. What does that show?

2 A. So, these are pictures of an overhead view of Reginald
3 in the operating room. He has been placed on the
4 ventilator, the breathing machine in the operating room
5 that provides the general anesthesia. He has a tube in
6 place in his airway, and they have not yet cleaned off any
7 of the burns from a dead skin standpoint, and you are able
8 to see the burned areas of his upper torso and his arms up
9 into his neck.

10 Q. And then State's Exhibits 21 and 22, what areas do
11 those show?

12 A. This is -- those are a view of his neck looking
13 upwards towards his face, as well as a right-sided view of
14 his upper torso, arm, and the side of his -- the right side
15 of his face. Again, these are before any cleaning of the
16 dead skin has been performed and before any skin covering
17 has been placed.

18 Q. You mentioned that when you were doing -- that there's
19 an area where you said typically the thigh where the skin
20 would be taken and then used is to graft other areas when
21 the skin grafts are finally able to be done?

22 A. That's correct.

23 Q. Is that painful?

24 A. Typically once we get to the point of the skin graft,
25 most patients will actually complain that the place where

1 you take the skin from hurts more than where you place the
2 skin. The skin -- the donor site where the skin is donated
3 from very much feels like we described it as if you fall
4 off of your bike and wind up scraping the knee or a leg,
5 that that's the level of the abrasion and the depth of the,
6 of the skin that we take.

7 Q. And the skin grafts in this case, those weren't able
8 to be done right away?

9 A. No. You have to wait for the tissue to go through
10 some of the healing process. New blood vessels have to
11 move into that burned area. There has to be what we call
12 granulation tissue, which is a fancy name for new, healthy
13 tissue being formed where those burns were. And once that
14 healing process is along its way, we then will place the
15 skin graft and that allows the skin graft to we call take
16 and heal.

17 Q. Doctor, finally, this is something he will have to
18 deal with with surgeries, laser, other types of surgeries
19 for the rest of his life?

20 A. That is correct.

21 Q. And the scars, will they ever go away?

22 A. The scars may minimize with time, but they will never
23 go away.

24 Q. So, he's disfigured for life?

25 A. There -- these scars can be very disfiguring, yes.

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1 MS. CAMPBELL: Thank you. I don't have anything
2 further.

3 THE COURT: Thank you, Solicitor.

4 Mr. Bank.

5 MR. BANK: Thank you, Your Honor. May it please the
6 court?

7 CROSS-EXAMINATION BY MR. BANK:

8 Q. Dr. Cartie, how are you today?

9 A. Good.

10 Q. Now before we get to the burns, I want to address
11 something very quickly about the potential injury to
12 Reginald's head that was mentioned on direct examination.
13 Do you recall that, sir?

14 A. Yes.

15 Q. I understand on direct there was some issue whether
16 there was a fracture. Was there any injury that was found
17 with the head?

18 A. There was no head injury found, whether it be
19 intracranial inside his head or a fracture.

20 Q. And again it was a little unclear what exactly hit the
21 head?

22 A. We did not have a good story. Whenever we have a
23 situation like that, we will typically check to make sure
24 that there are no other injuries.

25 Q. All right. Now let's talk about the temperatures and

R. CARTIE - CROSS-EXAMINATION BY MR. BANK

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1 the times needed to cause burns like these. What is the
2 typical -- maybe this may -- me and you have spoken before,
3 haven't we?

4 A. That's correct.

5 Q. What is it -- I think you explained to me once,
6 something, a hot tub temperature or typical. Can you go
7 through that with the jury?

8 A. So, whenever we talk about burns, there are three good
9 reference points to utilize for burn injury. The first one
10 I use is 109, 110 degrees. That's the highest a home hot
11 tub will go up to if you crank it all the way up. And
12 anyone who's ever tried to get into a hot tub that's
13 cranked all the way up, you better really take your time
14 because it's really hot and really uncomfortable. I use
15 that number because that's where your pain fibers start to
16 let you know that something is too hot. That will not
17 cause a burn, but it will let you know you're getting up
18 there in the temperature.

19 The next temperature I think about is about 135
20 degrees. In 135 degree water, you can have a second or
21 third-degree burn, again depending on the amount of time
22 you are exposed to that temperature. In an infant or a
23 young, small toddler, the skin is thinner than an older,
24 tougher adult, and so they will have a burn that occurs
25 more quickly than an adult.

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1 At 135 degrees it will take an adult about thirty
2 seconds to get significant tissue destruction, so a second
3 to third-degree burn. In a infant to a toddler, it will
4 take about ten, possibly fifteen seconds.

5 And then the last number I use is right around 165
6 degrees. 165 degrees will result in a second or
7 third-degree burn in an adult or a child in about half a
8 second.

9 Q. Thank you. Do you remember discussing with me a
10 temperature around that range of actually 155 degrees?

11 A. 155, 160, it's a near instantaneous burn once you get
12 up that high.

13 Q. And when we're talking about these numbers being
14 between 135 and 155, there's no precise science to when the
15 exact science -- or when the exact second happens. Is that
16 fair?

17 A. They have actually done pretty well replicated studies
18 as to what temperature, what depth tissue destruction
19 starts to take place.

20 Q. All right. So, once we get towards that 150, 155
21 degree temperature, we're talking about it happening very
22 quickly?

23 A. It will happen very quickly, yes.

24 Q. Would it happen quickly enough that if you got hit
25 with the water, just because you were able to jump out

1 doesn't mean you're not going to get burned?

2 A. Ask the question again.

3 Q. Sure. If we're talking about the temperatures that
4 cause a split-second burn if the water hits you, just
5 because you can jump immediately afterwards doesn't mean
6 the burn is then avoided, right?

7 A. That is correct. That at that high temperature, brief
8 contact can result in a second-degree burn.

9 Q. And an adult is also subject to getting burns with hot
10 water. Is that right?

11 A. That is correct.

12 Q. The only difference is it might take a little bit
13 longer because of the difference in the strength of the
14 skin?

15 A. Adults can take a little bit longer. That is correct.

16 Q. But they still are capable being burned in second to
17 third degree -- with second and third-degree burns with
18 water temperatures in the same way that a child would be
19 burned?

20 A. That is correct.

21 Q. The injuries would be similar if they -- if the second
22 or third-degree burn was actually achieved?

23 A. The injuries would be similar, yes.

24 Q. It would be noticeable?

25 A. They would also be noticeable, yes.

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1 Q. Now, I want to talk about this diagnosis that we --
2 you were asked about on direct. The three things that you
3 look for in diagnosis, and correct me if I'm wrong, the
4 first thing you look at is the physical evaluation. Is
5 that right?

6 A. That's part of our diagnostic process.

7 Q. A second part is the lab evaluation?

8 A. That is correct.

9 Q. And then a third part with coming up with a diagnosis
10 is history?

11 A. That is correct.

12 Q. And when you say history, does that mean you're taking
13 into account what witnesses may have told you?

14 A. When we, when we obtain a history, we will often
15 obtain that from multiple different sources depending on
16 availability of resources. That may include but it's not
17 limited to the patient, the patient's caregivers, people
18 who were with the patient at the time, other medical
19 professionals who obtained additional history at the time.

20 Q. And without the history here, you would be unable to
21 tell whether this happened as an accident or whether it
22 happened intentionally?

23 A. That is correct.

24 Q. Now finally, Doctor, I want to talk about -- there's
25 been some discussion about how much time it took Reginald

1 to get to Augusta. Is that fair?

2 A. Okay.

3 Q. Let me rephrase that question. Is it -- obviously
4 there was some gap in time between when Reginald got burned
5 and when you saw him in Augusta?

6 A. That is correct.

7 Q. Is the understanding there may have been a delay from
8 the home to the original emergency room?

9 A. I don't believe I documented that anywhere in my
10 notes. I seem to recall it, but again I ---

11 Q. That's ---

12 A. --- I don't know that for sure.

13 Q. That's fair, but there obviously then was a second
14 delay just basically having to get to Columbia -- to
15 Augusta is a typical delay that you see?

16 A. That is correct.

17 Q. Is it fair to say, Doctor, that any delay that was
18 created before he got to you did not affect the physical
19 treatment for injuries that Reginald received?

20 A. The, the delay, provided the delay is not significant,
21 it generally does not affect our treatment.

22 Q. And is a matter of a couple hours something that's
23 significant?

24 A. In burns such as this, I would consider that not a
25 significant delay.

R. CARTIE - REDIRECT EXAMINATION BY MS. CAMPBELL

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1 MR. BANK: Thank you, Dr. Cartie.

2 Beg the court's indulgence.

3 THE COURT: Of course.

4 (A PAUSE.)

5 MR. BANK: That's all the questions I have. Thank
6 you, Doctor.

7 THE COURT: Thank you, Mr. Bank.

8 Redirect, Solicitor?

9 MS. CAMPBELL: Yes, sir.

10 REDIRECT EXAMINATION BY MS. CAMPBELL:

11 Q. When we're talking about a delay, when he's being
12 transported from Richland Memorial, he's being treated?

13 A. That's -- he is under the care of medical providers
14 that are instituting therapies.

15 Q. And as far as the two-hour delay between when the
16 burns occurred and when he was presented at the initial
17 hospital, what kind of pain would he have been in?

18 A. Generally he would have been quite uncomfortable. He
19 would've been -- given the size of the burns, I would put
20 in the category of fairly miserable.

21 Q. He also asked you about with no history of the
22 accident. When we're talking about an accidental burn that
23 could do this type of damage, with type of accident are you
24 talking about?

25 A. So, I have certainly seen, you know, large numbers of

1 burns of all different sizes, and a 40 percent
2 unfortunately is not uncommon for me to see. It can be the
3 result of a house fire, clothing catching on fire. In the
4 scald category, I have actually seen burns of this size in
5 both toddlers and older kids. I saw a pair of children
6 who, they tipped over a large cauldron of fasole, which is
7 generally made in very large pots by grandmothers, and it
8 resulted in having, I believe, a 35, 40 percent burn just
9 because of the volume of the water involved. I have seen a
10 toddler pull a freshly made ---

11 MR. BANK: Objection, Your Honor. Are we going to
12 speak of Reginald's burns or ---

13 THE COURT: He's talking about accidents.

14 MS. CAMPBELL: You brought it up.

15 THE COURT: Scalding.

16 A. I have seen a ---

17 THE COURT: Overruled.

18 A. --- toddler pull a large pitcher of freshly made sweet
19 tea down onto herself that resulted in about a 40 percent
20 burn.

21 Q. So, large volumes of liquid we're talking about?

22 A. That's correct.

23 Q. And he also asked you about did you consider the
24 history. Which history did you consider significant in
25 what was told to you between versus -- the burns versus

R. CARTIE - REDIRECT EXAMINATION BY MS. CAMPBELL

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1 what the child told you?

2 A. The, the only history I obtained initially was from
3 the child, which I considered a fairly significant aspect
4 of his history.

5 Q. And again, did anything the defense asked you affect
6 your determination, your diagnosis that this was child
7 abuse?

8 A. No.

9 Q. Did he do this to himself?

10 A. He did not.

11 Q. And as the water comes out of the heat source, be it a
12 shower head or a faucet, as it goes downwards, is the heat
13 going to evaporate as it continues to go downward?

14 MR. BANK: Objection. Outside of the scope, Your
15 Honor.

16 MS. CAMPBELL: This is in his expertise.

17 THE COURT: Overruled.

18 MS. CAMPBELL: Thank you.

19 BY MS. CAMPBELL:

20 A. Generally water will cool as it moves away from its
21 heat source.

22 Q. And his injuries were from the top of his head all the
23 way down his back?

24 A. They covered the majority of his upper body, back, his
25 -- the front of his torso, his chest, his upper arms, and

1 his scalp, and the back of his head.

2 MS. CAMPBELL: Thank you. I don't have anything
3 further.

4 THE COURT: Recross?

5 MR. BANK: No more questions for Dr. Cartie. I do
6 have a matter of law.

7 THE COURT: All right. Thank you. Thank you very
8 much. You may step down.

9 (THE WITNESS EXITS THE STAND.)

10 MS. CAMPBELL: Your Honor, may he be excused.

11 THE COURT: Any objection?

12 MR. BANK: No objection.

13 THE COURT: Thank you, Doctor. Again, thank you for
14 being with us today. Appreciate your time.

15 A matter of law on this witness?

16 MR. BANK: Concerning his testimony, Your Honor.

17 THE COURT: The next witness? I'm sorry. Step up
18 here for me a moment.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 THE COURT: Thank you. Solicitor, you may call your
21 next witness.

22 THE COURT: State calls Karen Hill.

23 THE COURT: All right, if you'd come around and join
24 us, please.

25 KAREN HILL WARREN, BEING DULY

K. WARREN - DIRECT EXAMINATION BY MS. CAMPBELL

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1 SWORN, TESTIFIES AS FOLLOWS:

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

4 WITNESS: My name is actually Karen Warren. I've been
5 married since then. My maiden name is Hill.

6 DIRECT EXAMINATION BY MS. CAMPBELL:

7 Q. Sorry.

8 A. That's okay.

9 Q. Ms. Warren, where are you employed?

10 A. At Palmetto Health Richland.

11 Q. I'm sorry. I couldn't hear.

12 A. Palmetto Health Richland.

13 Q. And what do you do there?

14 A. I am a transport nurse.

15 Q. And as a transport nurse, what do your duties include?

16 A. We transport patients. Most of the patients that we
17 transport are bring -- we bring into the hospital. It's
18 neonatal and pediatric intensive case patients. We also
19 transport some patients out of the hospital if it's a
20 treatment we don't provide like heart children or burns.

21 Q. And specifically back on October the 7th of 2015, were
22 you working that evening?

23 A. I was.

24 Q. And did you have an occasion to come into contact with
25 a young man named Reginald Walker?

1 A. I did.

2 Q. And tell the jury how you came in contact with him and
3 what you were doing that night.

4 A. Our pager went off. We were told we had a burn
5 patient that needed to be transported to Doctors Hospital
6 in Augusta, so we went to pick the ER to him up. We, we
7 went there. We did our, our normal duties and load them in
8 the ambulance, then drove him to Augusta where they assumed
9 patient care there.

10 Q. And what was his condition when you first came in
11 contact with him?

12 A. He was burnt. He was -- he had some facial trauma,
13 too. I don't remember the extent; I did not chart that.
14 He was very upset. As far as the extent of his burn, I did
15 not visualize them. He was already wrapped.

16 Q. Okay. He was wrapped or bandaged?

17 A. He was wrapped, yes, in dressings already.

18 Q. And that was done before you got there by personnel in
19 the ER?

20 A. Correct.

21 Q. And once you made contact with him, where, if
22 anywhere, did you take him?

23 A. We took him -- we are in the ER, so we started in the
24 ER, and then we brought him out to the ambulance bay. We
25 loaded him in our ambulance and then transported him to

K. WARREN - DIRECT EXAMINATION BY MS. CAMPBELL

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1 Augusta from there.

2 Q. And once he was in the ambulance, what was his
3 demeanor like? What was his condition as far as...

4 A. He was very upset when we were in the ambulance; he
5 was very distraught. He was yelling for his mom.

6 Q. And did he appear to be still traumatized from the
7 extent of his injuries?

8 A. Yes.

9 Q. And during that time, did he say anything to you about
10 what had happened?

11 MS. PINNOCK: Objection, Your Honor, as hearsay.

12 A. I ---

13 THE COURT: Wait, wait just a minute, please.

14 Step up here, Solicitor, Ms. Pinnock.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 THE COURT: Thank you. Thank you, Ms. Pinnock.

17 Overruled.

18 MS. CAMPBELL: Thank you, Your Honor. I apologize.

19 THE COURT: Objection noted.

20 MS. PINNOCK: Thank you, Your Honor.

21 THE COURT: Thank you.

22 BY MS. CAMPBELL:

23 Q. Again, when -- what was his demeanor?

24 A. He was upset and anxious.

25 Q. Okay, and at that point, did he say anything?

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1 A. He did. I actually had written some things on my
2 chart. If I could just read that?

3 Q. You can refer to that and just make sure ---

4 A. Okay.

5 Q. --- you get exactly what he said.

6 A. Okay. I charted at 10:32:

7 Patient was upset after loading onto ambulance --
8 onto transport stretcher, calling for Mom.
9 Quickly calmed down after loading in ambulance
10 and door shut. I told him my name was Karen, and
11 I was going to take care of him until we got to
12 the other hospital, and that he would see his mom
13 soon. He stated ---

14 I didn't catch the name that he said.

15 --- put me in the water. He put me in the shower
16 and kept hitting me. I replied it's okay,

17 Minor You're safe now.

18 Q. And you were saying that to calm him down?

19 A. Yes.

20 Q. Then did you transfer him to Augusta Burn Center?

21 A. I did.

22 Q. And was he turned over to the doctors there?

23 A. He was.

24 Q. And during transport, did y'all give him medical
25 attention as required?

1 A. Yes.

2 MS. CAMPBELL: Thank you. I don't have anything
3 further.

4 THE COURT: Thank you, Solicitor.

5 Ms. Pinnock?

6 MS. PINNOCK: Your Honor, I have no questions. Thank
7 you.

8 THE COURT: Thank you. Thank you very much for being
9 with us this morning. You may step down.

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: Any objection to the witness being
12 excused, Solicitor?

13 MS. CAMPBELL: No, sir.

14 THE COURT: Ms. Pinnock?

15 MS. PINNOCK: No, sir.

16 THE COURT: Thank you again for being with us.

17 All right, Solicitor, you may call your next witness.

18 MS. CAMPBELL: State calls Dr. Lamb.

19 THE COURT: All right, Doctor, if you'd come around
20 and be sworn for us, please.

21 MS. PINNOCK: Your Honor, we would have a matter of
22 law before this witness.

23 THE COURT: All right, Madame Forelady, ladies and
24 gentlemen of the jury, please step to your jury room. Do
25 not discuss the case during this brief recess. Thank you.

1 Thank you very much.

2 (THE JURY EXITS AT 11:52 A.M.)

3 THE COURT: Yes, ma'am, Ms. Pinnock.

4 MS. PINNOCK: Thank you. May it please the court?

5 Your Honor, Dr. Lamb is the witness that we were -- that
6 we, you know, received her information yesterday morning.

7 THE COURT: Yes, ma'am.

8 MS. PINNOCK: We still as of this minute have no idea
9 what kind of opinion she's going to be offering. We have a
10 copy of her medical report that's been provided to us.
11 It's basically a summary that she performed a physical
12 examination on [REDACTED] Minor and she came to a
13 conclusion. She performed a physical exam, reviewed the
14 pictures from the Augusta Burn Center, and then put a
15 medical diagnostic conclusion in her report. That is the
16 only -- that is what I assume she's going to be offering an
17 opinion on. But as far as the details, Judge, we received
18 the medical reports and the CV yesterday. You know,
19 there's been no talk, like I just said, from the
20 solicitor's office to us indicating what she's going to be
21 offered to testify about.

22 Another concern of ours, Judge, based on the testimony
23 from Dr. Cartie a few minutes ago, if this witness is going
24 to be called to testify about the same medical diagnosis
25 Dr. Cartie just testified to about being child abuse, we

1 would object to that anyway, any testimony about that in
2 its entirety. She was not a treating doctor. She did not
3 -- you know, there's nothing that she did except the
4 physical exam before the interview at the Assessment
5 Resource Center on November 24, 2015, which is more than a
6 month and a half after the injury happened.

7 So, we would object firstly, first off because we have
8 no information on what she'll be talking about. We do
9 think it was a disclosure violation by the state initially.
10 And secondly, Your Honor, at this point and based on the
11 testimony of the previous medical doctor, it would be
12 cumulative, and I don't see any way that we could overcome
13 any more hurdles with medical professionals being called to
14 testify to their opinion to something as child abuse. I
15 think it would be cumulative testimony. I don't believe
16 that her testimony would -- should get past a 403 analysis.

17 THE COURT: May I see the report you're referring to
18 and the doctor's CV?

19 (A PAUSE.)

20 THE COURT: All right, Solicitor.

21 MS. CAMPBELL: Your Honor, I believe that her opinions
22 are in here. The second page, the top says physical abuse,
23 and the X is next to the burn. In the final page of her
24 report, her diagnosis and conclusions are stated
25 explicitly. In addition to the that, Your Honor, I

1 understand defense counsel spoke to Dr. Lamb yesterday
2 about her findings.

3 THE COURT: There is that. I have, I mean, I have
4 reviewed the report. Under child disclosure of, it is
5 marked on page 2 physical abuse. I don't know what they
6 offered. I take it that's what the solicitor is saying
7 they're offering, Ms. Pinnock. And then under the
8 diagnosis and conclusions on the page 7 of 7, what are you
9 offering? What are you offering, solicitor?

10 MS. CAMPBELL: Your Honor, she is an expert in the
11 area of child abuse pediatrician or a forensic
12 pediatrician. What she does is assess children. This is
13 part of her duties. He was referred to her for her
14 assessment, and she made it, and we're offering it for her
15 diagnosis that is clearly outlined in the two paragraphs of
16 diagnosis and conclusions as far as how these injuries were
17 sustained.

18 THE COURT: Thank you.

19 Ms. Pinnock, and here are your reports back.

20 MS. CAMPBELL: And as far as her being cumulatively,
21 Your Honor, we have not called every doctor, say, from
22 Richland County that saw the child. There's are multiple
23 doctors and surgeons we could have brought in from Augusta.
24 We have limited it to one from each center.

25 Additionally, Your Honor, you know, if they want to

1 stipulate that this is child abuse or infliction by another
2 person, but according to them in their opening argument,
3 they're arguing he did it to himself. It was an accident.

4 THE COURT: Thank you.

5 Ms. Pinnock.

6 MS. PINNOCK: Yes, Your Honor. I'm not going to
7 address the opening argument. That's not what -- the
8 theory the defense put up during opening. I guess I did, I
9 did stop Dr. Lamb in the hall, and I asked what she had
10 been qualified as in the past, and I asked her, you know,
11 what are they going to, you know, what are they going to be
12 asking you. She said I'm going to testify off my report.

13 I don't just think (that covers, you know, well, here's
14 the opinion this person is going to be testifying about.
15 Here is something new we're going to be getting out of this
16 witness. I don't think that covers it. I stopped her in
17 the hallway, and that's the only information that we have.

18 Your Honor, I think even that aside, it still comes
19 back to the second part of my objection, which would be
20 under 403. I understand there's fifty different doctors,
21 medical personnel involved in this case. We had extensive
22 arguments about, you know, the testimony of Dr. Cartie, you
23 know, involving the, you know, medical diagnosis of child
24 abuse. Your Honor did rule on that, and the testimony was
25 provided to the jury. You know, I don't think that the,

1 that the word, you know, cumulative has a certain number on
2 it. You know, our concern with this witness testifying
3 right behind another, you know, medical doctor giving an
4 opinion about it being a child abuse, you know, I don't, I
5 don't want to go back through the entire argument about it,
6 but, you know, our initial position is still our position,
7 Judge. It does, you know, go into the province of what the
8 jury should be deciding.

9 I understand and respect your ruling because that was
10 your ruling. We're not asking you to go back and, and, you
11 know, change that at this point. But I think at this
12 point, the prejudicial nature of the testimony does
13 outweigh any probative value of it under 403 because we --
14 I mean, if they're going to keep parading, you know,
15 doctors in to talk about something being child abuse, I
16 don't see how, how we as a defense for Mr. Johnson have any
17 chance of coming over that hurdle. I think that's where
18 the prejudicial nature does get -- you know, that the bar
19 on that does go higher than any probative value of it. The
20 jury has testimony. They can, you know, they can weigh Dr.
21 Cartie's testimony, you know, any way they want to. It's
22 already there.

23 So, Your Honor, I will, you know, stand on everything
24 that I said before. I don't believe that to be proper for
25 this witness to come in and testify just to having done a

1 medical exam, provided no treatment to the child, you know,
2 type up a report after looking at the photographs from
3 another hospital, and then coming to this medical
4 conclusion that something is child abuse, to then have that
5 information provided to the jury.

6 THE COURT: Thank you. Thank you, Ms. Pinnock.
7 Anything further, Solicitor?

8 MS. CAMPBELL: Your Honor, I'm looking at their
9 opening argument, and they said this was a tragic,
10 unfortunate accident was a quote from her opening argument,
11 and they have brought up the fact that they think that
12 autistic children have a higher level of tolerance for
13 pain.

14 Additionally, Your Honor, this is standard in a case
15 such as this for -- to be referred to the ARC for an
16 assessment, both medically and a forensic interview which
17 was done in this case, and the purpose of that is for Dr.
18 Lamb to be able to testify as far as her conclusions, which
19 are clearly outlined in her report.

20 Again, Your Honor, if they were willing to stipulate
21 that this was an act inflicted upon a child by someone
22 else, we don't have a problem, but their own question and
23 everything they've done is that he somehow did this to
24 himself, and it's just an accident.

25 (A PAUSE.)

1 THE COURT: My view of the report of Dr. Lamb is it
2 indicates to the court, at least, that she made a finding
3 of physical abuse in her diagnosis and conclusions
4 summarize, summarize the medical assessment that she did.
5 In the analysis of the probative value and the prejudicial
6 effect, Rule 403 provides that:

7 Although relevant, evidence may be excluded if
8 its probative value is substantially outweighed
9 by the danger of unfair prejudice. Probative
10 means to or tending to prove or disprove.
11 Probative value is the measure of the importance
12 of that tendency to the outcome of a case. It is
13 the weight that a piece of relevant evidence will
14 carry in helping the trier of fact decide the
15 case. The more essential the evidence, the
16 greater the probative value. Thus, a court
17 analyzing probative value considers the
18 importance of the evidence and the significance
19 of the issues to which the evidence relates.

20 Then in unfair prejudice, as to unfair prejudice:

21 The probative value must be balanced against the
22 danger of unfair prejudice. Prejudice that is
23 unfair is distinguished from the legitimate
24 impact all evidence has on the outcome of a case.
25 Unfair prejudice does not mean the damage to a

1 defendant's case that results from the legitimate
2 probative force of the evidence. Rather, it
3 refers to evidence which tends to suggest a
4 decision on an improper basis. Rule 403 only
5 requires suppression of evidence that results in
6 unfair prejudice, prejudice that damages an
7 opponent for reasons other than its probative
8 value. For instance, an appeal to emotions.

9 In making that analysis and that balance and not, not
10 having -- making the assumption that the doctor would be,
11 would be qualified to testify in that regard, in looking at
12 the report of the doctor -- not saying each and every
13 specific of that report is admissible necessarily -- I do
14 not think the verbal testimony is unfairly prejudicial.

15 It does not -- because as I understand the issues in
16 the case on both sides, not, not addressing all the
17 elements of great bodily injury, is primarily intent. Was
18 it unlawful, was it intentional, or was it not unlawful or
19 not intentional? Was it accidental? And I, I think that
20 is the primary issue. There may be other issues, but that
21 is the primary issue, and that increases the probative
22 value, and it's not unfairly prejudicial because it's not
23 preying on the emotions, this type of evidence. This is
24 sterile medical evidence, and it goes then to the weight
25 and the credibility.

1 All right, anything, anything -- yes, Ms. Pinnock.

2 MS. PINNOCK: Your Honor, I would also at this time
3 object to Dr. Lamb testifying under 702 for the expert in
4 the field of child abuse and based on the case, the
5 *Commander* case.

6 THE COURT: All right, and I would have to listen to
7 -- I don't have to listen necessarily *in camera* -- I will
8 but I don't have to -- to Dr. Lamb's testimony. I think
9 the 702, I think it does assist the jury to have an expert,
10 but I can't rule now if Dr. Lamb is or is not an expert ---

11 MS. PINNOCK: Yes, sir.

12 THE COURT: --- in that regard, and then I certainly
13 have analyzed Dr. Cartie's presentation as to *State vs.*
14 *Commander* and 702, 703, 704. I have not done that at this
15 point with Dr., with Dr. Lamb because I hadn't heard it.

16 MS. PINNOCK: Yes, sir.

17 THE COURT: Okay, but that motion is noted and if I
18 have to send the jury back out, I will.

19 MS. PINNOCK: Thank you, Your Honor.

20 THE COURT: All right. Thank you.

21 Yes, Mr. Bank.

22 MR. BANK: Your Honor, would now be the appropriate
23 time to address the motion for mistrial based on Dr.
24 Cartie's testimony of this being discipline?

25 THE COURT: I don't need to hear now. I won't forget

1 it unless I lose that note.

2 MR. BANK: Yes, sir.

3 THE COURT: And nobody, nobody ever cleans this place
4 up here, Mr. Bank.

5 MR. BANK: I just wanted to make a timely objection.

6 THE COURT: It actually looks similar to y'all's
7 tables except it's hidden a little bit, you know? Y'all's
8 and y'all's. That goes to both sides. Nothing wrong with
9 that, of course.

10 MR. BANK: Yes, sir, and then finally I think if we
11 could get a basis for the denial of the objection on the
12 hearsay for the EMS, the doctor that just testified for the
13 record?

14 THE COURT: *State vs. McFadden* primarily, and I also
15 think 803, excited utterance. I don't know if it's 1 or 2
16 or a combination now of 1 and 2.

17 MR. BANK: Yes, sir.

18 THE COURT: But that, that would be my basis.

19 MR. BANK: Thank you.

20 THE COURT: All right, thank you. I may elaborate on
21 that factually later, but that's primarily my basis.

22 All right, y'all mind if I take about ten minutes? If
23 you do, I don't care but I thought I'd be gracious enough
24 to ask. Let's take about a ten-minute recess. Thank you.
25 Thank you very much.

1 (OFF THE RECORD.)

2 THE COURT: Anything before we bring in the jury,
3 Solicitor?

4 MS. CAMPBELL: No.

5 THE COURT: Mr. Bank, Ms. Pinnock?

6 MS. PINNOCK: No, Your Honor.

7 (THE JURY ENTERS AT 12:24 P.M.)

8 THE COURT: Welcome back, ladies and gentlemen. Again
9 thank you, thank you for your patience.

10 Solicitor, you may call your next witness.

11 MS. CAMPBELL: May it please the court? State calls
12 Dr. Susan Lamb.

13 THE COURT: All right, Doctor, if you'll come around
14 and be sworn for us, please?

15 SUSAN M. LAMB, BEING DULY SWORN,
16 TESTIFIES AS FOLLOWS:

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

19 WITNESS: Dr. Susan Lamb, L-a-m-b.

20 VOIR DIRE EXAMINATION BY MS. CAMPBELL:

21 Q. Dr. Lamb, where are you employed?

22 A. I'm employed at the Assessment Resource Center, which
23 is at Palmetto Health USC.

24 Q. And what you do there, ma'am?

25 A. I'm a child abuse pediatrician.

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1 Q. And as a child abuse pediatrician, what do your duties
2 include?

3 A. I -- any time there is a concern of child abuse or
4 neglect, children are referred to our center primarily by
5 DSS or law enforcement, although other medical
6 professionals can refer as well.

7 Q. Can you tell this jury a little bit about your
8 education and your training in the medical field?

9 A. Sure. So, my undergraduate degree was at Johns
10 Hopkins University. Graduated there in 2004. I got my
11 medical degree from the University of Virginia in 2009. I
12 then went on to do a pediatric residency and be board
13 certified in pediatrics in 2012, and then I went on to do a
14 three-year fellowship in child abuse and neglect. So, it's
15 a subspecialty training, and graduated from there in 2015
16 and was board certified in child abuse and neglect.

17 Q. And in addition -- I believe you said you were board
18 certified in pediatrics?

19 A. Yes.

20 Q. As well as in child abuse and neglect?

21 A. Yes.

22 Q. And what's the significance of being board certified
23 in an area?

24 A. So, board certification is our governing body. It
25 makes sure that we stay up to date with standards of care,

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1 medical research that comes out, that we have peer review
2 amongst our colleagues that essentially we're providing the
3 best medical care. So, there's continuing education,
4 retest, clinical competencies. So, that's what board
5 certification means. So, I have two -- one in pediatrics,
6 one in child abuse -- that I have to maintain.

7 Q. And have you testified before as an expert in the area
8 of child abuse?

9 A. Yes, I have.

10 Q. And in what different states have you testified?

11 A. I have testified in Virginia, North Carolina, and
12 South Carolina.

13 MS. CAMPBELL: Your Honor, at this time we would offer
14 her as an expert in child abuse with pediatrics.

15 THE COURT: All right, *voir dire*, Ms. Pinnock?

16 MS. PINNOCK: Yes, Your Honor.

17 THE COURT: All right. Yes, ma'am, you may.

18 VOIR DIRE EXAMINATION BY MS. PINNOCK:

19 Q. Dr. Lamb, you said you were board certified in 2013?

20 A. Yes.

21 Q. And the board, you said, gives you -- it does peer
22 reviews and makes sure you're up on your CLEs?

23 A. CMEs, continuing ---

24 Q. CMEs.

25 A. --- education.

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1 Q. Okay.

2 A. Yes.

3 Q. We call the CLEs.

4 A. Yes.

5 Q. But the peer review, what, what exactly is that?

6 A. So, it involves quality improvement and peer-review
7 status. So, it means that no decision that we make on any
8 of our clinical findings are of themselves. We always peer
9 review them with others in our field. Here we're lucky to
10 have two child abuse pediatricians in addition. So, we
11 review here as well as with our nurse practitioners. If
12 you don't have that option, then you have national options
13 where you can submit to a national expert and receive peer
14 review.

15 Q. Okay. So, you said that there is multiple abuse
16 pediatricians where you work?

17 A. There are three of us, including myself here. Dr.
18 Olga Rosa and Dr. Susan Luberoff are both board certified
19 in child abuse pediatrics and are working here in Columbia.

20 Q. Okay, and that's who you have do the review on your
21 findings?

22 A. Them as well as our two nurse practitioners.

23 Q. Okay. So, everybody works in the same office?

24 A. Yes, we do.

25 Q. Okay. Have you -- you've published, right?

1 A. Yes, I have.

2 Q. When was your last publication?

3 A. I've only published once, and that was on sexual
4 abuse. You have it on my CV there. I'm sure you can see
5 the date more clearly than I can.

6 Q. Okay. So, it's only on sexual abuse?

7 A. It was on sexual abuse, yes.

8 Q. And you said that you work at the ARC. What exactly
9 is the ARC?

10 A. So, the ARC, it stands for Assessment and Resource
11 Center. So, it's a child advocacy center. So, there's a
12 national network of child advocacy centers where children
13 can receive care when there has been any concern for abuse
14 or neglect. So, we centralize services so you can get your
15 interview, your medical exam, and your therapy all at one
16 safe place for children, so it minimizes trauma to them.
17 There's a national alliance that qualifies all of the
18 centers as child advocacy centers.

19 Q. Okay. So, you weren't in charge of the interview, and
20 you're just in charge of the medical exam?

21 A. Yes. There are forensic interviewers who do the
22 interview.

23 Q. And when did [REDACTED] Minor come to you?

24 A. So, he ---

25 MS. CAMPBELL: Objection, Your Honor. I thought we

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1 were here about the qualifications to testify.

2 THE COURT: All right, Ms. Pinnock.

3 MS. PINNOCK: Your Honor, I was just going to have her
4 say the date she ---

5 THE COURT: I'm sorry?

6 MS. PINNOCK: I was just going to ask -- I was just
7 asking her the date she did the examine on the child. I
8 wasn't going into any details.

9 THE COURT: Rephrase the question.

10 MS. PINNOCK: Yes, sir.

11 BY MS. PINNOCK:

12 Q. Well, we don't have to talked about that now. We can
13 talk about that later.

14 So, as far as what your, I guess I want to say your
15 qualifications with child abuse, is it science or it is
16 kind of objective? Which one would you classify it as?

17 A. Well, science is objective, so it is a medical
18 science. We depend, just like other medical professionals,
19 on our physical exams, lab tests, x-rays, histories that we
20 get from caretakers or children. So, it's a medical
21 science just like any other.

22 Q. Okay. Is there, like, a, is there, like, numeric
23 considerations you take when you form your opinions, or I
24 guess can it be -- is there data that you base this on?

25 A. Yes.

1 Q. And when y'all bring your -- when y'all reach your
2 conclusions, you said it's based on a physical exam, labs,
3 and then social history?

4 A. No. History. History of present illness, family
5 history, social ---

6 Q. Right.

7 A. --- history, yes.

8 Q. The history that brings them to your office?

9 A. Yes.

10 Q. Okay.

11 MS. PINNOCK: Beg the court's indulgence.

12 THE COURT: Yes, ma'am.

13 (A PAUSE.)

14 MS. PINNOCK: Your Honor, I don't have any further
15 questions for this issue other than just renew our
16 objections under 702 and *Commander*.

17 THE COURT: All right, thank you. I would rule that
18 -- well, first I do want her CV marked as a court's
19 exhibit. I had the opportunity to review it during the
20 course of the *in-camera* hearing, and I would qualify Dr.
21 Lamb as an expert in the field pediatrics and child abuse.

22 Is that what she's offered for, Solicitor?

23 MS. CAMPBELL: Yes, Your Honor. She's board certified
24 in both pediatrics and then a further or subspecialty is
25 the child abuse pediatrician.

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1 THE COURT: Well, Dr. Lamb will be permitted to give
2 opinion testimony in those areas. She is qualified by the
3 court in that way, and the basis of those opinions, the
4 jury shall give that testimony whatever weight in testimony
5 it deems fit and appropriate. You'll recall my previous
6 charges on expert testimony. I will not go back further at
7 this time. She is so qualified in this area at this time.

8 WITNESS: Thank you, Your Honor.

9 THE COURT: Thank you. Thank you, Doctor.

10 Solicitor, you may continue.

11 Thank you, Ms. Pinnock.

12 DIRECT EXAMINATION BY MS. CAMPBELL:

13 Q. Okay, Doctor, your findings in this case, those are
14 actually available for anybody to review. Is that correct?

15 A. Yes. They're part of his medical record.

16 Q. And she also asked you about publications and such.
17 Did you also do some type of post or a publication on
18 widespread partial thickness burns?

19 A. I don't believe that's my CV.

20 Q. In your training, did you also get trained in the
21 area, looking at burns and assessing those?

22 A. Yes. Oh, I'm so sorry. I did publish a paper on
23 burns. It was a case report on a child who had an
24 accidental burn from a G tube being open too long, and the
25 stomach acid actually caused burns in a burn pattern there,

1 but through our history and evaluation, we were able to
2 determine it was accidental. So, sorry I forgot about that
3 publication.

4 Q. Let me ask you this, Doctor. When you first come in
5 contact with a patient, do you have any reason to find that
6 it's not accidental or that it is accidental? Does it
7 matter to you as far as your findings?

8 A. No. So, we always start from the basis that this is
9 some type of medical condition, accidental. About a third
10 of my cases that I routinely evaluate we find has no basis
11 for child abuse or neglect. So, it's not a diagnosis that
12 we always use. We start from the basis of what's going on?
13 What can we figure out?

14 Q. And you did that in this case?

15 A. Yes, in all cases.

16 Q. When did you first come in contact with [Minor] ?

17 A. So, [Minor] was referred to our center, and he
18 came for an evaluation on November 24th of 2015.

19 Q. And who actually referred him to you?

20 A. He was referred by Richland County DSS; he was in DSS
21 custody at that time. So, once he had been discharged from
22 Augusta Medical Center and was in foster care, they
23 referred him for an evaluation.

24 Q. And at that point, what, if any, information was
25 provided to you in making this assessment?

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1 A. So in making the assessment, we had the history that
2 the DSS investigators had kind of accumulated from the
3 different caretakers there because the CAC is a safe place.
4 No individuals who are alleged to have hurt a child in any
5 way are allowed there just because -- we're not the courts.
6 A lot of the evaluations happen beforehand. So, we just
7 try to err on keeping the kids safe. So, they told me what
8 the statements were that they had gotten and what their
9 concerns were, and they summarized what the Augusta Burn
10 Center had seen, and they sent me the pictures of Minor
11 burns when they -- when he got there so that I could see
12 them before he had any surgeries.

13 Q. And I want to show you...

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

15 THE COURT: Sure.

16 BY MS. CAMPBELL:

17 Q. What's been marked as State's Exhibits 1 through 16.
18 Are these some of the photographs you reviewed?

19 A. Yes, these are the photographs that I reviewed. So,
20 you could still see the blistering like on the scalp and
21 where the skin hadn't been scrubbed off there. So, those
22 were the pictures I reviewed. I didn't see any of the ones
23 -- let's see -- if there was any grafting done.

24 Q. Okay.

25 A. I just reviewed the ones that showed his burn pattern

1 initially.

2 Q. How it initially presented at the first hospital?

3 A. Yes.

4 Q. In addition to that, before making any determinations
5 based on the history you got, as well as the review of the
6 photographs, did you also conduct an examination of your
7 own?

8 A. I examined [Minor]

9 Q. And tell the jury how that happened. What happened?

10 A. So, our child life specialist goes and gets the child,
11 kind of explains to them what we're going to be doing.

12 [Minor] was very anxious about the examination. He has
13 dressings in place, not on his scalp per se, but part of
14 his head, all of his arms, his thighs down to his knees,
15 and his torso as well. So, we do a head-to-toe physical
16 exam. Listen to their heart, their lungs, look in their
17 eyes or ears, examine all of their skin.

18 In [Minor] case, I did take down the dressings on his
19 arms and on his chest, but he had, he had a lot of anxiety
20 about the pain he was going to be in with his thighs, and
21 it was painful to take off the dressings on the arms. So,
22 since I had the original photos, I didn't take down all of
23 his dressings.

24 Q. And the dressings that he would have had on his
25 thighs, were those from the burns or from something else?

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1 A. Part of them would have been from the burns, but part
2 of them were also from where they had taken the skin grafts
3 out. So, he had on water-sealed compressive clothing just
4 to kind of hold everything in place and hold the dressings
5 and prevent any rubbing from clothing there, and so it's
6 very tight to get on and off.

7 Q. And again the reason you said you didn't want to
8 remove any more dressings was because of what?

9 A. He was in too much pain after we had taken off the arm
10 dressings. And in our clinic, we don't keep any pain
11 medications, so I didn't want to do anything without having
12 to sedate him or give him IV pain medicine. It would have
13 been too painful.

14 Q. So, he was reacting to pain?

15 A. Yes, he was.

16 Q. And in your opinion in a normal way?

17 A. Yes, he was a normal seven-year-old boy with, you
18 know, some mild delays and some language delays due to the
19 diagnosis of autism.

20 Q. And in assessing the wounds, what were your
21 observations from both the pictures and from your
22 observations of the wounds you were able to address?

23 A. Sure. So, the majority of the wounds had been grafted
24 at that point, so you could see the crisscross pattern.
25 There he had grafting and scarring primarily on the outside

1 and backs of his arms, kind of both sides of his forearms,
2 backs of his hands. When you flex your arms, those areas
3 were spared. So, there was burns there.

4 He had extensive burns all down his back, onto his
5 shoulders, and his upper chest here, but not so much on his
6 lower abdomen, just patchy there. And then his face was,
7 the backs of his ears, neck, everything was burned except
8 for kind of here on the front of his face.

9 Q. And after you made your -- and I think you did a
10 thorough physical exam on him as well. Did you come to any
11 conclusions in this case?

12 A. Yes, I did.

13 Q. And what are your conclusions?

14 MS. PINNOCK: Your Honor, again we would renew our
15 objections.

16 THE COURT: Yes, ma'am, say again?

17 MS. PINNOCK: We renew our previous objections.

18 THE COURT: All right. Yes, ma'am. So noted.

19 BY MS. CAMPBELL:

20 A. So, I diagnosed Minor as a victim of child physical
21 abuse.

22 Q. And what was the basis of that, ma'am?

23 A. So, the pattern of burning on him shows that he was in
24 a crouched position. So if you're standing up, the water
25 will run down your back onto your buttocks, onto the backs

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1 of your thighs. If you are facing forward, you'll get the
2 same runoff pattern. So, we see commonly runoff patterns,
3 spill patterns, what you would see. So, in order for him
4 to spare most of his chest and his thighs, he had to have
5 been crouched down protecting his lower legs, and then the
6 majority would have been hitting on the top of his head and
7 running down with him forward with his hands up over his
8 face, trying to protect his face. So, there had been --
9 that's not a pattern that you would associate with an
10 accidental burn, for someone to be crouched down in that
11 position.

12 Obviously there had been some time for an accidental
13 history to be presented by anyone who had been caring for
14 him. And when I did my assessment, there had been no
15 history that would account for that pattern of burn.

16 Q. So, he would have had time to react and actually
17 crouch and put his hands over his ---

18 A. Yes. So, he ---.

19 Q. --- when the majority of the burn happened?

20 A. So, he, he had time to get into a defensive position
21 there. So, you protect your front, your abdomen, your
22 genitals. Very painful. Get down to present the least
23 amount of target and turn around so that your back is
24 taking the majority of the water.

25 Q. In your opinion, could he have done this to himself?

1 A. No.

2 Q.: There's been some question. If the shower had just
3 been turned suddenly to hot or something, would -- it is
4 consistent with your findings?

5 A. No, because of the position he was in. No one showers
6 in a crouched position with their head covered like that.
7 If you're -- someone's washing your hair, you might put
8 your hands up, but you'd be standing in a shower. If you
9 were sitting in a bath, you'd get tide lines that wouldn't
10 be covered from above. So with the shower, no way to put
11 this together accidentally.

12 Q. And as far as interviewing the child about what
13 happened to him, that would not have been your duty that
14 day, would it?

15 A. No. So, we don't re-question a child because
16 questioning them multiple times is very traumatizing to
17 have to tell it. So, a forensic interview was done ---

18 MS. PINNOCK: Objection, Your Honor.

19 THE COURT: She's just saying -- I thought her
20 testimony was a forensic interviewer.

21 MS. CAMPBELL: That she didn't do it.

22 MS. PINNOCK: If she's not going to be going into
23 any ---

24 MS. CAMPBELL: She's not.

25 MS. PINNOCK: --- any details. Okay.

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1 THE COURT: I didn't take it that she was.

2 She is not, is she?

3 MS. CAMPBELL: No, sir. I don't think under the rules
4 we can go into that.

5 THE COURT: And that, that was the basis of your
6 objection?

7 MS. PINNOCK: Yes, sir.

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

9 BY MS. CAMPBELL:

10 Q. And you can't say what he said, but he was interviewed
11 by someone other than yourself?

12 A. Yes. So, we collect all the people who were involved
13 in the case. So, CPD, DSS, they watch through
14 closed-circuit TV while someone who is trained to speak to
15 children does it in another room, in a child-friendly room
16 there so that's the least traumatizing to a child.

17 Q. And, Doctor, finally. What was your diagnosis in
18 this?

19 A. Child physical abuse.

20 MS. CAMPBELL: Thank you. I don't have anything
21 further.

22 THE COURT: Ms. Pinnock?

23 MS. PINNOCK: Thank you, Your Honor. Very briefly.

24 CROSS-EXAMINATION BY MS. PINNOCK:

25 Q. Dr. Lamb, you said you didn't see Minor

1 Minor, until November?

2 A. Yes, November 24th.

3 Q. So, that's almost a month and a half after the actual
4 injury happened?

5 A. Yes.

6 Q. And so you didn't provide him medications?

7 A. While he was inpatient?

8 Q. I'm sorry?

9 A. No. So, when he came to see me, he was on medication.

10 Q. He was already discharged from ---

11 A. Yes.

12 Q. --- another hospital?

13 A. Yes.

14 Q. You had all of those medical records?

15 A. No. I did not review the Augusta Burn Center medical
16 records. I reviewed the ---

17 Q. Did you have ---

18 A. --- I had their ---

19 Q. --- the photographs from Augusta ---

20 A. --- photographs.

21 Q. Okay.

22 A. Yes.

23 Q. And you did not speak to any of the doctors at the
24 Augusta Burn Center prior to ---

25 A. No, I did not.

S. LAMB - CROSS-EXAMINATION BY MS. PINNOCK

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1 Q. But you are aware that he was an inpatient in a
2 hospital in Augusta for approximately a month?

3 A. Yes, I was.

4 Q. Okay, and when he got to your office, you said you did
5 a full physical ---

6 A. Yes.

7 Q. --- workup on him? And that's because you got a
8 referral from Richland County?

9 A. Richland County DSS.

10 Q. And you said something, that there was no history
11 provided to you that there was an accident?

12 A. No. So, because we have contact with the
13 investigators, so CPD, Columbia Police Department, DSS, we
14 always ask them for all the history that they've obtained
15 at that point. I can't -- I'm not an investigator. I
16 can't go calling people. So, I asked them what's happened,
17 and then I make them aware that if anything changes, if any
18 additional history is provided, to please let me know so
19 that we could revise our report if that's indicated.

20 Q. Right, because sometimes history can change your
21 opinion on something?

22 A. Certainly.

23 Q. And we get histories from, like you said, trying to
24 talk to witnesses, caregivers, things of that nature?

25 A. Yeah, the investigators do.

1 Q. Okay. Oh, and that's not something you do?

2 A. No. If the caretaker is not an offending caregiver,
3 not someone we believe is -- did anything to a child, we
4 get history from them while they're there. So, whoever
5 accompanies the child provides the history.

6 Q. But there was no parent or guardian other than through
7 the court that showed up with ---

8 A. Yes.

9 Q. --- Reginald?

10 A. DSS.

11 Q. Okay, and do you have your report with you?

12 A. I can get it out of my purse.

13 Q. Well, you might remember. If you need to grab it, you
14 can.

15 A. Okay.

16 Q. But you, you mentioned in your report that the water
17 in the home was 147 degrees Fahrenheit.

18 A. Yes. So, that's part of the investigators -- whenever
19 they do a scene investigation, we always ask them to go
20 out, test temperature, see what the water heater is set at,
21 and then actually go and turn on the faucet to hot and test
22 the actual temperature of the water that comes out.

23 Sometimes in old buildings in particular you can get hot
24 spots even though a heater may be set lower.

25 Q. Okay, but the number you were provided was 147 degrees

S. LAMB - REDIRECT EXAMINATION BY MS. CAMPBELL

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1 Fahrenheit?

2 A. Yes.

3 MS. PINNOCK: Beg the court's indulgence.

4 THE COURT: Yes, ma'am. Of course.

5 (A PAUSE.)

6 MS. PINNOCK: Thank you, Your Honor. I have nothing
7 further.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION BY MS. CAMPBELL:

10 Q. Doctor, just a couple of questions. Could the burns
11 occur if the water is slightly cooler or hotter?

12 MS. PINNOCK: Objection, Your Honor. It's outside the
13 scope.

14 MS. CAMPBELL: You asked about 147 degrees.

15 THE COURT: Under 611 I'll allow it.

16 MS. CAMPBELL: Thank you.

17 BY MS. CAMPBELL:

18 A. So depending on what the water is, it just depends on
19 time duration. So, hotter water shorter duration, colder
20 water longer duration can result in the same type of burns.

21 Q. And she asked you about any other history other than
22 accident. If this was the history that this took place in
23 the shower, this wasn't an accident that took place in the
24 shower?

25 A. No.

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1 Q. A pot of -- a cauldron of boiling water might be a
2 different...

3 A. Sure. If, if maybe they were playing hide and seek
4 and could account for the child being in a crouched
5 position in front of a stove.

6 Q. But not in the shower?

7 A. No.

8 MS. CAMPBELL: Thank you.

9 THE COURT: Recross, Ms. Pinnock?

10 MS. PINNOCK: No, Your Honor.

11 THE COURT: Thank you. Thank you very much, Doctor.

12 WITNESS: Thank you.

13 THE COURT: Thank you for being with us today. You
14 may step down.

15 Any objection to the doctor being excused?

16 MS. PINNOCK: No, Your Honor.

17 MS. CAMPBELL: Thank you.

18 THE COURT: Thank you.

19 WITNESS: Thank you.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: How long is your next witness, Solicitor?

22 MS. SIMPSON: Your Honor, the next witness will be
23 fairly lengthy. It is Kristin Campbell.

24 THE COURT: All right.

25 MS. SIMPSON: And we do have a couple matters to take

1 up.

2 THE COURT: All right. Well, I don't like to split
3 them up, direct and cross, nor do I like to stop during
4 direct. So, we will take our luncheon recess.

5 Ladies and gentlemen, please remember to -- please
6 remember. Please do not discuss the case with anyone:
7 fellow jurors, lunch mater, or anyone else. Do not read,
8 watch, or listen to any news accounts about the case. Do
9 not do any independent investigation or investigation on
10 the Internet. Remember you determine the case based on the
11 evidence and testimony presented to you in the courtroom,
12 the law as I tell you the law is after you've heard all the
13 evidence and all the testimony.

14 With that being said, if you'd be back at 2:15, 1415
15 hours, please. I hope y'all have a pleasant lunch. Thank
16 you. Thank you very much.

17 (THE JURY EXITS AT 12:50 P.M.)

18 THE COURT: All right, Mr. Bank, I'll take up the
19 mistrial motion upon my return.

20 MR. BANK: Yes, sir. Yes, sir.

21 THE COURT: I've got a commitment at 1:00.

22 MR. BANK: Yes, sir.

23 THE COURT: And I do want to do a little research,
24 too.

25 Anything additional, though, before we take our

1 recess, Mr. Bank?

2 MR. BANK: Not from the defense.

3 THE COURT: Defense -- excuse me, the state?

4 MR. FYALL: Your Honor, I have a redacted version
5 of ---

6 THE COURT: I'll take that up when I get back.
7 Anything else? ~

8 MR. FYALL: Oh, we sent emails out, so we're going to
9 listen to it over the break, and if there's no ---

10 THE COURT: I'm sorry?

11 MR. FYALL: It's been emailed out to everyone. So,
12 we're going to listen to it over the lunch break, and if
13 there's no -- other than that, that's it.

14 THE COURT: All right.

15 Solicitor?

16 MS. SIMPSON: Oh. I was just standing. I'm sorry.
17 No, no other, no other motions or matters at this time.

18 THE COURT: When people stand up, you know, I don't
19 know how to deal with them.

20 All right, thank y'all very much. 2:15.

21 (CV OF DR. S. LAMB MARKED INTO EVIDENCE AS COURT'S
22 EXHIBIT NUMBER 8.)

23 (OFF THE RECORD.)

24 THE COURT: All right, Mr. Bank.

25 MR. BANK: Your Honor, may it please the court? The

1 defense at this point is moving to strike the testimony of
2 -- part of Dr. Cartie's testimony. He testified during
3 direct examination that the event that happened to Minor
4 happened as a form of discipline. That was an inadmissible
5 statement. That was not included in his proffer. I don't
6 believe there's any disagreement that was inadmissible.

7 At this point, the jury has now heard that word
8 discipline, which is why it needs to be struck, but we're
9 moving for a mistrial at this point because I don't think
10 that bell can be unrung.

11 Your Honor, the word discipline creates the first
12 piece of evidence in this case that goes to a type of
13 intent. Reginald's testified himself on the stand and did
14 not give any type of motive, intent, or anything along
15 those lines. All the other witnesses' testimony has been
16 limited to not include any of that because it is
17 impermissible hearsay.

18 Dr. Cartie, despite going through testimony through a
19 proffer in front of Your Honor, let out the word discipline
20 anyway. It's inadmissible. The jury now thinks that there
21 is some type of motive or intent for Shane to have done
22 this to him, and I don't believe there's any way to fix
23 that. So, we are moving for a mistrial. I don't believe
24 that the jury can now look at this fairly, having heard
25 that. I do ask for it to be struck. I just don't know

1 that that will fix it. Thank you.

2 THE COURT: Thank you, Mr. Bank.

3 Solicitor.

4 MS. CAMPBELL: May it please the court, Your Honor? I
5 don't know that we do believe that that would be
6 inadmissible in the fact that it's the manner in which the
7 hits were -- he describes how the hit was, which would be
8 part of the medical diagnosis.

9 Your Honor, even if it were inadmissible, Your Honor,
10 we feel like a curative instruction would be more than
11 adequate to cure. If you strike it from the record, it's
12 stricken from the record. I don't know that the defense is
13 requesting a curative instruction. I'm not sure about
14 that, but we feel like that would be more than sufficient,
15 if there is any prejudice, to cure any prejudice that may
16 be here.

17 THE COURT: Thank you.

18 All right, anything additional, Mr. Bank?

19 MR. BANK: No, Your Honor.

20 THE COURT: All right. Thank you. Looking at the
21 standard in *State vs. Vantan*, V-a-n-t-a-n, 387 South
22 Carolina 412:

23 The decision to grant or deny a mistrial is
24 within the sound discretion of the trial court
25 and will not be overturned on appeal absent an

1 abuse of discretion amounting to an error of law.
2 The granting of a motion for a mistrial is an
3 extreme measure. Should be taken only when the
4 incident is so grievous that prejudicial effect
5 can be removed in no other way. A mistrial
6 should be granted only when absolutely necessary,
7 and defendant must show both error and resulting
8 prejudice to be entitled to a mistrial. A
9 mistrial should only be granted in cases of
10 manifest necessity and with the greatest caution
11 for very plain and obvious reasons. Whether a
12 mistrial is manifestly necessary is a
13 fact-specific inquiry. It is not a mechanically
14 applied standard, but rather it is a
15 determination that must be made in the context of
16 the specific difficulty facing the trial judge.
17 The trial court should exhaust other methods to
18 cure possible prejudice.

19 The five words that were stated by Dr. Cartie was: As
20 a form of discipline. I do not find that that incident is
21 so grievous as to prejudice -- the prejudicial effect
22 cannot be removed in any other way. Given the fact that a
23 mistrial should only be granted in cases of manifest
24 necessity and the greatest caution for plain and obvious
25 reasons, inquiry as to fact specific, the doctor did

1 testify as to -- gave his opinion as to this was or
2 amounted to -- injury inflicted amounted to child abuse.

3 Again, that goes back to the medical type of
4 definition that the doctor was using, not in the legal
5 sense, nor would punishment be in the legal sense. Whether
6 or not it was punishment, I would still define what as
7 great bodily injury under the statute. I further find that
8 there would be another method to cure any possible
9 prejudice before aborting this trial. So, I would deny the
10 motion for mistrial.

11 I will give a curative instruction if you would like,
12 Mr. Bank.

13 MR. BANK: Your Honor, I will not refuse a curative
14 instruction. We will renew our objections since we don't
15 believe it will be sufficient, though, for a mistrial.

16 THE COURT: Thank you. That's so noted.

17 Anything further before we bring in the jury?

18 MS. SIMPSON: Yes, Your Honor. May it please the
19 court? Our next witness is Kristin Campbell, the victim's
20 mother and codefendant. I just want to note for the record
21 her defense attorney is present in the courtroom, Ted
22 Lupton. She did plead guilty as charged to unlawful
23 conduct and neglect. Her sentence was deferred; no
24 promises have been made to her with respect to sentencing.

25 And along that same line, Your Honor, I would ask even

1 though she's the codefendant, just remind the defense that
2 they cannot go into sentencing or what the defendant might
3 be facing with respect to his own charge.

4 Additionally, Your Honor, we had -- I spoke with Mr.
5 Lupton, and I know he's advised Ms. Campbell that we are
6 not going into the fact that Shane had been in prison at
7 any point, and so I would like for Your Honor to also
8 remind her of that as well.

9 And the drug use, and this is for both sides. It's my
10 understanding we agree this will be reciprocal during the
11 redactions. As far as testimony, she is not to talk about
12 her own drug use or Shane Johnson's drug abuse.

13 THE COURT: Ms. Pinnock.

14 MS. PINNOCK: Your Honor, I would just ask that you
15 also instruct Ms. Campbell to not go into any allegations
16 of domestic violence or being scared because those are also
17 issues that were agreed upon by both sides.

18 MS. SIMPSON: Your Honor, with respect to that, Ms.
19 Campbell is going to testify about her reasons. I don't
20 think that we can go into -- I mean, that would be the
21 objection made once it comes up. I mean, it's not
22 something that she should not be allowed to go into or that
23 we did not agree. However, with respect to prison and drug
24 abuse and the sentencing issue, of course.

25 THE COURT: Well, you got to slice that kind of thin.

1 You can go into that she was scared. She can be scared for
2 a variety of reasons but not into the underlying foundation
3 of why she was scared because she was -- her allegations or
4 her testimony may be that she was being abused by Mr.
5 Johnson.

6 MS. SIMPSON: Okay, and I think her attorney can
7 instruct her on what Your Honor's ruling is, that she can
8 say she's scared but not go into specific instances of
9 abuse.

10 THE COURT: She can say that if it's true. Obviously
11 she can say she was scared.

12 MS. SIMPSON: And, Your Honor, I ---

13 THE COURT: She can certainly say who she was scared
14 of, but she can't go into domestic abuse.

15 MS. SIMPSON: Yes, Your Honor, and that will be
16 limited. Of course if the defense opens the door, we'll
17 address that at that time.

18 THE COURT: I'll certainly revisit it if that occurs.

19 MS. PINNOCK: Yes, Your Honor. I was just going to
20 ask Your Honor to, you know, if you're willing to allow her
21 to testify that she is scared, to not allow her to infer a
22 reason why she was scared of Mr. Johnson. I think that has
23 the same effect as ---

24 THE COURT: Well, I thought that's -- that was my
25 ruling, that she was scared of Mr. Johnson. You know, I

1 thought that was my ruling, and it may have not been, but
2 she couldn't, she couldn't say that it was domestic abuse.
3 Are there other reasons she was scared of Mr. Johnson
4 besides domestic abuse?

5 MS. SIMPSON: Not that I'm aware of, Your Honor, based
6 on her statements in this case.

7 MS. PINNOCK: Yes, Your Honor, that was your ruling,
8 and I was just expressing my concern with allowing her to
9 say that she was scared of Mr. Johnson. I think the
10 inference is there that she's scared of him for, you know,
11 whatever reason. So, I think that does give -- that would
12 have the same affect. Because of the inference of saying
13 she's scared of him, the jury would infer that she's scared
14 of him for a particular reason.

15 THE COURT: I'm going to allow her to testify if the
16 question is why didn't you do X if the question is I was ,
17 afraid. Who were you afraid of? Mr. Johnson. That's all
18 in the context of this case. It's not in context of other
19 behaviors that may have amounted to conduct that was
20 domestic violence.

21 MS. PINNOCK: Certainly.

22 THE COURT: All right? Thank you.

23 Anything further before we bring in our jury?

24 MS. SIMPSON: Oh, just with respect to impeachment,
25 she does not have anything on her prior record.

1 THE COURT: Only, only this charge?

2 MS. SIMPSON: Yes, Your Honor.

3 MR. LUPTON: Your Honor, I would beg the court's
4 indulgence to explain the court's ruling to my client.

5 THE COURT: All right. Yes, sir.

6 (A PAUSE.)

7 THE COURT: I received a note from the jury:

8 On behalf of the jurors, there are many jurors
9 that have prior arrangements out of town next
10 week. Is there any way we can stay as late or
11 early possibly tonight and tomorrow to ensure
12 this case is complete? Thank you. Signed on
13 behalf of all the jurors, juror number 108.

14 I take it the answer to that question is yes?

15 MS. SIMPSON: Yes.

16 MR. BANK: Yes, Your Honor.

17 THE COURT: How many more witnesses you got,
18 Solicitor?

19 MR. LUPTON: Your Honor, if I may beg the court's
20 indulgence? Just to clarify, if there is some event that
21 happened during the incident that she -- that caused her
22 fear, she would or would not be allowed to testify about it
23 as part of *res gestae* of the event?

24 THE COURT: All that has ever been presented to me is
25 prior instances of domestic violence. That's all that's

1 been presented to me ---

2 MS. SIMPSON: Unless ---

3 THE COURT: --- that I'm aware of.

4 MR. LUPTON: And I think that that's the case, Your
5 Honor. If, if something comes -- if he said something or
6 he made a gesture to her that night, I think that's what
7 I'm talking about. I just want to make sure that we don't
8 violate your ruling inadvertently by talking about that.

9 THE COURT: Well, what is the testimony? I mean, I'm
10 filling in a vacuum.

11 MS. SIMPSON: Your Honor, I'm not entirely sure with
12 respect to the night of while they're in the home of any
13 abuse as far as like hitting her or anything of that nature
14 or threatening her. I have not spoken with her directly
15 myself at all, but that's not what we have before us.

16 And I do know, however, that prior to the arrest, the
17 police were called. So, I think that she, she needs -- if
18 he's including that as part of the incident, we would agree
19 that doesn't come in, that she can't talk about that
20 because it goes to she was afraid of him because she had
21 been abused before, but that was well after, two weeks
22 after the incident.

23 MR. LUPTON: And I don't think there's going to -- and
24 again, Your Honor, I just wanted to clarify it just so I
25 can advise her fully.

1 THE COURT: Thank you. Thank you, Mr. Lupton.

2 Ms. Pinnock, anything?

3 MS. PINNOCK: Judge, the only concern I have at this
4 point is it sounds like -- and maybe this is not an issue,
5 Maybe it won't be an issue, but we don't know exactly what
6 she's talking about potentially as an incident happening.
7 As Ms. Simpson said, we don't have any information that
8 there was something that went on, you know, during this
9 evening. I don't know -- I'm not sure how to respond to
10 that because I don't know what we're talking about or
11 potentially talking about.

12 MS. SIMPSON: And, Your Honor, the only thing I'm
13 aware of, too, is that Mr. Johnson told Ms. Campbell that
14 they needed to get their stories straight. I don't think
15 that's ---

16 THE COURT: That's not a ---

17 MS. SIMPSON: --- abusive.

18 THE COURT: That's not a threat.

19 MS. SIMPSON: Or threat.

20 THE COURT: That's a tacit conspiracy. That's not a
21 threat of domestic violence if that's what is referenced
22 here.

23 MR. LUPTON: And, Your Honor, I don't have any
24 information either that there was any kind of physical
25 assault or threats that night, but just in terms, you know,

1 if she's talking about, you know, he gave me a hard look or
2 something like that, I just want to make sure that I was
3 clear on what the court's ruling was so I can advise her.
4 I've explained to her nothing that happened prior to be
5 talked at all as to why she was afraid. Basically she can
6 say she was afraid of him, but she cannot say she was
7 afraid of him because. That anything that happened after
8 that because would be inadmissible.

9 THE COURT: That your understanding of my ruling,
10 Solicitor?

11 MS. SIMPSON: Yes, Your Honor, and this ---

12 THE COURT: Is that your understanding of my ruling,
13 Ms. Pinnock?

14 MS. PINNOCK: Yes, Your Honor.

15 THE COURT: All right, Solicitor.

16 MS. SIMPSON: Just one more thing. So, we are going
17 to -- with respect to when the officers are called out
18 subsequent to the incident, I don't intend to go into that,
19 but the police were called because she was scared. I don't
20 intend to go on that. However, the conversation that she
21 had with the defendant, I do intend to go into that, but
22 not that she called the police because she was scared.

23 MS. PINNOCK: Just about getting their story straight
24 or something?

25 MS. SIMPSON: On the night of.

1 MS. PINNOCK: Of.

2 MS. SIMPSON: But a different day.

3 MS. PINNOCK: Okay.

4 MS. SIMPSON: I think, I think we got it.

5 THE COURT: Okay, ready for the jury?

6 MS. SIMPSON: State's ready, Your Honor.

7 MS. PINNOCK: Yes, Your Honor.

8 (THE JURY ENTERS AT 2:35 P.M.)

9 THE COURT: Hope y'all had a delightful lunch. Ladies
10 and gentlemen, I received your note. The answer to that is
11 yes. We can stay late, we can start early, and we can
12 start late tomorrow night if need be, and we will press on.
13 I can't predict anything, in particular the future, but
14 we'll press on. I've worked many times very late and at
15 times on Saturdays and at times on Sunday afternoon, but
16 we'll press on and see, see where we're at as the day goes
17 along, okay?

18 And no child care today?

19 FOREPERSON: I'll just have to make it at the break,
20 the next break.

21 THE COURT: You have to -- oh, okay. All right.

22 Any, anybody else? All right, thank you very much.

23 Solicitor, you may call your next witness.

24 MS. SIMPSON: Thank you, Your Honor. May it please
25 the court? State calls Kristin Campbell.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 KRISTIN CAMPBELL, BEING DULY
2 SWORN, TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Have a seat in the witness stand.
4 State your name for the record.

5 WITNESS: Kristin Campbell.

6 DIRECT EXAMINATION BY MS. SIMPSON:

7 Q. Ms. Campbell, how old are you?

8 A. I'm thirty-two.

9 Q. And are you married?

10 A. No.

11 Q. Do you have any children?

12 A. Yes.

13 Q. And how many children do you have?

14 A. One.

15 Q. Who is that?

16 A. [REDACTED] Minor

17 Q. And how old is [REDACTED] Minor

18 A. He's eight.

19 Q. And is that who we've been referring to as [REDACTED] Minor or

20 [REDACTED] Minor, throughout the trial?

21 A. Yes.

22 Q. And do you actually have a nickname for him as well?

23 A. Yes, I do.

24 Q. What is that?

25 A. Junebug.

1 Q. And who is [Minor] biological father?

2 A. Reginald Walker, Sr.

3 Q. And do you currently live in Colombia?

4 A. Yes, I do.

5 Q. How long have you been living in Colombia?

6 A. Since 2009.

7 Q. Okay, and where do you live at this time?

8 A. I reside at 804 Easter Street.

9 Q. And how long have you been living on Easter Street?

10 A. I'm not exactly sure what month, but I know in 2009.

11 THE COURT: Say that again. Speak up just a little
12 bit for me.

13 BY MS. SIMPSON:

14 A. I'm not exactly sure what month, but it, it was in
15 2009.

16 Q. Okay, in 2009 when you moved here?

17 A. Yes.

18 Q. Okay. So, that's the only place you've really lived
19 since you've been in Columbia?

20 A. Yes.

21 Q. Who are your parents?

22 A. Debra Campbell and Major Campbell.

23 Q. Do you currently work?

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

25 Q. And have you actually ever been employed?

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. Yes.

2 Q. Doing what?

3 A. I worked in the restaurants.

4 Q. Restaurants?

5 A. Like Wendy's, Six Flags America.

6 Q. Okay, and but at this time you're not working. What
7 is the reason for that?

8 A. I'm disabled.

9 Q. Okay, and do you receive income as a result of being
10 disabled?

11 A. Yes, I do.

12 Q. Are you considered intellectually disabled?

13 A. Yes.

14 Q. With respect to your finances and throughout the
15 course of the time you've been here, do your parents
16 actually help you financially?

17 A. Yes.

18 Q. With things? Tell us about that. What all have they
19 helped you with?

20 A. My mother mainly helps me with my son, things of him,
21 of his clothes, shoes, different things for school.

22 Q. Okay, and what about the house you live in?

23 A. My father resides with me, so he helps me with rent,
24 paying bills over there.

25 Q. Okay, but your mom's name is also on the house as

1 well?

2 A. Yes, ma'am.

3 Q. When you moved in?

4 A. Yes.

5 Q. And they did actually buy you a car as well, the car
6 that you drive?

7 A. No. They didn't buy it.

8 Q. Did they help you pay for it?

9 A. No. My mother gave me the car.

10 Q. Oh, she gave it to you?

11 A. Yes.

12 Q. Okay, and you said she provides things like clothes,
13 food if need be?

14 A. Yes.

15 Q. So, they help you out with your income?

16 A. Yes.

17 Q. How long -- let me back up. [Minor] is your only
18 child. How long have you had [Minor] Like has he been
19 with you for the entire course of his life?

20 A. Yes.

21 Q. I want to turn your attention to Shane Johnson. How
22 do you know the defendant?

23 A. I know him through our kids, my son and his, his two
24 kids.

25 Q. Okay, and when did y'all meet?

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. Back in I want to say November, I believe. It was at
2 the end of the year of 2014, I believe.

3 Q. Okay, and where was he actually living at the time?

4 A. With his mother.

5 Q. And you said he had how many children?

6 A. Two.

7 Q. And what were their names?

8 A. Hayden and I can't remember his daughter's name.

9 Q. Okay, and was Hayden about the same age as Minor

10 A. Yes.

11 Q. Okay. So, they went to the same school?

12 A. Yes.

13 Q. Tell me about your relationship and how it developed
14 as far as you all becoming -- like hanging out, meeting. I
15 know you said you met through your children. How did your
16 relationship progress?

17 A. Well, my son and his son was going to the same school,
18 and my son one day asked me if he can go over to his
19 friend's Hayden's house and I said yes, but as the days
20 went by and he was going over there, I decided to go over
21 there and meet whoever was watching my son. And I knew
22 Shane's sister, so she was the one who took me over to the
23 house, and I met their mother and that's when I met Shane.

24 Q. Okay, and do you remember his sister's name?

25 A. Teah.

1 Q. Teah Johnson?

2 A. Yes.

3 Q. Okay, and at some point, did the defendant, Mr.
4 Johnson, and yourself enter into a more intimate
5 relationship?

6 A. Yes.

7 Q. And tell us about that.

8 A. What do, what do you mean by that?

9 Q. As far as did y'all become boyfriend and girlfriend?
10 Did you remain friends?

11 A. Down the line we became boyfriend and girlfriend.

12 Q. Okay, and at some point did he actually move in with
13 you?

14 A. Yes.

15 Q. Were his children living at the home with you?

16 A. No.

17 Q. Did they have occasion to visit?

18 A. Yes.

19 Q. Okay, and under what circumstances would they come
20 visit?

21 A. I'm not really too sure. I just know whenever his
22 mother had them, they would come over to my house
23 sometimes.

24 Q. Okay. So, [Minor] was around them a good bit at
25 times even though they didn't stay there?

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

431

1 A. Yes.

2 Q. Now when he moved in with you, who all was actually
3 living with you at -- and where do you live again?

4 A. 804 Easter Street.

5 Q. Okay. Who all was living at the home with you?

6 A. Just me and my son.

7 Q. Okay, and then Shane Johnson moved in?

8 A. Yes.

9 Q. Was his mother living across the street or did she
10 actually leave that location at some point?

11 A. She was living across the street when I first met
12 Shane. Eventually she moved.

13 Q. Okay, and what, about what timeframe did she move?

14 A. Um.

15 Q. Would it be near in time to when he moved in with you?

16 A. Yes.

17 Q. And about what time was that? How long before this
18 incident occurred had he been living with you?

19 A. I'm not too sure.

20 Q. I mean, like a month, two months? Spring? Fall?

21 A. It was cold outside.

22 Q. It was cold outside?

23 A. Yes, it was getting cold.

24 Q. Okay. So, he lived with you for a period of time?

25 A. Yes.

1 Q. And he had a chance to interact with [Minor]

2 A. Yes.

3 Q. Okay. I want to back up a little bit. Can you just
4 describe [Minor] for us?

5 A. He's a fun-loving child. Always asks questions. Easy
6 to get along with. He's just all around good child.

7 Q. And at some point, was he diagnosed with some level of
8 autism?

9 A. Yes.

10 Q. And you were aware of that?

11 A. Yes.

12 Q. Okay, and tell us. Were you involved as far as
13 helping with [Minor]

14 A. Yes.

15 Q. Tell the jury about how -- what you did for him and
16 how you were there for him.

17 A. I basically bathed my son, did homework with him,
18 projects, anything that came up with school. I was just
19 basically doing it all for him and with him.

20 Q. Okay, and even when Shane moved in, did he have a
21 whole lot of opportunity to be alone with [Minor]

22 A. No.

23 Q. With respect to his autism, would you describe him as
24 being pretty highly functioning?

25 A. Yes.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. So, can he communicate with you?

2 A. Yes.

3 Q. Hold pretty intelligent conversations with you?

4 A. Yes.

5 Q. Is he able to tell you when something's wrong?

6 A. Yes.

7 Q. What about pain if he's hurt?

8 A. Yes. He would definitely tell you if he was in pain
9 or hurting.

10 Q. Okay. So, he -- it's not he puts his hand on the
11 stove ---

12 A. No.

13 Q. --- and can't feel it?

14 A. No.

15 Q. So, you would consider his tolerance ---

16 MS. PINNOCK: Objection, Your Honor. She's leading.

17 THE COURT: Rephrase the question.

18 MS. SIMPSON: Yes, Your Honor.

19 BY MS. SIMPSON:

20 Q. So, how would you, I guess, characterize his pain
21 tolerance?

22 A. He has -- it's, it's low. He doesn't have a very high
23 tolerance for pain at all.

24 Q. Now, with respect to **Minor** on a typical -- **Minor**
25 in school, correct?

1 A. Yes.

2 Q. Where is he in school at?

3 A. Greenview Elementary.

4 Q. What grade?

5 A. He's in second grade.

6 Q. Second grade and does he actually take extra classes,
7 too, just to help him with this developmental skills?

8 A. Yes. He takes speech. He also has resources --
9 resource teacher that teaches him math, spelling. I
10 believe that's it, math and spelling.

11 Q. But he functions -- does he function well in school?

12 A. Yes.

13 Q. Have you had any disciplinary issues to where the
14 school's called you and ---

15 A. No.

16 Q. --- he's just acted out?

17 A. No, not at all.

18 Q. As far as your contact with the school, do you go to
19 school with him? Like, how does he get to school?

20 A. Well, when he was with me at my home, I would get up,
21 walk him to school. And when it's time for him to get out
22 of school, I would walk up to the school, pick him up, walk
23 back home.

24 Q. Okay, and did you have occasions to attend lunch times
25 or ---

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. Yes.

2 Q. --- whatever things might go on at school?

3 A. Yes.

4 Q. So, you were involved?

5 A. I was there frequently.

6 Q. As far as Minor typical morning routine, tell us
7 about that because he's pretty highly functioning.

8 A. Yes.

9 Q. So, what, what would you tell him to do?

10 A. Well, I would wake him up about 6:30, and he would get
11 up and put on his clothes, shoes, book bag, got his lunch
12 box, and we would be out the door.

13 Q. Okay, and as far as, like, brushing his teeth and
14 washing his face and things of that nature, did you direct
15 him to do that?

16 A. Yes. He knows how to do it on his own.

17 Q. Okay. So, you didn't have to help him with the sink
18 faucet or anything to wash his face?

19 A. Well, I wouldn't let him touch a faucet or anything of
20 that nature when it came to water.

21 Q. Okay.

22 A. I would have to turn it on for him.

23 Q. Okay, but he had no trouble washing his face?

24 A. No.

25 Q. And he would tell you if the water was hot ---

1 A. Yes.

2 Q. --- or cold, and so you said he would be able to put
3 his clothes on?

4 A. Yes.

5 Q. Now, as far as Mr. Johnson's interactions -- or let me
6 back up. Was he working when he was living with you?

7 A. Yes.

8 Q. What did he do?

9 A. Lawn work.

10 Q. Lawn work?

11 A. Yes.

12 Q. And about how long would he be gone? Like what were
13 his typical work hours?

14 A. He would be gone about 9 in the morning til about,
15 want to say to evening. I'm not exactly sure what time.

16 Q. And on a usual day when y'all got home, who was
17 involved with handling either his kids or yours typically?

18 A. I would, I would take care of my son.

19 Q. Okay, and by take care of, what do you mean?

20 A. Feed him, do homework. Whatever **Minor** needed.

21 Q. And how much interaction did Mr. Johnson really have a
22 little **Minor**

23 A. He only really reacted with him when his kids was
24 there.

25 Q. Okay. So, when they were there ---

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. Yes.

2 Q. --- that's the most involvement ---

3 A. Yes.

4 Q. --- that he had?

5 I want to turn your attention to the day of this
6 incident on October 7th of 2015. Where were you living?

7 A. 804 Easter Street.

8 Q. And who all was living with you at that time?

9 A. Me, my son, and Shane..

10 Q. Okay, and can you tell the jury how that day started
11 out?

12 A. Yes, I can. My son had a project due, and I started
13 his project and me and him finished it that night. And I
14 was tired from doing his project that -- the day before.

15 So, I was too tired to put him in the shower, so Shane
16 offered to put him in the shower for me. And I was a
17 little bit hesitant, but I was too tired to put him in the
18 shower. And I was in my room and I heard my son scream,
19 and when I heard my son scream, I ran down the hallway to
20 the middle bathroom that I have.

21 And the dark -- the door was ajar, and when I came to
22 the door, it was steam in the room. So, I opened the door
23 and you really couldn't see anything when you came into the
24 bathroom. So, I saw my son just curled up in a ball in
25 the, in the tub shower that I have, and Shane was standing

1 there. So, I turned the water off and I ran back into my,
2 my master bedroom because I got a towel.

3 I ran back to the middle bathroom, and I got my son
4 out of the shower tub that I have, and I put my son -- I
5 walked into my bedroom and I put him on my bed, and I took
6 the towel off of him, and that's when I seen his skin
7 peeling off. And I told my son you have to go to the
8 hospital. My son said no, I don't want to go.

9 So, from there I googled on my cell phone how to treat
10 burns, and it said that you have to cool the area of the
11 burn down. So, that's what I did. I went back into my
12 middle bathroom and I ran some cold water. I put my son in
13 the tub, and he stayed in there no more than five minutes,
14 and he said I'm ready to get out. So, I took him out, took
15 him back into my bedroom and I looked down. I told him, I
16 said we have to go to the hospital.

17 And from there, I just remember that Shane was on the
18 phone with somebody. He walked out of the house; I don't
19 know who he was on the phone with, but he was on the phone
20 talking to somebody. And when my -- well, I finally, you
21 know, got my son out of the house and into my car, and from
22 that point on I was driving down Farrow Road ---

23 Q. I'm going to ---

24 A. --- and the police ---

25 Q. I'm going to stop you just a minute because I want to

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

439

1 back up to the incident in the bathroom.

2 A. Okay.

3 Q. You heard, I think you said you heard your son
4 screaming?

5 A. Yes.

6 Q. And you actually have given statements in this case,
7 right?

8 A. Yes.

9 Q. When you went into the bathroom and you saw the steam,
10 who was in the bathroom with your son?

11 A. Shane.

12 Q. What was he doing at that time?

13 A. He was just standing, looking at my son, in front of
14 the tub.

15 Q. Did you say anything to him or did he say anything to
16 you?

17 A. I asked him what happened to my son, and his response
18 was he touched the faucet. He wanted the water warmer.

19 Q. Okay, and as far as his demeanor, he's just standing
20 there?

21 A. Yes.

22 Q. And the water was, was it still on or ---

23 A. Yes.

24 Q. --- was it off?

25 A. It was still on.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Okay. So, when you left the bathroom to get the
2 towel, you went directly in there and what happened when
3 you got back in the bathroom specifically?

4 A. I reached down and I picked my son out of the tub.

5 Q. Was Shane still in the bathroom at that point?

6 A. No. He walked out.

7 Q. Okay. So, it's just you and [Minor]

8 A. Yes.

9 Q. And what is [Minor] doing?

10 A. He's crying.

11 Q. Okay. Was it clear to you he was in pain?

12 A. Yes.

13 Q. And the water, did you actually touch it at all before
14 you turned it off?

15 A. No.

16 Q. Or did you know it was hot?

17 A. It was. I knew it was hot.

18 Q. So, you took him to your bedroom, right?

19 A. Yes.

20 Q. At some point, were you going to take him to the
21 hospital?

22 A. Yes.

23 Q. I mean, did you and Shane talk about going to the
24 hospital?

25 A. Yes.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

441

1 Q. Tell the jury about that.

2 A. Shane told me not to take him to the hospital.

3 Q. And at what point did Shane tell you not to take him?

4 A. While my son was screaming, while he was on my, on my
5 bed when -- after I took the towel off of him.

6 Q. Okay, and what was your response?

7 A. I told him that he needed to go to the hospital.

8 Q. And by he ---

9 A. My son.

10 Q. --- at this point you're talking to your son?

11 A. I'm talking about my son.

12 Q. But Shane has said?

13 A. That he didn't need to go, that he will be fine.

14 Q. Okay, and at what point -- at this point, do you get
15 your phone?

16 A. Yes.

17 Q. You've already seen your son's skin peeling off?

18 A. Yes.

19 Q. We're just trying to get the order of events right
20 here, okay? So, was Shane there and saw the skin peeling
21 off as well?

22 A. Yes.

23 Q. In the towel?

24 A. Yes. We were in my bedroom.

25 Q. And what was [Minor] state at that point?

1 A. He was still crying.

2 Q. Still crying, and did it occur to you or did you ask
3 him about what happened?

4 A. I did, and all ---

5 Q. And what did Little [Minor] say?

6 A. All he ---

7 MS. PINNOCK: Objection, Your Honor. Calls for
8 hearsay.

9 THE COURT: Overruled.

10 BY MS. SIMPSON:

11 A. All [Minor] told me is that Shane did that to
12 him.

13 Q. Okay, and at this point he's crying. You've ---

14 A. Yes.

15 Q. --- just gotten ---

16 A. Very upset and he's crying.

17 COURT REPORTER: There's a lot of cross talk, Judge.

18 MS. SIMPSON: I'm sorry.

19 BY MS. SIMPSON:

20 Q. Okay. So, at what point do you pick up your phone and
21 google? Is this after Shane has told you he'll be fine?
22 Let's not go to the hospital?

23 A. Could you, could you repeat that, please?

24 Q. After Shane told you you didn't need to go to the
25 hospital, is that the point when you picked up your phone?

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. Yes.

2 Q. And what did you do?

3 A. I googled burns on my cell phone.

4 Q. And specifically what type of burns?

5 A. I just googled burns.

6 Q. Burns?

7 A. No, it wasn't anything specific. I just googled
8 burns.

9 Q. Okay, and you remember talking to law enforcement on
10 several occasions in this case?

11 A. Yes.

12 Q. And would you agree with me that -- the possibility
13 that you told them you actually googled second-degree burns
14 and how to deal with those?

15 A. It was so long ago. So, I know I, I googled burns.

16 Q. Okay, and when you googled it, what information came
17 up?

18 A. Just that you have to cool it off, cool the burns off.

19 Q. Okay. Was there anything else other than just to cool
20 it off?

21 A. No.

22 Q. So when you googled burns, it didn't say seek medical
23 attention?

24 A. I didn't ---

25 Q. That didn't come up?

1 A. I didn't read to that point.

2 Q. That wasn't the first thing on the list?

3 A. No.

4 Q. Okay, and anything about ointment or maybe calling
5 911? Just cold water?

6 A. Well, as I said, I didn't read on to that point.

7 Q. Okay. So, you just stopped reading about how to treat
8 them even though you didn't call 911 or go to the hospital?

9 A. Yes.

10 Q. Now during this time -- and what is the kind of
11 timeframe for, let's see, that you hear the screams and
12 then you have [Minor] in the bedroom?

13 A. Well, after he got into the shower about three to five
14 minutes or five or six minutes after I heard him burn --
15 excuse me, scream.

16 Q. Okay, and then y'all are in the room. Shane, is he in
17 the bedroom with you at any point during this time?

18 A. After I took [Minor] out of the tub.

19 Q. Okay, and I believe you said he was on his phone.
20 Could you hear what he was saying?

21 A. No. He walked out of the house.

22 Q. He walked out of the house?

23 A. Yes.

24 Q. And what did you do when he walked out of the house?

25 A. I was just talking to [Minor].

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

445

1 Q. Okay. You didn't feel the need to call 911?

2 A. I didn't have my phone.

3 Q. Who was using your phone?

4 A. Shane.

5 Q. Okay. At some point, did somebody else arrive at your
6 house that night?

7 A. Yes.

8 Q. Who?

9 A. Shane's brother.

10 Q. Brother?

11 A. Is what he calls him.

12 Q. Do you know his real name?

13 A. Yes.

14 Q. What is it Bruce Gibbs.

15 Q. Okay, and are they actually blood brothers?

16 A. No.

17 Q. Okay, and when he arrived, do you know like -- did
18 y'all -- did Shane go get him or ---

19 A. No. He, he ---

20 Q. How did he get there?

21 A. He drove.

22 Q. He drove?

23 A. Yes.

24 Q. Was anyone with him?

25 A. Yes.

1 Q. Who was with him?

2 A. Bruce's girlfriend.

3 Q. Okay, and when they got there, did Bruce observe what
4 was going on?

5 A. Yes.

6 Q. Tell the jury about that and your interactions.

7 A. Well, when Bruce got there, I guess we were, we were
8 just all walking. Me and Shane were just walking back and
9 forth arguing about taking my son to the hospital, and
10 Bruce told him that my son had to go to the hospital, and
11 eventually Shane said okay.

12 Q. Okay, and [REDACTED] Minor been with you your whole
13 life, right?

14 A. Yes.

15 Q. And it's clear you love him.

16 A. Yes.

17 Q. Why didn't you call 911?

18 A. I was scared.

19 Q. So, once Shane tells you it's okay, let's go, what
20 happened next?

21 A. I got my son into the car and I left.

22 Q. Was it just you?

23 A. No.

24 Q. Okay. Tell us who all got in the car and what you
25 did.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. Me, Shane, my son, and Bruce Gibbs all got into my
2 van, and we were riding down Farrow Road, and I got stopped
3 by the police.

4 Q. Okay, I'm going to show you what's been marked as
5 State's Exhibit 28 and entered into evidence. Do you
6 recognize that?

7 A. That's my van.

8 Q. It's your van?

9 A. Yes.

10 Q. Okay, and where were you seated?

11 A. In the driver's seat.

12 Q. Okay, and who had [Minor] ?

13 A. Shane.

14 Q. And was he clothed? Wrapped in a blanket? What?

15 A. Only thing my son had on was a pair of underwear and
16 he was wrapped in a blanket.

17 Q. And again, who was holding him?

18 A. Shane.

19 Q. And what was [Minor] kind of condition or
20 demeanor at this time?

21 A. He was just screaming out things.

22 Q. Just screaming out things?

23 A. Yes.

24 Q. Like what kind of things?

25 A. I'm hurting. Shane, you did this to me.

1 Q. Okay, and who else was in the car?

2 A. Bruce Gibbs.

3 Q. And where was he seated in the van?

4 A. The passenger middle on the right ---

5 Q. Was it ---

6 A. --- on the right-hand side of the van.

7 Q. Okay.

8 A. You know the passenger? And then behind the passenger
9 seat.

10 Q. Okay. So, he's in the back next to Shane?

11 A. Yes.

12 Q. Okay, and you stated you got stopped. Where --
13 exactly what hospital were you going to?

14 A. I was going to Richland Memorial.

15 Q. And did you know how to get there?

16 A. No.

17 Q. Well, then how did you know where to go?

18 A. Shane told me.

19 Q. Okay. So, you're driving. Shane is directing. Is
20 there any conversation in the car between you and Shane?

21 A. No.

22 Q. None whatsoever?

23 A. No.

24 Q. Okay, and you stated you got stopped by the police.
25 Tell the jury about that.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. When the police stopped me, he asked me why was I
2 going so fast, and I told him I needed to get my son to the
3 hospital, and the police were kind of acting like he didn't
4 believe me. So, opened up the van door where Shane and my
5 son were sitting. I opened up the blanket that my son had
6 on. The police saw the burns and he said, okay, I can
7 follow you.

8 Q. Okay. So, he -- did the police actually follow you to
9 the hospital?

10 A. I have no idea. I didn't wait for the police.

11 Q. Once you arrived at the hospital, what happened next?

12 A. I parked in front of the hospital, got out, and me,
13 Shane, and my son was -- well, my son wasn't running, but
14 me and Shane were running my son into the hospital.

15 Q. Okay, and who is holding Shane at this -- or who is
16 holding Minor at this point?

17 A. Shane.

18 Q. And is it fair to say he's actually holding him
19 throughout the whole time?

20 A. Yes.

21 Q. And when y'all went into the hospital, what happened
22 next?

23 A. We went to the front desk, and I told the lady that my
24 son needed to be seen and opened up his blanket that he had
25 on, and they immediately took him in the back.

1 Q. They immediately took him in the back?~

2 A. Yes.

3 Q. And as far as what you observed with respect to his
4 injuries, where were his injuries on his body that, that
5 you could see?

6 A. On his chest.

7 Q. His chest. Could you see his face?

8 A. I did see his face, but at the time no skin was
9 peeling off of his face.

10 Q. Okay, and what about his head? Did you happen to
11 notice the swelling?

12 A. No.

13 Q. No. So, they immediately take him and y'all are
14 allowed to go with him for a period of time, correct?

15 A. Yes.

16 Q. What happens during that time?

17 A. When we were in the back?

18 Q. As far as when the doctors are talking to you trying
19 to find out about what happened.

20 A. Well, when we were, we were in there, the doctors
21 asked me what happened, and only thing that I could tell
22 the doctors, that my son got burned.

23 Q. Okay, and so you didn't tell them -- did you tell them
24 how he got burned?

25 A. I can't remember.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Okay. So, you don't recall how he got burned, telling
2 them whether ---

3 A. I don't ---

4 Q. --- it was a ---

5 A. --- recall about the ---

6 Q. --- grease burn, cook burn, shower? What? What do
7 you recall?

8 A. I don't recall talking to the doctor.

9 Q. You don't remember anything about that?

10 A. No.

11 Q. Do you remember Shane talking to the doctors?

12 A. I wasn't in the room when Shane talked to the doctors.

13 Q. Okay. So, at no point did you tell them that you just
14 walked in and saw **Minor** sitting in the hot tub by
15 himself and immediately took him to the hospital? Is it
16 possible that you said that?

17 A. Could be a possibility.

18 Q. Okay, and at some point Shane -- is **Minor** still
19 upset?

20 A. Yes.

21 Q. During this time?

22 A. Yes.

23 Q. And Shane's still holding him?

24 A. No.

25 Q. No? He's put on the stretcher?

1 A. Yes.

2 Q. Well during this time, are the doctors speaking with

3 [REDACTED] Minor, too?

4 A. Yes.

5 Q. Okay, and what happened as they were speaking with
6 him?

7 A. Well, it was a bunch of nurses in there. So, I
8 remember them asking him what happened and who did it to
9 him.

10 Q. Okay, and ---

11 A. Who hurt him.

12 Q. And what happened next?

13 A. My son was just screaming out Shane, you did this to
14 me.

15 Q. You were standing there for that, as well as ---

16 A. Yes.

17 Q. --- the doctors?

18 A. I was.

19 Q. Okay, and at some point, do they -- do you actually
20 recall, if you recall, the nurse talking to you?

21 A. Yes. I remember talking to a nurse.

22 Q. Okay, and what do you remember about that
23 conversation?

24 A. She asked me what happened to my son.

25 Q. And what did you say at that time?

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. I told her that he got burned.

2 Q. He got burned?

3 A. Yes.

4 Q. Did she follow up with a question how did he get
5 burned?

6 A. Yes.

7 Q. Okay, and what was your response to that?

8 A. I told her that Shane burned him.

9 Q. You told her that Shane burned him?

10 A. Um.

11 Q. Now, we're still at Palmetto Health Richland where
12 your first statement is that he did it to himself, right?
13 Is that right?

14 A. Yes. That's what I was told.

15 Q. That's what you were told?

16 A. Yes.

17 Q. Was **Minor** ever allowed to take a shower by himself?

18 A. No.

19 Q. Okay, and at some point did you actually indicate to
20 medical personnel, and I know you had talked to -- or did
21 you have to talk to a lot of people that night?

22 A. I did.

23 Q. Did that include law enforcement, DSS?

24 A. I don't remember talking to DSS. I do remember
25 talking to law enforcement.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Law enforcement. At some point, did you tell perhaps
2 a nurse that it was actually ---

3 MS. PINNOCK: Objection, Your Honor. She's leading.

4 THE COURT: Restate the question, Solicitor.

5 BY MS. SIMPSON:

6 Q. At any point, did you tell anyone that it was you who
7 returned on the shower?

8 A. Yes, I did.

9 Q. Tell the jury about that.

10 A. Well, what do you mean by that?

11 Q. Tell the jury who you told or what you recall about
12 telling people that you turned on the shower.

13 A. I was, I was always basically told to say that I was
14 the one who burned my son.

15 Q. And who told you to say those things?

16 A. Shane.

17 Q. And so you, that's what you told people?

18 A. Yes.

19 Q. Were you notified that your son -- or did you stay at
20 the hospital? Tell us about what happened next.

21 A. At Richland?

22 Q. Yes.

23 A. Yes, I stayed the whole time.

24 Q. Okay, and did he stay for days, or where did he go?

25 A. No. He just -- he was -- after they wrapped him up,

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 they, they ended up taking him to Augusta.

2 Q. Okay, and did you go to Augusta?

3 A. I did.

4 Q. Who went with you?

5 A. Shane.

6 Q. Shane, and is Shane the only person who went with you?

7 A. No.

8 Q. Who else went with you?

9 A. Bruce Gibbs.

10 Q. So, y'all all three went to Augusta?

11 A. Yes.

12 Q. And when you got to Augusta, what happened?

13 A. I asked where my son was, gave them his -- gave the
14 people his name, and they took me directly to him.

15 Q. All right. What did you observe when you saw

Minor

16 Minor

17 A. I saw my son wrapped up looking like a mummy.

18 Q. A mummy?

19 A. Yes.

20 Q. Was he able to communicate with you or talk to you at
21 all, or was he just ---

22 A. Yes, he was able to communicate with me.

23 Q. Okay. As far as him being treated, did you talk to
24 the doctor? Did they talk to you about his treatment
25 and ---

1 A. Yes.

2 Q. --- what he needed?

3 A. Yes.

4 Q. And they asked you, too, what happened?

5 A. I don't recall.

6 Q. You don't remember that?

7 A. No.

8 Q. Did you stay at the Augusta Burn Center that night?

9 A. I did.

10 Q. And did Shane stay as well?

11 A. No.

12 Q. Okay. So, he left?

13 A. Yes.

14 Q. What about Bruce?

15 A. Yes. He left, too.

16 Q. Okay. So, who else came to the hospital that night?

17 A. I just remember it was me being -- I stayed the night
18 with my son.

19 Q. Okay. At some point, did you notify family members at
20 all?

21 A. I did.

22 Q. Like your parents or ---

23 A. Yes.

24 Q. Tell us about ---

25 A. I notified ---

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Who did you notify about what happened?

2 A. I told my father.

3 Q. You told your father?

4 A. Yes.

5 Q. And who came down -- I guess you stayed the night.

6 Who came down to the hospital?

7 A. My mother.

8 Q. Your mother?

9 A. Yes.

10 Q. And was that into -- I guess we're into the next day?

11 A. Yes, the next day.

12 Q. And were you able to see [REDACTED] Minor ?

13 A. I was.

14 Q. And talk to him?

15 A. Yes.

16 Q. And how many nights did you actually spend at the
17 Augusta Burn Center?

18 A. One.

19 Q. One. So, this happened on the 7th, and you spent the
20 night of the 8th pretty much?

21 A. Pretty much, yes.

22 Q. And your family comes down. Who, who do you come back
23 to Columbia with, or where do you go when you leave?

24 A. I left with my father.

25 Q. Okay, and where did you end up?

1 A. I ended up back home.

2 Q. And is that the home on Easter Street?

3 A. Yes.

4 Q. Okay, and who was with you at your home?

5 A. It was just me.

6 Q. Just you?

7 A. Yes.

8 Q. At some point, does Shane come back over?

9 A. Yes.

10 Q. Because y'all were still together?

11 A. Yes.

12 Q. And during this time -- like I said, you never went
13 back down to the Augusta Burn Center, right?

14 A. No.

15 Q. Did you and Shane talk about what happened?

16 A. Yes.

17 Q. Tell us what was said.

18 A. He told me that our stories had to match.

19 Q. And was he still living in the home at this time?

20 A. Yes.

21 Q. And by stories had to match, what did you think he was
22 talking about?

23 A. Whatever he said, I had to say the same thing.

24 Q. And say the same thing about what?

25 A. About my son.

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1 Q. About him getting burned?

2 A. Yes.

3 Q. Does any -- at some point -- let's see. 7th, 8th,
4 9th, do you talk with family members throughout this time
5 period or anything?

6 A. Yes.

7 Q. And you talked with his family as well?

8 A. When, when ---

9 Q. Mr. Johnson's family. Shane's.

10 A. Yes. I talked to them, too.

11 Q. Okay, and on the 12th, were you actually asked to come
12 in to give a statement to police about ---

13 A. Yes.

14 Q. --- what happened?

15 A. Yes, I was.

16 Q. And at that time, were you advised of your rights?

17 A. Yes.

18 Q. Did you understand your rights?

19 A. Yes.

20 Q. Did you agree to speak with police voluntarily?

21 A. Yes.

22 Q. And in that interview, what were they asking you
23 about?

24 A. My son, how he got hurt.

25 Q. Okay, and what did you tell them?

1 A. I told them that I was the one who put my son in the
2 shower.

3 Q. And why did you tell them that?

4 A. Because I was told to do that.

5 Q. Okay. By who?

6 A. By Shane.

7 Q. So, were you telling the truth during that interview?

8 A. No, I wasn't.

9 Q. Now, were you aware -- actually, did you and Shane
10 both go to the police station that day?

11 A. Yes.

12 Q. Did y'all ride together?

13 A. No.

14 Q. You rode separately?

15 A. The first time?

16 Q. On October 12th, the first day.

17 A. Yes, we rode together.

18 Q. Okay. You rode together that time?

19 A. Yes.

20 Q. And were y'all able to leave, I guess, the police
21 state station?

22 A. Yes.

23 Q. That day?

24 A. Yes.

25 Q. And where did you go when you left? Home?

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1 A. Yes.

2 Q. And Shane was home with you?

3 A. Yes.

4 Q. Was anybody else in the home at this time?

5 A. No.

6 Q. And you didn't go -- or did you go to the hospital?

7 A. I wasn't allowed to.

8 Q. You weren't allowed to go?

9 A. No.

10 Q. Who didn't allow you to go to the hospital?

11 A. Shane.

12 Q. To see your son?

13 A. Yes.

14 Q. Okay. So during this time, again do y'all continue to
15 talk about what happened?

16 A. Yes.

17 Q. Do you talk to anybody about what happened other than
18 Shane?

19 A. I talked to my father, and I talked to one of my
20 aunts.

21 Q. Okay, and is this after the first interview?

22 A. Yes.

23 Q. With the police?

24 A. Yes.

25 Q. Okay, and we'll get to that because were you

1 interviewed a second time on October 19th?

2 A. Yes.

3 Q. Okay. So, we're about seven days later, correct?

4 A. Yes.

5 Q. During that time period, the time period before from
6 the 7th to the 19th, who were you with?

7 A. Shane.

8 Q. Shane, and after that first interview with law
9 enforcement, what were you doing during the course of the
10 week? Was he -- was it typical days? Like, was he going
11 to work?

12 A. Yes.

13 Q. I mean, what ---

14 A. Yes, he ---

15 Q. --- was happening?

16 A. --- was going to work and I was home.

17 Q. And what were you -- and while you were home, did you
18 have access to the car or did he use the car?

19 A. I had access to my car.

20 Q. Did y'all actually have a barbecue at some point or,
21 like, a cookout over at your house?

22 A. Yes.

23 Q. And tell the jury about that.

24 A. It -- I had a barbecue cookout. It was me, Shane, and
25 his family.

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. And his family, who all was there?

2 A. His mother, sister, aunt.

3 Q. Okay, and your family during this time -- and I'm
4 talking about your mother, and does she have any sisters?
5 You have aunts?

6 A. Yes. Yes, I do.

7 Q. Who are they? Who are the aunts? Just name them.

8 A. Oh. My auntie Renee, my auntie Kim.

9 Q. Okay, Auntie Renee, Auntie Kim, and you have more
10 aunts, too, but you have a pretty big family?

11 A. Yes, I do.

12 Q. Okay.

13 A. Yes, I do.

14 Q. So, you have a big family. Are you in communication
15 with them?

16 A. Yes.

17 Q. And where are they? Is anyone going to the Augusta
18 Burn Center to visit Minor during his hospital stay?

19 A. Yes. My whole family.

20 Q. Your whole family went?

21 A. Yes.

22 Q. Everybody except you?

23 A. Yes.

24 Q. Okay. So, barbecue cookout. What's the nature of
25 this cookout? Y'all -- you said it's his family with you?

1 A. Yes.

2 Q. While your son's in the hospital?

3 A. Yes.

4 Q. Okay. At some point, do you speak with one of your
5 aunts?

6 A. Yes, I do.

7 Q. Okay, and without telling me what all was said during
8 that conversation, did you discuss with her about what
9 happened to [Minor]? Did she want to talk to you
10 about what happened?

11 A. Yes.

12 Q. And what did you decide to do or tell her about [Minor]
13 [Minor]

14 A. I decided that I was going to tell the truth about
15 what happened to my son.

16 Q. And what is the truth about what happened to your son?

17 A. That I did not burn him.

18 Q. Who burned him?

19 A. Shane.

20 Q. Did you go to the police station on your own, or were
21 you called to come up there?

22 A. I was called to come up there.

23 Q. Okay, and when you went up there, who went with you
24 this time?

25 A. I was up there by myself. Oh, I believe my -- I want

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON.

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1 to say my father was with me, I believe.

2 Q. Your father took you. Okay, and at this point did you
3 know that Shane was going to be interviewed the same day as
4 well?

5 A. I did.

6 Q. Because he was still in the house with you, right?

7 A. No.

8 Q. No? Had he moved out at that point or just wasn't in
9 the house?

10 A. Well, I called ---

11 Q. That day?

12 A. I called ---

13 MS. PINNOCK: Objection, Your Honor. Can we approach?

14 THE COURT: Yes, ma'am.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 THE COURT: Thank you. Thank you, Ms. Pinnock. Thank
17 you, Solicitor.

18 MS. PINNOCK: Thank you, Judge.

19 MS. SIMPSON: Thank you, Judge.

20 BY MS. SIMPSON:

21 Q. So, you go to the police station with your dad?

22 A. Yes.

23 Q. And do you remember who you talked to?

24 A. Yes.

25 Q. Who?

1 A. At the police station?

2 Q. Uh-huh.

3 A. Detective Charley.

4 Q. Investigator Charley?

5 A. Yes.

6 Q. And he, had he actually -- is he present in the
7 courtroom? Do you recognize him?

8 A. Yes, he is.

9 Q. Okay, and had he been present during your first
10 interview?

11 A. No. He wasn't, he wasn't in the room.

12 Q. He wasn't in the room?

13 A. No.

14 Q. But he was aware -- was he aware of your first
15 interview?

16 A. Yes.

17 Q. Things you said?

18 A. Yes.

19 Q. And at this point in time, you said you decided to
20 tell the truth?

21 A. Yes.

22 Q. Were you advised of your rights?

23 A. Yes.

24 Q. And you understood them?

25 A. Yes.

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1 Q. And did you wish to speak with Investigator Charley
2 freely and voluntarily?

3 A. Yes, I did.

4 Q. And what did you tell him about what happened that
5 night?

6 A. I told him I was not the one who put my son in the
7 shower. I did not burn him.

8 Q. And did you admit that you didn't call 911?

9 A. Yes.

10 Q. Did you say why you didn't call 911?

11 A. Yes, I did.

12 Q. And why was that?

13 A. I was scared.

14 Q. Scared of who?

15 A. Shane.

16 Q. Prior to going to the police station on the 19th and
17 talking, had you actually had a conversation, another
18 conversation with Shane about your stories?

19 A. No. I did not talk to him.

20 Q. You didn't talk to him ---

21 A. About anything.

22 Q. About anything?

23 A. No, not that I remember.

24 Q. After the barbecue?

25 A. Well.

1 Q. As far as the incident is considered, did you tell him
2 you were about to tell the truth?

3 MS. PINNOCK: Objection, Your Honor. She's leading.

4 THE COURT: Restate the question, Solicitor.

5 BY MS. SIMPSON:

6 Q. Okay, at any point, did Shane know that you were going
7 to talk to the police?

8 A. Yes.

9 Q. So, he was aware?

10 A. Yes.

11 Q. I want to back up. [Minor] biological father
12 is who?

13 A. Reginald Walker, Sr.

14 Q. And at this time in October, where was he living?

15 A. He was in California.

16 Q. And how long had he been in California? Was he ---

17 A. About five years.

18 Q. Okay. So, at no point was he present ---

19 A. No.

20 Q. --- during this incident?

21 A. Not at all.

22 Q. But did [Minor] have interactions with him, like
23 conversations?

24 A. Yes, every day.

25 Q. Okay. As far as Shane's income to -- you know, did he

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 receive money for working?

2 A. Yes.

3 Q. Did he help you out in any way financially ---

4 A. No.

5 Q. --- with the bills?

6 A. No.

7 Q. Who helped you out?

8 A. My mother.

9 Q. Okay. I'm going to show you what's been marked as
10 State's Exhibit and entered into evidence as State's 68.

11 Do you recognize this?

12 A. Yes, I do.

13 Q. And what's in this picture?

14 A. My tub.

15 Q. Okay, and what happened in that tub?

16 A. My son got ---

17 Q. Is that where you found Minor

18 A. Yes.

19 Q. And was the shower curtain, if you recall, was it open
20 or closed when you found him?

21 A. I don't recall.

22 Q. I'm going to show you what's entered as State's 74.

23 Do you recognize this?

24 A. Yes. That's my bathroom.

25 Q. That's your bathroom?

1 A. Yes.

2 Q. And what portion is it showing of your bathroom?

3 A. The bottom.

4 Q. The bottom?

5 A. The bottom where the faucet is and the handle.

6 Q. And the handle. Is that handle used to control ---

7 A. Yes.

8 Q. --- what the water ---

9 A. The temperature, water, yes.

10 Q. And then as far as State's Exhibit 72, do you
11 recognize that?

12 A. Yes. That's my shower.

13 Q. That's your shower?

14 A. Yes.

15 Q. And it looks like it's a shower head, right?

16 A. Yes.

17 Q. Does it come apart?

18 A. Yes, it does.

19 Q. Okay. So the cord, you can actually ---

20 A. Yes.

21 Q. --- move it around?

22 A. Move around with it, yes.

23 Q. When you went into that bathroom and you saw your son
24 screaming and crying, was the shower head up in place where
25 it is in these photos? Had it been placed back or where --

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1 how was it?

2 A. It was how the picture looks now.

3 Q. Okay, and as far as where Shane was standing, was he
4 standing -- is this a kind of small bathroom or a huge
5 bathroom?

6 A. It's a small bathroom.

7 Q. Small bathroom. Was Shane -- where was he standing?

8 A. He was standing to the, to the left.

9 Q. Okay, to the left?

10 A. Yeah. It's not ---

11 Q. Okay.

12 A. It's not shown in the picture.

13 Q. Oh. Okay. Now, you say you were scared of Shane on
14 that evening, but rather than take your son to get
15 immediate assistance, you were concerned about yourself.
16 Is that fair?

17 A. No, I wasn't concerned about myself. I was concerned
18 about my son.

19 MS. SIMPSON: Beg the court's indulgence.

20 (A PAUSE.)

21 BY MS. SIMPSON:

22 Q. During all your conversations from the time your son
23 was burned, who did he say did it to him?

24 A. Shane.

25 Q. And at any point, did he say anybody else?

1 A. No.

2 Q. Now, Ms. Campbell, you were actually charged, correct?
3 Correct?

4 A. Yes.

5 Q. With unlawful conduct or neglect of a child?

6 A. Yes.

7 Q. And that was as a result of your actions and your role
8 in this case?

9 A. Yes.

10 Q. And as far as -- actually, I have one more question
11 with respect to your role. It took y'all almost two hours
12 to take [Minor] to the hospital, correct?

13 A. Yes.

14 Q. After he was burned?

15 A. Yes.

16 Q. And as I said, you were charged with unlawful conduct
17 and neglect of a child?

18 A. Yes.

19 Q. Have you pled guilty to that charge?

20 A. Yes, I have.

21 Q. And do you know what you're facing?

22 A. No, I don't.

23 Q. Do you know that charge carries zero to ten years?

24 A. Yes.

25 Q. Okay, and have any promises been made to you with

K. CAMPBELL - DIRECT EXAMINATION BY MS. SIMPSON

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1 respect from my office about testifying here today?

2 A. No.

3 Q. So, you're still facing up to ten years?

4 A. Yes, I am.

5 Q. And did anybody threaten you to testify here today?

6 A. No.

7 Q. So, you're testifying here of your own free will?

8 A. Yes, I am.

9 Q. The person that you saw standing in the shower while
10 your son was screaming and crying and burning, do you see
11 him in the courtroom here today?

12 A. Yes, I do.

13 Q. And can you point him out for the jury?

14 A. (THE WITNESS COMPLIES.)

15 Q. Will you describe what he's wearing?

16 A. Black tie, want to say purple shirt or, like, a
17 whitish shirt.

18 Q. And does he have on glasses?

19 A. Yes, he does.

20 Q. Sitting between his attorneys?

21 A. Yes.

22 MS. SIMPSON: Your Honor, let the record reflect she's
23 identified the defendant.

24 THE COURT: So reflected. Thank you. Thank you,
25 Solicitor.

1 Ms. Pinnock.

2 MS. PINNOCK: May it please the court, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. PINNOCK: Begging the court's indulgence?

5 THE COURT: Yes, ma'am.

6 (A PAUSE.)

7 CROSS-EXAMINATION BY MS. PINNOCK:

8 Q. How you doing, Ms. Campbell.

9 A. Good. How you doing?

10 Q. Good. All right, I'm not going to take up too much of
11 your time, okay? I just want to -- I'm going to go through
12 a few things with you. I just need some clarification on
13 some things.

14 You met -- you said that you, going back to when you
15 met Shane, it was in November-ish of 2014?

16 A. Yes.

17 Q. And the only reason that you knew who he was was
18 because Minor went to play with ---

19 A. His son.

20 Q. --- his son? So at some point, like all parents do,
21 you're, like, if my child's going to be over there, I need
22 to know who's going to be over there watching him?

23 A. Yes.

24 Q. And when they were over there playing, Shane would be
25 the one watching them, right?

K. CAMPBELL - CROSS-EXAMINATION BY MS. PINNOCK

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1 A. His mother would be home, too.

2 Q. But he was there? Shane was there?

3 A. Yes.

4 Q. Okay, and you knew Shane's sister?

5 A. Yes.

6 Q. And she introduced you to, I guess, her mother and
7 Shane when you came to the house?

8 A. Yes.

9 Q. And it was never an issue for [Minor] to go over there
10 and play?

11 A. No.

12 Q. Like everybody, we all want our kids to go over and
13 play with their friends.

14 A. Yes.

15 Q. And they would do this. You know, y'all, y'all would
16 let them play together after school, on weekends, whenever
17 they were around?

18 A. After school.

19 Q. Okay, and at some point with you, after you met him,
20 you said, I believe you pretty much said that y'all just
21 kind of clicked. You started hanging out, and then you
22 started dating?

23 A. Yes.

24 Q. And at some point you said that he, he did move into
25 the house with you and [Minor]

1 A. Yes.

2 Q. And it had been you and **Minor** for quite some time?

3 A. Yes.

4 Q. And y'all had your routine like everybody does, right?

5 A. Yes.

6 Q. You know, Monday through Friday get ready for school.

7 He goes to school. You get your house stuff done. You run
8 errands. After school, you had the, the luxury of going to
9 pick him up after school?

10 A. Yes.

11 Q. Which a lot of parents don't have the luxury of doing.

12 A. Yes.

13 Q. So, you'd make sure he had everything he needed?

14 A. Yes.

15 Q. Because that's your son.

16 A. Yes.

17 Q. You love him.

18 A. Yes.

19 Q. I'm not doubting that you love him. He is your son.

20 He is your only child?

21 A. Yes.

22 Q. But even as parents, would you agree with me we don't
23 get everything right all the time, right?

24 A. I can agree to that.

25 Q. You know, sometimes it's, well, I tried this new

K. CAMPBELL - CROSS-EXAMINATION BY MS. PINNOCK

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1 recipe I thought was going to be awesome, but it turned out
2 to be horrible, but our kids don't like to make us sad, so
3 they eat it anyway, right?

4 A. Yes.

5 Q. And, you know, it's because we're not perfect. We
6 know that we get things wrong.

7 A. Yes.

8 Q. All we can do is try our best.

9 A. Yes.

10 Q. And on the 6th of October of 2015, you testified that
11 you told the investigators that you were helping Minor
12 with a project?

13 A. Yes.

14 Q. And you had been up late the night before?

15 A. Yes.

16 Q. And y'all worked on it hard all through the next day?

17 A. Yes.

18 Q. And you finally finished it?

19 A. Yes.

20 Q. Everybody knows that nobody has time for school
21 projects, but it's time we get to spend with our children.

22 A. Yes.

23 Q. And that's what y'all were working on for most of the
24 day because he wasn't in school that day?

25 A. Yes.

1 Q. He was out of school because of the flood?

2 A. Yes.

3 Q. But Shane went to work that day, right?

4 A. That morning.

5 Q. Yeah. So, he was gone pretty much the entire morning?

6 A. Yes.

7 Q. You said he gets home from work in the late
8 afternoons?

9 A. Yes.

10 Q. And after y'all had finished the project, you said
11 that you were tired?

12 A. Yes.

13 Q. But it had gotten to, you know, Minor bath leading
14 into bedtime?

15 A. Yes.

16 Q. So, it was time for him to get washed up and get ready
17 for bed?.

18 A. Yes.

19 Q. And did you say you asked Shane to help, or did he
20 offer to help?

21 A. He offered.

22 Q. Okay. It's not something that happened often?

23 A. No.

24 Q. Because y'all had your routine?

25 A. Yes.

K. CAMPBELL - CROSS-EXAMINATION BY MS. PINNOCK

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1 Q. That's something that y'all did together?

2 A. Yes, me and my son.

3 Q. That was your responsibility?

4 A. Yes.

5 Q. So, when, when you say that Shane was putting **Minor**
6 in the shower, you said you were laying on your bed?

7 A. Yes.

8 Q. You were watching TV?

9 A. Yes.

10 Q. And you heard the water come on?

11 A. Yes.

12 Q. I'm going to show you Defense Exhibit 1 that's already
13 in evidence. That your hallway, right?

14 A. Yes.

15 Q. And this room at the back, that's **Minor** room?

16 A. Yes.

17 Q. Your room is the door right beside it, right?

18 A. To the right.

19 Q. And this would be the bathroom?

20 A. Yes.

21 Q. Okay. So, **Minor** room is all the way to the back.
22 Your room is to the right of his room?

23 A. Yes.

24 Q. And then this would be the bathroom?

25 A. Yes.

1 Q. So, we're not talking about a 4000 square-foot house?

2 A. No.

3 Q. It's a comfortable house for you and your son?

4 A. Yes.

5 Q. Would you agree with me it's about 7 feet from your
6 room to the bathroom?

7 A. I don't know.

8 Q. You don't know, but it's not an extended -- a large,
9 large area?

10 A. No.

11 Q. So, so, you're laying in bed. You've got the TV on.
12 You hear the water come on, and then you heard Minor
13 scream?

14 A. Yes.

15 Q. And I didn't understand this at first, but knowing
16 what I know now, we all know that our children have certain
17 screams, right?

18 A. Yes.

19 Q. We start learning it when they're babies. You know,
20 when they're hungry, when they're tired, you can tell the
21 difference between a scream that says you might be able to
22 take your time getting somewhere and a scream that says you
23 have to go right now.

24 A. Yes.

25 Q. It's that scream that hits you to your core, right?

K. CAMPBELL - CROSS-EXAMINATION BY MS. PINNOCK

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1 A. Yes.

2 Q. That's the scream that you heard?

3 A. Yes.

4 Q. Those screams just make your -- a physical reaction in
5 your body where you are up and running before you have time
6 to think about it?

7 A. Yes.

8 Q. And that's what you heard?

9 A. Yes.

10 Q. That strike-you-to-the-core, bloodcurdling scream,
11 right?

12 A. Yes.

13 Q. He wasn't screaming for ten minutes before you got
14 there, right?

15 A. No.

16 Q. You heard the noise, and your feet hit the ground?

17 A. Yes.

18 Q. You got out of your room and went to the bathroom?

19 A. Yes.

20 Q. And you said when you got there, the door was ajar.
21 So, the door was open?

22 A. Yes.

23 Q. And you said Shane was just kind of standing there?

24 A. Yes.

25 Q. You described him at one point as looking nervous or

1 shocked. Do you remember doing that?

2 A. Yes.

3 Q. And Ms. Simpson showed you a picture, but you said you
4 couldn't see where Shane was standing in it. Where was
5 Shane standing when you opened the door?

6 A. In this area.

7 Q. Up there by the curtain?

8 A. Yes.

9 Q. So when you go into the bathroom, he's standing up by
10 this curtain?

11 A. Yes.

12 Q. The shower nozzle is in the holder?

13 A. Yes.

14 Q. He is standing there. Minor in the floor of the
15 tub screaming?

16 A. Yes.

17 Q. And you got to that bathroom in a second?

18 A. Yes, I did.

19 MS. PINNOCK: Beg the court's indulgence.

20 THE COURT: Yes, ma'am.

21 (A PAUSE.)

22 BY MS. PINNOCK:

23 Q. And, Ms. Campbell, you stated you were also charged
24 with unlawful conduct towards a child or neglect?

25 A.. Neglect.

K. CAMPBELL - CROSS-EXAMINATION BY MS. PINNOCK

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1 Q. And you said you didn't know what it carries?

2 A. No, I didn't.

3 Q. And that's your lawyer sitting up here, right, fourth
4 row, gray suit?

5 A. Yes, it is.

6 Q. And y'all discussed you coming to testify today,
7 right?

8 A. Yes.

9 Q. And he told you that you wouldn't be getting any
10 offers from the solicitor in your case until after this
11 trial was done, right?

12 A. Yes.

13 Q. And you don't want to go to prison for ten years.

14 A. No, I don't.

15 Q. And Ms. Simpson is the one that did your guilty plea,
16 right? When you, when you came to court to plead guilty,
17 she was the prosecutor ---

18 A. Yes.

19 Q. --- standing there?

20 A. She was there.

21 Q. Okay. So, she is prosecuting your case?

22 A. Yes.

23 MS. PINNOCK: Thank you, Ms. Campbell.

24 I don't have anything else, Judge.

25 THE COURT: Redirect, Solicitor?

1 MS. SIMPSON: Brief redirect, Your Honor.

2 REDIRECT EXAMINATION BY MS. SIMPSON:

3 Q. Ms. Campbell, I believe she brought up the fact that
4 Shane volunteered to give [Minor] a shower?

5 A. Yes.

6 Q. Had you had any issues with [Minor] in the shower and
7 the water temperature and burning prior to this day and
8 prior to Shane giving him a shower?

9 A. Never.

10 Q. And before that, you were responsible for most
11 everything?

12 A. Yes.

13 Q. This day was an exception?

14 A. Yes.

15 Q. And I believe she mentioned two conversations with
16 your lawyer. Have you been made any promises of an offer
17 or anything of that nature?

18 A. No.

19 Q. By the state?

20 A. No.

21 Q. By myself, by Ms. Campbell?

22 A. No.

23 Q. And when you walked in, she mentioned the screams that
24 hit you to your core, and you know the different ones.
25 Shane could hear the screaming, correct?

1 A. Yes.

2 Q. From his position?

3 A. Yes.

4 Q. And that water was still on?

5 MS. PINNOCK: Objection, Your Honor. She's leading.

6 BY MS. SIMPSON:

7 Q. Was that water still on?

8 A. Yes, it was.

9 MS. SIMPSON: No further questions, Your Honor.

10 THE COURT: Recross, Ms. Pinnock?

11 MS. PINNOCK: No, Your Honor.

12 THE COURT: Thank you. Thank you very much.

13 All right, Ms. Campbell, you may step down.

14 (THE WITNESS EXITS THE STAND.)

15 THE COURT: Before we take our afternoon recess,
16 ladies and gentlemen, I do want to address one issue that
17 came up during the morning hours as to one witness, Dr.
18 Cartie. If you'll recall, Dr. Cartie was the first witness
19 that testified this morning from the Augusta Burn Center,
20 the Joseph Still Burn Center, and during the course of his
21 testimony, he gave various opinions. In one response, he
22 gave an opinion to the effect that the event, the injury,
23 may have occurred as a form of punishment.

24 Those five words, as a form of punishment, I am
25 striking those from the record. I am advising that during

1 your deliberations, you are not, not to consider those
2 words. They've been stricken from the record, and they
3 should not even be discussed by the jury in any manner.

4 Many times, often in the courtroom you may have the
5 intersection of various professions and crafts, and what
6 may be part of their vocabulary may not be part of the
7 judicial or the legal vocabulary. So as to those words,
8 I'm striking them from the record. I'm advising you you're
9 not to consider them whatsoever during the course of your
10 deliberations. They will be no part of your decision in
11 this matter, and do not even discuss them in your jury
12 room, and I will remind you of this when I instruct you
13 later on during the course of the trial.

14 With that being said, let's take about a
15 fifteen-minute recess. How late y'all want to work today?
16 Show of hands. Okay, that's a good answer. That kind of
17 my timeframe sometimes. All right, we will press on.

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

20 (THE JURY EXITS AT 3:46 P.M.)

21 THE COURT: All right, anything from the state before
22 we take our recess, Solicitor?

23 MS. CAMPBELL: Nothing, Your Honor.

24 THE COURT: Anything from defense, Mr. Bank?

25 DEPUTY: Quiet, please.

1 MR. FYALL: Your Honor, we never officially -- the
2 court reporter reminded me we never officially moved
3 Exhibit 93, Mr. Johnson's statement, into evidence. I'd
4 just like to do that at this time.

5 THE COURT: Any objections?

6 MR. BANK: That's the audio, the first one?

7 MR. FYALL: Yes.

8 MR. BANK: I believe that you've granted all our
9 motions on that.

10 THE COURT: Yes, sir.

11 MR. BANK: In terms of the redactions. So, we have
12 no, no objections.

13 THE COURT: The audio on what now?

14 MR. BANK: The audio, the audio of the ---

15 MR. FYALL: The initial one that we actually started
16 publishing, the court reporter ---

17 THE COURT: The statement of Mr. Johnson?

18 MR. FYALL: Yes, the October 12th statement.

19 THE COURT: I have not ruled on that under *Jackson vs.*
20 *Denno*, but I understand all that has been presented is
21 going to be presented. There's also the -- I believe
22 there's a statement, the Advice of Rights form that's
23 marked 94. I'm not sure what it's marked, but I would find
24 it complies with *Jackson vs. Denno* and *State vs. Parker* as
25 far as, as far as voluntariness.

1 MR. BANK: Yes, sir.

2 THE COURT: All, anything else?

3 MR. BANK: We have no objection to that.

4 I would renew the objection to the curative
5 instruction. We would -- we still ask for a mistrial, but
6 I understand your ruling.

7 THE COURT: I understand. All right. Yes, sir.

8 MR. BANK: And the only other thing would be in terms
9 of scheduling, I think we have an hour and a half of audio
10 left. Is that about right?

11 MR. FYALL: Fifty-eight minutes.

12 THE COURT: That counts the other thirty on ---

13 MR. FYALL: I'm sorry.

14 THE COURT: --- 12 October?

15 MR. FYALL: Including that thirty, it's an hour and a
16 half.

17 THE COURT: So, it's 128 minutes? Is that -- no,
18 ninety-eight, hour and a half, okay.

19 How many more witnesses you got, Solicitor? Two?

20 MS. CAMPBELL: Three. Two short ones, then the
21 investigator.

22 THE COURT: Two short ones and then Detective Charley?

23 MS. CAMPBELL: Yes, sir.

24 THE COURT: All right. We'll press on.

25 MR. BANK: And I'm just trying to figure out whether

1 we should try to have our witnesses here just first thing
2 in the morning, or whether we should have them here this --
3 whether we think the state's case will take up the rest of
4 the afternoon with the hour and a half and the three
5 witnesses.

6 THE COURT: I think we will. I think it will be fine
7 in the morning.

8 You agree with that, don't you, Solicitor?

9 MS. CAMPBELL: At the rate we've been going, Judge,
10 yes.

11 THE COURT: Particularly if I get up and take a
12 recess.

13 MR. BANK: I'll go ahead and start instructing them to
14 ---

15 MS. CAMPBELL: Just as far as ---

16 MR. BANK: --- be here tomorrow morning.

17 MS. CAMPBELL: How long do you think your case will
18 take in the morning?

19 MR. BANK: Not -- depending, it depends on -- right
20 now not very long. I don't know who your next witnesses
21 are. If it's just Investigator Charley and the interviews,
22 I, I don't have much at all, leaving aside Mr. Johnson's
23 decision ---

24 THE COURT: If you want to press on this evening, I'll
25 press on. Y'all can work on your closings. If the jury

1 will hang with us, I'll hang with you.

2 MR. BANK: I think that the only witness that I'm
3 concerned about with the timing would be very brief. So,
4 even if we did him in the morning, I'd be able to get him
5 in and out very quickly. I just don't -- I just didn't
6 want to not have him here and everybody be trying --
7 expecting him to be here.

8 THE COURT: We're fine in the morning.

9 MR. BANK: Okay.

10 THE COURT: Okay?

11 MR. BANK: Thank you, Judge.

12 THE COURT: Fifteen-minute recess.

13 MS. CAMPBELL: Thank you, Judge.

14 THE COURT: Thank you. Thank you very much.

15 (DVD MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
16 93.)

17 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
18 NUMBER 9.)

19 (OFF THE RECORD.)

20 THE COURT: Anything before we bring in the jury,
21 Solicitor?

22 MS. SIMPSON: No, Your Honor.

23 THE COURT: Ms. Pinnock?

24 MS. PINNOCK: No, Your Honor.

25 THE COURT: All right. Let's see, we're waiting on

1 Mr. Bank and Ms. Sturgill.

2 MS. STURGILL: I'm here, Your Honor.

3 THE COURT: Oh. All right. Yes, ma'am.

4 MS. STURGILL: Mr. Bank just stepped out for a moment.

5 THE COURT: All right.

6 MS. CAMPBELL: Your Honor, we gave them the phones.

7 There were two phones that were taken in this case, and our
8 investigator was not able to get anything off of them. We
9 gave them access, as Mr. Bank told you on Monday, to the
10 phone and they were to turn them over to us. I just went
11 over to confirm that they got nothing from the phone, and
12 apparently they got something from the phone. So, they're
13 now getting it up here for me.

14 THE COURT: All right.

15 MS. CAMPBELL: But that may affect when I can rest.

16 THE COURT: All right.

17 Is that Mr. Watkins?

18 MS. PINNOCK: Yes, sir.

19 THE COURT: All right.

20 MS. CAMPBELL: I just wanted to let you know what was
21 going on.

22 THE COURT: All right. Is Mr. Bank going to deal with
23 the next witness? If so, I'll be glad to wait. That may
24 be him coming in now.

25 MS. CAMPBELL: I'm not sure.

B. REED - DIRECT EXAMINATION BY MS. SIMPSON

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1 THE COURT: That's him. That's him.

2 All right, so we're ready for the jury, correct?

3 MS. CAMPBELL: Yes, sir.

4 (THE JURY ENTERS AT 4:11 P.M.)

5 THE COURT: All right, we will, we'll work late. If
6 anybody needs to call uncle, please do so and I'll
7 certainly respond to that.

8 All right, Solicitor, call your next witness.

9 MS. SIMPSON: Thank you. May it please the court?
10 Your Honor, state calls Barbara Reed.

11 THE COURT: All right, if you'd come around and be
12 sworn for us, please. Yes, ma'am.

13 BARBARA REED, BEING DULY SWORN,
14 TESTIFIES AS FOLLOWS:

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

17 WITNESS: Barbara Reed.

18 DIRECT EXAMINATION BY MS. SIMPSON:

19 Q. Ms. Reed, what is your profession?

20 A. I am a teacher.

21 Q. Okay, and where are you currently employed?

22 A. Currently I work at J. Lewis Greenview Elementary
23 School.

24 Q. So, what age group do you teach?

25 A. I teach first graders.

B. REED - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Okay, and can you tell the jury just a little bit
2 about your educational background?

3 A. This is my thirteenth year of teaching. I teach
4 general education, which includes children of all walks of
5 life. I have normally probably twenty to twenty-five
6 children in my class. I've taught three different grade
7 levels. I've been in first grade for ten years.

8 Q. Okay, and were you [REDACTED] Minor's first grade
9 teacher?

10 A. Yes.

11 Q. And this was prior to the incident happening, correct?

12 A. During, yes.

13 Q. Or during that time. With respect to Reginald -- and
14 let me back up. In your classes, do you actually have
15 students with special needs ---

16 A. Yes.

17 Q. --- as well as students who are not developmentally
18 ---

19 A. Yes, ma'am.

20 Q. --- delayed? Kind of explain that for the jury.

21 A. The children that I serve in my classroom are, like I
22 said, general education, but I also have special-needs,
23 children that are in my class for the majority of the day,
24 and then part of the day they might spend in a resource
25 classroom and then come back to me for everything else.

1 Q. And are you familiar with -- what do you call Reginald
2 Walker?

3 A. What do I call him?

4 Q. Yes.

5 A. A child.

6 Q. A child. Does he go by Minor

7 A. He goes by Minor yes.

8 Q. Minor at school?

9 A. Sometimes I call him Minor but most of the time
10 it's Minor

11 Q. Okay, and is he able to communicate with you well?

12 A. Yes, ma'am.

13 Q. Or was he at the time ---

14 A. Yes, ma'am.

15 Q. --- in your class?

16 A. Yes, ma'am.

17 Q. And ---

18 A. He was very vocal, very verbal.

19 Q. So, if something's wrong or if something happened
20 during the class, would he tell you about it?

21 A. Absolutely.

22 Q. As far as pain tolerance, does Minor exhibit or did he
23 exhibit any unusual type of tolerance ---

24 A. No, ma'am.

25 Q. --- for pain, or was it pretty normal?

B. REED - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. No, ma'am. If he got hurt, I knew about it.

2 Q. Okay, he ---

3 A. From him.

4 Q. --- told you?

5 A. Uh-huh.

6 Q. And as far as Minor ability to interact with the
7 other students in the class, how, how does that work? How
8 would ---

9 A. He's is definitely ---

10 Q. --- he do that?

11 A. --- very friendly with all the children. When he
12 would leave to go to his resource class in the mornings,
13 there were two other children that went with him, and he
14 was kind of the caretaker of everybody and made sure
15 everybody got down the hallway, and made sure everybody got
16 back on time. And they weren't doing something the right
17 way, he was sure to let them know that they weren't doing
18 something the right way and let me know. So, definitely
19 was the ringleader, I guess, to kind of take care of
20 everybody.

21 Q. And as far as being in class and comprehension, while
22 he may not have been on the same level as everyone in the
23 class, was he able to comprehend the subject matter and
24 participate ---

25 A. Yes.

1 Q. --- in class?

2 A. Yes.

3 Q. Also with respect to Reginald before this incident,
4 did he have any type of scarring or anything of that
5 nature?

6 A. No.

7 MS. SIMPSON: Beg the court's indulgence.

8 (A PAUSE.)

9 BY MS. SIMPSON:

10 Q. And have you seen Reginald since then?

11 A. Uh-huh.

12 Q. Minor since then?

13 A. He came back to my classroom last year.

14 Q. Last year?

15 A. Uh-huh.

16 Q. And that was after this incident occurred?

17 A. Yes.

18 Q. And at that point, what did you visibly observe about
19 him?

20 A. Scarring on his face, his neck. Then he was still
21 wearing compression, so I didn't ever see his arms. When
22 it started getting warm and he was wearing shorts, you
23 could see the scars on his legs, and then, I mean, there's
24 one on the back of his head also.

25 Q. But as far as his ability to participate in class, was

B. REED - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 he still essentially the same Minor

2 A. Yes, and he told me so.

3 Q. And he told you so?

4 A. He did. The first day he came back and I saw him, he
5 said it's me, Ms. Reed. It's still me, Minor so.

6 Q. If you are able to recall, how long was he actually
7 out of school?

8 A. I really -- I don't -- I would be guessing if I told
9 -- I don't...

10 Q. You'd be guessing?

11 A. I don't really remember. It was after Christmas that
12 he came back. I do know that.

13 Q. Okay. So, it would have been -- I guess y'all have a
14 holiday break?

15 A. Uh-huh.

16 Q. Right, so sometime in January ---

17 A. Yes.

18 Q. --- maybe?

19 A. Yes. I meant yes.

20 MS. SIMPSON: Thank you, Ms. Reed.

21 WITNESS: Okay.

22 MS. SIMPSON: Nothing further.

23 THE COURT: Mr. Bank.

24 MR. BANK: Very briefly.

25 CROSS-EXAMINATION BY MR. BANK:

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1 Q. So, you said -- you described Minor being vocal,
2 right?

3 A. Yes.

4 Q. And being able to communicate just fine. Is that
5 correct?

6 A. Yes.

7 Q. Being able to explain things when asked. Is that
8 fair?

9 A. Yes.

10 MR. BANK: Thank you. That's all the questions I
11 have.

12 THE COURT: Redirect, Solicitor?

13 MS. SIMPSON: No, Your Honor, and may this witness be
14 excused?

15 THE COURT: Yes, ma'am.

16 Thank you very much for being with us this afternoon,
17 Ms. Reed.

18 WITNESS: Thank you.

19 THE COURT: You may step down. You may be excused.

20 (THE WITNESS EXITS THE STAND.)

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

22 MS. SIMPSON: May it please the court? State calls
23 Ronica Henry.

24 THE COURT: All right, Ms. Henry, if you'd come around
25 and be sworn for us, please.

R. HENRY - DIRECT EXAMINATION BY MS. SIMPSON

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1 RONICA HENRY, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

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

5 WITNESS: Ronica Henry.

6 DIRECT EXAMINATION BY MS. SIMPSON:

7 Q. Ms. Henry, what is your profession?

8 A. I am a teacher.

9 Q. And how long have you been teaching?

10 A. Twenty-six years.

11 Q. And for the duration of that, where have you taught?

12 A. Lewis Greenview and Charleston County.

13 Q. Okay, and Greenview, how many years were you -- is
14 that an elementary school?

15 A. Yes, A.J. Lewis Greenview Elementary School.

16 Q. Okay, and how long were you at -- or have you been at
17 Greenview Elementary?

18 A. I started at Greenview in 1991 to 2002 and then from
19 2010 until present.

20 Q. Okay, and with respect to what grade you teach, do you
21 teach a number of different grades or just one grade?

22 A. What have I taught or what am I teaching now?

23 Q. What have you taught and what are you teaching now?

24 A. I've taught second, third, fourth, literacy coach, and
25 parent educator, and I'm now currently teaching second.

- 1 Q. Okay, and is [Minor] in your class?
- 2 A. Yes, he is.
- 3 Q. And with respect to your class size, tell the jury
- 4 about that.
- 5 A. I have twenty-two students and four students who are
- 6 special-needs students.
- 7 Q. Okay, and throughout the duration of your career, have
- 8 you always kind of worked with special-needs students ---
- 9 A. Every year.
- 10 Q. --- or had them in ---
- 11 A. Yes.
- 12 Q. --- your class?
- 13 A. Every year.
- 14 Q. And are you familiar with autism?
- 15 A. Yes.
- 16 Q. Children with autism? Have you had children on
- 17 different levels ---
- 18 A. Yes, I have.
- 19 Q. --- of autism, and were you aware if [Minor] had
- 20 autism?
- 21 A. Yes, I was aware.
- 22 Q. And do you call him [Minor] I'm sorry.
- 23 A. I call him [Minor] or [Minor]
- 24 Q. Okay, and did he seem -- does he communicate well in
- 25 class?

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1 A. Yes.

2 Q. Communicate? Verbalize?

3 A. Yes, he does.

4 Q. As far as his pain tolerance now -- because this is
5 second grade, right?

6 A. Yes.

7 Q. How would you describe it? Is it...

8 A. Normal, as a normal kid.

9 Q. Normal kid?

10 A. Uh-huh.

11 Q. Now second grade, so he's come to you, and have you
12 seen him or been familiar with him prior to him being in
13 your class?

14 A. I have.

15 Q. Okay, and when he came to your class, do y'all have
16 certain activities and things of that nature that you do?

17 A. Yes.

18 Q. Tell the jury about some of those.

19 A. In the classroom?

20 Q. Well, as far as, like, PE sort of activities.

21 A. Well, yes, he goes out for physical education, and
22 there has not been any problems in physical education. He
23 acts like the rest of the students in the classroom.

24 Q. Okay, and have you been able to observe his scarring?

25 A. I have.

1 Q. Tell the jury what you observed and how.

2 A. Every second grader at -- in Richland One attends
3 swimming, and we go to Drew Wellness for swimming. I did
4 not want him to get dressed in the locker room with the
5 other students because children are children.

6 MR. BANK: Your Honor, I don't know the relevance to
7 this, to this point.

8 THE COURT: Excuse me. I can't hear you.

9 MR. BANK: I'd object on relevance, Your Honor.

10 THE COURT: All right, I would overrule the objection.
11 You may continue ---

12 WITNESS: Thank you.

13 THE COURT: --- Ms. Henry.

14 BY MS. SIMPSON:

15 A. And I had him -- because I didn't want him to be
16 around the other students when he was getting undressed in
17 the locker room, I would let him get dressed in the -- in
18 another classroom next to -- empty classroom, and I would
19 turn off the light and get him dressed so he would go to do
20 wellness with the other students and not have to worry
21 about them looking at him and asking questions.

22 Q. Okay, and at any point during this process, have you
23 actually observed the scarring, not just on his face but
24 about his body?

25 A. Yes, ma'am. On his back when I was getting him

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1 dressed and on his legs.

2 Q. And can you describe the scars that which you
3 observed?

4 A. Well, it was -- I would turn the lights off. So, I
5 mean, I could tell that they were burns, but I did not want
6 -- to be honest, I did not want to see them.

7 MS. SIMPSON: Thank you, Ms. Henry.

8 WITNESS: You're welcome.

9 MS. SIMPSON: Nothing further.

10 THE COURT: Thank you, Solicitor.

11 Mr. Bank?

12 MR. BANK: No questions, Your Honor.

13 THE COURT: Thank you. Thank you, Ms. Henry. Thank
14 you for being with us this afternoon.

15 WITNESS: Thank you.

16 THE COURT: You may step down. You may be excused.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: Solicitor, you may call your next witness.

19 MS. SIMPSON: Your Honor, at this time we would finish
20 publishing the interview from yesterday where we had to
21 end. I believe there's about thirty minutes left of the
22 defendant's interview.

23 THE COURT: All right, you may publish.

24 MS. SIMPSON: And for the record, that is State's 93.

25 THE COURT: All right. Thank you. Thank you,

1 Solicitor.

2 (WHEREUPON, PLAY OF STATE'S EXHIBIT NUMBER 93 RESUMES
3 FOR THE JURY. AUDIO NOT TRANSCRIBED.)

4 MS. SIMPSON: Your Honor, that would be the extent of
5 the audio recording.

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

7 MS. SIMPSON: Permission to approach?

8 THE COURT: Yes, ma'am.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: Ladies and gentlemen, I think what we're
11 going to do tonight, there is another tape. That tape is
12 fifty-eight minutes. I would like to take hear the tape
13 tonight and then break after that for some -- because of
14 some administrative issues, and then start back in the
15 morning. I can't start back before 9:30. It's not because
16 I'm not going to be here. I already had to cancel
17 something else tomorrow, and I rescheduled it for 9:00 in
18 the morning, so -- and I have to, I have to do that in the,
19 in the courthouse.

20 I think we're in striking distance, though. With that
21 backdrop of I have no credibility with y'all on timing, but
22 I think we are within striking distance to where the
23 completion of the case would be tomorrow, okay?

24 So, let's listen to the next tape. I don't know what
25 it's marked. You have no objections to that?

1 MR. BANK: I have no objection to it being published,
2 Your Honor.

3 THE COURT: All right, let's, let's publish the second
4 audio tape.

5 MS. SIMPSON: Your Honor.

6 THE COURT: Oh. Yes, ma'am?

7 JUROR: May we have a stand-up break?

8 THE COURT: Sure. You can stand up, stretch, of
9 course. Yes, ma'am. Yes, ma'am. Of course.

10 (A PAUSE.)

11 (DVD MARKED AS STATE'S EXHIBIT NUMBER 97 FOR
12 IDENTIFICATION.)

13 MS. SIMPSON: And, Your Honor, at this time the state
14 would offer State's 97 into evidence pursuant to the
15 defense's previous objections, but it's my understanding
16 they have no objection to the introduction of this.

17 MR. BANK: That's correct.

18 THE COURT: All right. Thank you. You may publish
19 State's 97. Thank you.

20 (DVD MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
21 97.)

22 (WHEREUPON, STATE'S EXHIBIT NUMBER 97 IS PLAYED FOR
23 THE COURT. AUDIO IS NOT TRANSCRIBED.)

24 JUROR: Can I ask a question?

25 (PLAY IS HALTED.)

1 JUROR: This is pretty important. I mean, is there,
2 like, a transcript with this that we can watch as he's
3 talking so that we can -- this is -- this video is, is very
4 rough, and I feel like this is the part that we really need
5 to hear. And I don't know if there's, like, a transcript
6 of it or not.

7 THE COURT: Would y'all step back to the jury room
8 momentarily? Do not discuss the case, and I appreciate
9 your question. It's very important. Thank you. Thank you,
10 very much.

11 (THE JURY EXITS AT 5:40 P.M.)

12 THE COURT: Solicitor, is there an answer to his
13 question, to the jury's question?

14 MS. CAMPBELL: The problem we have is we have a
15 partial transcript that was done. We've not redacted that
16 to redact out the parts they wanted out. It has times
17 that's referred to in here, too, but those times are no
18 longer accurate with all the redactions, and we didn't
19 think to prepare Rick Parrott. We could probably get that
20 done overnight.

21 MR. BANK: Your Honor, if they're referring to the
22 transcript, I can hand my copy up to you. Is this what you
23 were ---

24 MS. CAMPBELL: We could expand on this.

25 THE COURT: All right: Yes, sir.

1 MS. CAMPBELL: This is a basis.

2 MR. BANK: Your Honor, these -- unfortunately I have
3 my notes on them, but I think they can give you an idea.

4 Your Honor, it's, it's kind of -- it's not just
5 incomplete. It skips around and the investigator just kind
6 of put his notations of what he thinks is important. I
7 wouldn't say it's word-for-word accurate. It most
8 certainly skips around from thing to thing.

9 MS. CAMPBELL: I think we could fill in the blanks,
10 though, and put in...

11 (A PAUSE.)

12 MS. CAMPBELL: We could do that, Your Honor.

13 THE COURT: Well, I'm not suggesting you do, you do
14 that necessarily. I'm just trying to formulate a response
15 to our juror, an unsolicited response, I might add, in the
16 courtroom.

17 (A PAUSE.)

18 MS. CAMPBELL: It actually plays better on the
19 computer than it does on this. I don't know why.

20 (A PAUSE.)

21 MR. BANK: Your Honor, I think maybe the best next
22 step would be to potentially set the sound differently.
23 Maybe even set it up with the computer potentially then in
24 the, the jury room. If we have a clerk in there, we make
25 sure they're not talking or something. I think we -- I

1 think the goal, first of all, should be can we improve the
2 sounds before we start figuring, trying to debate whether
3 there should be a transcript or not.

4 MS. CAMPBELL: And I'd be glad, Judge, we ---

5 THE COURT: I'm just trying to answer the juror's
6 question. I guess the answer is no, there's not a
7 transcript.

8 MR. BANK: That's...

9 MS. CAMPBELL: Not at this time. We've prepared them
10 in the past, Your Honor, and usually they object, and then
11 we don't get to use them.

12 MR. BANK: At this point, we wouldn't object to that.

13 MS. CAMPBELL: So, my experience is just when we
14 prepared them, they generally objected to them.

15 THE COURT: Well, there's, there's certain cases there
16 are certain grounds ---

17 MS. CAMPBELL: Yes, sir, and ---

18 THE COURT: --- for objection.

19 MS. CAMPBELL: I realize that's my point of view.

20 THE COURT: Right.

21 MS. CAMPBELL: And so that was remiss on my part.

22 THE COURT: I don't think it would be prudent for me
23 to allow them to listen to it in the jury room at this
24 point. It's a great idea, but I just don't think from a
25 practical point of view it's a great idea. Sometimes,