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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Court of General Sessions

Honorable Edward W. Miller, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARON DUANE DAVIS,

APPELLANT

Appellate Case No. 2012-213571

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBITS #19-24 (CT STILLS)

STATE'S EXHIBIT #27 (AUTOPSY PHOTO)

STATE'S EXHIBIT #28 (PHOTO – VICTIM FACE)

STATE'S EXHIBIT #29 (PHOTO – VICTIM HEAD/BACK)

STATE'S EXHIBIT #30 (PHOTO)

STATE'S EXHIBIT #33 (CD – INTERVIEW OF DEFENDANT)

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2012GS2301479
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Daron D. Davis,	)	
	)	
Defendant.	)	
	)	

December 3-6, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

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1 the way, I had mentioned to the state at the
2 conclusion of the case, in the event, in the event
3 that the jury reaches a verdict of guilty, I'm
4 going to ask that the Court -- this is premature
5 obviously, but I wanted to kind of give you notice.
6 I am going to ask that the jury be polled, not only
7 as to whether that's their verdict, but whether
8 their verdict is the result of any outside --
9 information outside of the record in this case.
10 This is -- if one juror remembers something and
11 then spreads it or talks about it during their
12 deliberations, this case just goes down the drain.

13 **THE COURT:** Well, that's not completely
14 true, Mr. Mauldin. There are plenty of cases and
15 you've been involved with them where jurors have
16 heard about the case but they swear under oath to
17 be fair and impartial and follow the law.

18 **MR. MAULDIN:** That's, uh, -- and then the
19 only other motion we had at this time, Your Honor,
20 was the question about the photos. I'm going to
21 ask that we take a look at the photos that we know
22 that the State is going to offer. We're not going
23 to have any objection if the Court rules that they
24 are appropriate.

25 **MS. SUSTAKOVITCH:** Your Honor, if I may --

1 **THE COURT:** Yeah.

2 **MS. SUSTAKOVITCH:** By way of information,
3 the victim in this case, at autopsy, there were
4 four main findings for her. She suffered a very
5 large skull fracture. I'm going to pass up what's
6 been passed over to the defense, State's Exhibit 3,
7 for purposes of this hearing. The child was one
8 day from being five months old. That is her skull
9 fracture. She'd also had subdural hematoma,
10 retinal hemorrhaging.

11 This case -- the State has carefully gone
12 through the autopsy photos in this case, which I
13 will have to tell you in 11 years of doing this are
14 probably the most disturbing I've ever seen.
15 There's hundreds of them, Your Honor. The State is
16 attempting to introduce one. And the purpose of
17 that photo, this photo would be sought to be
18 introduced through the medical examiner. It goes
19 directly to the issue of force. It goes directly
20 to the issue that the State has the sole burden of
21 proof on which is extreme indifference to human
22 life.

23 Apart from those two issues, which that
24 photograph, from talking to Dr. Fulcher, and I will
25 say as an aside, he listed probably 10 photos that

1 he thought were so probative and they were pictures
2 of --

3 **THE COURT:** So you're only going to offer
4 this one, is that right?

5 **MS. SUSTAKOVITCH:** That's right. That would
6 be it. The other reason, Your Honor, besides the
7 fact that it shows force, is this case is going to
8 come down to when the rubber hits the road. Either
9 this defendant inflicted this injury on the child
10 or her mother did. That is how this is going to
11 break down.

12 The jury is going to have to assess who had
13 the physical ability to do it. They are going to
14 have to come to terms with if they believe the
15 mother did it, that she did that. I think it's
16 extremely probative on the issue of guilt. I would
17 ask that Your Honor would admit it. I have
18 provided, Judge, defense counsel with a cropped
19 photo. If you look at this one, Your Honor, -- if
20 I may approach.

21 **THE COURT:** Uh-huh.

22 **MS. SUSTAKOVITCH:** This one does show her
23 scalp which was pulled back. You can see her hair
24 in the bottom of that one. In an interest to try
25 to make this as not inflammatory as possible, we

1 cropped it. You can not see any of that. We would
2 ask that that photograph be the one that the State
3 is allowed to admit through the medical examiner.
4 Thank you. If we could mark that photo for
5 purposes of --

6 **THE COURT:** Yeah, you were referencing --
7 the first picture I was shown has got a red sticker
8 on there as State's Exhibit number 3.

9 **MS. SUSTAKOVITCH:** Yes, sir. I'll have this
10 one marked for purposes of this hearing. This is a
11 cropped ---

12 **THE COURT:** Enlargement.

13 **MS. SUSTAKOVITCH:** --- version of that
14 photograph. Yes, enlargement of that photograph.

15 **THE COURT:** All right. So you really want
16 to introduce the second, is that right?

17 **MS. SUSTAKOVITCH:** Yes, sir.

18 **THE COURT:** This will be number four?

19 **MS. SUSTAKOVITCH:** I think she's marked some
20 other exhibits so let's see so the record is clear.

21 (WHEREUPON, State's Exhibit 27 is marked for
22 identification purposes.)

23 **MS. SUSTAKOVITCH:** Your Honor, the State
24 would be moving to introduce State's Exhibit number
25 27 through the medical examiner.

1 MR. MAULDIN: And not three?

2 MS. SUSTAKOVITCH: No, sir. We wanted to
3 let Your Honor know that was the original
4 photograph and our attempt to make it --

5 THE COURT: All right. Make that one a
6 Court's Exhibit then.

7 MR. MAULDIN: So 27, if -- I'm making sure I
8 follow -- 27 is the one that the State's going to
9 offer.

10 THE COURT: Right.

11 MR. MAULDIN: 3, they are not going to
12 offer.

13 MS. SUSTAKOVITCH: That's correct.

14 THE COURT: I'm making 3 a Court's Exhibit
15 since it was shown to me in this hearing.

16 (WHEREUPON, State's Exhibit 3 is remarked as Court's
17 Exhibit 2 for identification purposes.)

18 MR. MAULDIN: And Your Honor, let me say, I
19 would concede that if this autopsy photo evidence
20 is admissible at all, that photograph is probably
21 --

22 THE COURT: Less inflammatory.

23 MR. MAULDIN: As little, in terms of
24 inflammatory, as you probably can get. I object to
25 the use of the autopsy photos period under any

1 circumstances, but I will concede that if they are
2 looking at number 27.

3 **THE COURT:** Okay. Well, if -- you know it's
4 kind of premature to rule to admit it yet, but
5 that's certainly less inflammatory than 3. If it's
6 authenticated and what the State has represented
7 comes to light during the testimony, then I would
8 be inclined to admit it.

9 **MR. MAULDIN:** Yes, sir.

10 **MS. SUSTAKOVITCH:** Your Honor, if I may,
11 State versus Martucci, which is 380 S.C. 232 would
12 be the State's case that the State is relying on.
13 In that one, autopsy photos were admissible. The
14 real issue is are those photographs being
15 introduced to corroborate the testimony of the
16 chief medical examiner. In this case, is the
17 standard that the child was abused and that it
18 manifested an extreme indifference to human life.
19 That would be our primary case that we would be
20 relying on. I would say that Dr. Fulcher is going
21 to be our third witness.

22 As this trial progresses, it's going to be
23 more and more clear when the defendant's statement
24 is introduced and also the mother testifies that it
25 is either him or her. I just wanted to put the

1 Court on notice of that. As Dr. Fulcher is
2 testifying, he has no part in determining who did
3 this.

4 THE COURT: Okay.

5 MS. SUSTAKOVITCH: I just wanted to let you
6 know timing-wise he will be our third witness.

7 THE COURT: Okay. That's fine.

8 MR. MAULDIN: The other issue on the photos,
9 Your Honor, is the State, if I'm not mistaken, will
10 attempt to introduce what they showed me the other
11 day to be three photographs. Perhaps it might be a
12 good idea that I -- I understood that there were
13 three photographs that actually depict the victim
14 at the hospital under treatment.

15 MS. SUSTAKOVITCH: Yes, sir. Your Honor,
16 let me find those for you.

17 MR. MAULDIN: If they've changed their mind,
18 I'll withdraw the objection. But if they are, in
19 fact, intending to offer those through our witness,
20 it would be an early witness, Your Honor. That's
21 the reason I'm bringing this out.

22 MS. SUSTAKOVITCH: May it please the Court,
23 Your Honor. These are the three photographs. We
24 can have them marked.

25 THE COURT: As one or as three.

1 **MS. SUSTAKOVITCH:** Uh, as three different
2 exhibits.

3 **THE COURT:** Okay.

4 (WHEREUPON, State's Exhibits 28 through 32 are
5 marked for identification purposes.)

6 **MS. SUSTAKOVITCH:** Your Honor, through our
7 second witness, who is the forensics technician who
8 arrived at the scene and he also responded shortly
9 thereafter to the hospital -- I'll show these to
10 defense counsel -- the State is going to try to
11 introduce State's Exhibit 28, 29 and 30. I'll pass
12 those up to the court.

13 The probative value and importance of these
14 photos, Your Honor, is the factual timeline in this
15 case. In this case, the father, this defendant,
16 was taking care of the child while the mother was
17 at work. He took care of her from say 2:30 on the
18 18th of January 2011. Mom was at work. Mom came
19 in around 12:45 that night when Child, the infant
20 victim in this case, was in her bassinet. She was
21 presumably asleep.

22 Uh, the mother did not have any interactions
23 -- the evidence in this case is going to show that
24 she did not have any interactions with her daughter
25 that night. She came in. There will be evidence

1 that the child made a sound. The mother thought
2 that that was her acknowledging her voice. There
3 was no contact with the child when she got home
4 that night. The evidence is also going to be that
5 that morning, the mother was asleep and had no
6 contact with her daughter at that point.

7 The reason these photographs are important is
8 a lot of jurors -- a lot of parents might say how
9 can the mom -- when this jury understands the
10 damage to this child's brain and the devastation
11 that was done to this child's brain, I think a
12 reasonable juror is going to say that no way did
13 that mom, when she came in that night, if this
14 child was that injured, there is no way a mother
15 would not pick up on that.

16 **THE COURT:** Okay. Okay. I haven't heard
17 him object to it yet.

18 **MR. MAULDIN:** Well, the objection, Your
19 Honor, is -- relates essentially to exactly what
20 the State is attempting to preempt my position and
21 that is there's really nothing probative about what
22 the State needs to prove that is then supported by
23 photos of a five-month-old laying in a hospital bed
24 on life support. There's not one single element of
25 the criminal charge in this case that is being

1 supported by, contradicted by, whatever, these
2 photographs. It has no probative factor. When you
3 measure probative versus prejudicial, you've got to
4 start with is it probative period. You've got to --

5 THE COURT: Well --

6 MR. MAULDIN: If it's outweighed by
7 prejudice, then, of course, it doesn't come in.

8 THE COURT: Well, I understand what y'all
9 are -- the State is talking about. You're talking
10 about sort of reply evidence. You are with these
11 photographs defending the mother to show why --

12 MS. SUSTAKOVITCH: No.

13 THE COURT: That's what I've heard.

14 MS. SUSTAKOVITCH: I was probably inartfully
15 articulating it. I think what the evidence is
16 going to show is that this child suffered very,
17 very traumatic head injuries. And what is
18 significant about these photographs is there is
19 nothing visible in these injuries that would in any
20 way indicate to you that this child was critically
21 injured. I think that a jury has the right to know
22 that.

23 You know, when the medical examiner testifies
24 about this four-inch skull fracture and the
25 subdural hematoma and the retinal hemorrhages and

1 all of this, the fact that the mother came in that
2 night at 12:30 and was not able to notice that her
3 child was in very, very severe distress, these
4 photographs were taken shortly after they arrived
5 at the hospital. This is documented evidence of
6 the fact that there was no visible injury to this
7 child. It's not really reply evidence. This is
8 what this child presented as.

9 Our first witness is Dr. Shelley, the
10 pediatrician that the parents brought this child
11 into. Dr. Shelley did not observe any visible
12 injuries, not to the back of her head, which the
13 State is trying to show in this picture, no
14 injuries to her face, no abrasions, anything like
15 that. So the State's position is they are entirely
16 relevant to show that there were no signs of
17 visible injuries, nothing that would have shown
18 this mother or tipped her off that anything was
19 wrong with her child. Thank you, Your Honor.

20 **MR. MAULDIN:** If that is their position, if
21 it is the no visible injuries, we still believe
22 that the evidence of a five-month-old laying in an
23 Intensive Care Unit hooked up to all sorts of
24 equipment is so much more prejudicial than what --
25 if their witnesses are going to say that there are

1 no visible injuries, there's not going to be up to
2 speed. We're not going to stand up and say yes,
3 there was. The fact is that there's still no
4 probative value to these photographs.

5 Now, finally, Your Honor, and I certainly
6 would say that the middle photograph, you've got
7 the face and --

8 THE COURT: The face and the back of the
9 head.

10 MR. MAULDIN: --- and the back of the head.
11 And then you've got the full body of the child.
12 That one, obviously, is objectionable, the one in
13 the middle. It absolutely establishes nothing and
14 yet inflames the jury to what this poor child went
15 through.

16 THE COURT: Okay.

17 MR. MAULDIN: We encourage the Court to --
18 we will raise our question at the time they are
19 presented if the court wishes. I just wanted the
20 Court to be aware of this dispute.

21 MS. SUSTAKOVITCH: Your Honor, the State
22 would be willing to withdraw this photograph.

23 THE COURT: All right. So we're talking
24 about 28 and 30 are the only two.

25 MS. SUSTAKOVITCH: Yes. Thank you, Judge.

1 MR. MAULDIN: So now the arguments as to the
2 two --

3 THE COURT: The front and the back of the
4 head.

5 MS. SUSTAKOVITCH: Thank you.

6 MR. MAULDIN: Hang on one -- Your Honor --

7 THE COURT: You told me that was your last
8 motion.

9 MR. MAULDIN: Hang on just one minute.

10 THE COURT: All right.

11 MR. MAULDIN: I want to make sure.

12 THE COURT: All right.

13 MR. MAULDIN: The additional two motions,
14 Your Honor, we're going to suggest be held until
15 the close of the State's case. This is the matter
16 of whether or not they are allowed to question Mr.
17 Davis about prior record and in terms of
18 impeachment on any other. And the other is the
19 order and manner which we present closing
20 arguments, that those can be presented --

21 THE COURT: All right. What else we got?
22 Anything?

23 MS. SUSTAKOVITCH: Your Honor, just briefly
24 from the State.

25 THE COURT: Okay.

1 the State's witnesses, didn't know the name but
2 recognized the individual. So that's the reason for
3 the -- for that.

4 Ms. Haddon, thank you very much. You are
5 elevated now.

6 And Mr. Childress, you are the lone alternate.

7 I need all 13 of y'all to be strong. Okay. At
8 this time, I'll ask you to stand and take the oath
9 in the case. Thank you.

10 **THE CLERK:** Please raise your right hand.
11 The proper response is "I will". You shall well and
12 truly try the case 2012-GS-23-1479, the State versus
13 Daron Duane Davis indicted for Homicide by Child
14 Abuse and a true verdict render according to the law
15 and the evidence so help you God. I will?

16 (WHEREUPON, each juror responds.)

17 **THE COURT:** All right. Ladies and Gentlemen,
18 we are ready to proceed to begin the case. I turn
19 it over to the attorneys for their opening
20 statements..

21 **MS. SUSTAKOVITCH:** Thank you, Your Honor.
22 May it please the Court.

23 **THE COURT:** Yes, ma'am.

24 **MS. SUSTAKOVITCH:** Good afternoon. On
25 January 19th, 2011, a little baby girl named

1 Child was one day away from being five months old.
2 But on that day, Child was on a gurney in a
3 hospital fighting for her life at Greenville
4 Memorial. Child lost her life. She was
5 declared brain dead and she was taken off of life
6 support. The evidence in this case will show that
7 the person who is responsible for Child's death is
8 this defendant, Daron Davis, her biological father.

9 My name is Christy Sustakovitch. I'm a
10 Prosecutor with the Greenville County Solicitor's
11 office. This is Assistant Solicitor Leigh Poaletti.
12 As prosecutors, it's our job to present to you
13 evidence in this case, evidence to prove to you
14 beyond a reasonable doubt that this defendant
15 committed a crime, Homicide by Child Abuse.

16 From the outset, it's an unimaginable concept.
17 Some of the things that you're going to have to
18 hear, you're going to have to absorb. I can
19 probably speak for everyone in this courtroom. It's
20 going to be hard for you. We appreciate your
21 service.

22 You're going to hear more about the law in this
23 case in the end. Judge Miller will instruct you on
24 that. But very briefly, the substance of the charge
25 is that Daron Davis is charged with causing the

1 death of Child, his almost five-month-old baby, by
2 child abuse, by neglect and under circumstances that
3 manifested an extreme indifference to human life.

4 As Judge Miller told you, evidence in these
5 cases comes in many forms. There's physical
6 evidence. There's direct evidence, which is
7 witnesses from this witness stand testifying
8 directly to you. There's often expert and medical
9 evidence. You're going to hear some of that in this
10 case. In the evidence presented to you, you will
11 hear of no accidental or non-criminal way that this
12 child's brain could have been damaged so severely.

13 The State's evidence will show you that Child
14 suffered severe inflicted head trauma. Your task is
15 to look at all the evidence using a clear head and
16 an open mind and your common sense to follow it to
17 the responsible party in this case. The evidence,
18 in the end, the State believes will show it is this
19 defendant.

20 I want to briefly give you a little background
21 of what you'll hear. You'll hear about this
22 defendant's relationship with the mother of the
23 victim, Shalita Dawkins, that's seated on the front
24 row in the purple. You will hear how Shalita met
25 this defendant when she was about 20 years old.

1 This defendant was about 40 years old. She had two
2 young children at the time. She met this defendant,
3 became pregnant with her third, Child. Child was
4 born August of 2010.

5 After that, this defendant moved into the home.
6 This defendant did not have a job. Shalita had a
7 job or had gotten a job at a call center in the
8 Verizon center in Mauldin. You will hear how their
9 life was in the fall of 2010, with Shalita taking on
10 new responsibilities, a new job. She began working
11 nights. By nights, I mean, 3:00 to midnight. That
12 put this defendant as the primary caretaker of the
13 children.

14 You will hear about January 18th, 2011. You
15 will hear how Child woke up. That little baby was
16 fine. The baby was fine. You will hear how Shalita
17 Dawkins got ready to go to work as she normally did.
18 You will hear how she left around 2:30 that day.
19 That's a critical marker. The evidence will show
20 that that is the point at which this mother's
21 personal knowledge as to the welfare of Child ended,
22 because of one of three things. The evidence will
23 show she was at work.

24 The evidence will show she got home later that
25 night and Child was in bed or Shalita was asleep

1 herself the next morning. You will hear about that
2 night when Shalita got home and how she did not have
3 any contact with her child who was in the bassinet,
4 how Child made a sound and Shalita thought she was
5 sleeping. She went to bed too. You will hear about
6 the next morning when Shalita was asleep. She has
7 no contact with her daughter until this defendant is
8 waking her up with her child on the bed saying Child
9 is not breathing properly.

10 Listen carefully to his story. Listen
11 carefully as the keeper of the firsthand information
12 of what is going on with this child, listen to what
13 he says. Follow it carefully. You will hear about
14 how he said he got up that morning of the 19th. You
15 will hear about how Child was fine and he fed her
16 and how he says he went to the bus stop to drop her
17 older brother off and was away from the home about
18 30 minutes. You will hear how he says he came back
19 and he had these different exchanges with Child.
20 You will hear how he says that he eventually woke up
21 the mother to say Child is not breathing properly.

22 You will hear about the sad series of events
23 that spiraled from that moment after Shalita Dawkins
24 was awakened and told her child was not breathing.
25 You will hear how they go to the pediatrician's

1 office, how a doctor tries to save her, how she's
2 taken to the hospital. She ultimately dies.

3 There are two things the State will not be able
4 to tell you in this case with any certainty. You
5 will hear about a very large skull fracture and
6 injuries to this child's head. The State will not
7 be able to tell you what the instrument was that
8 caused that skull fracture to Child. We frankly
9 don't know. You will also not hear the exact moment
10 in time when her head impacted with whatever it did
11 causing her death. It is so important what you're
12 doing today and what we're embarking on in a system
13 of justice, in this courtroom today.

14 The State has the entire burden of proof and we
15 welcome it. Everyone has their job in this
16 courtroom. As Judge Miller outlined just a few
17 moments ago, with all deference to Judge Miller,
18 you, alone, have the most important job of anyone in
19 this courtroom. You will determine what happened,
20 what you believe the truth to be.

21 I believe that the most important tool that you
22 can use as you go through this trial is right with
23 you right now. It is your common sense. If you
24 look at this evidence logically, thoughtfully and
25 calmly and listen to all the evidence, it leads you

1 to but one clear result. That's what this case is
2 about, a little girl who's life was taken from her,
3 and search for truth and justice for the man who
4 took her life. Thank you.

5 MR. MAULDIN: This case is about a rushed
6 judgement. A rushed judgement. The judge in his
7 earlier comments mentioned the concept of
8 presumption of innocence until proven guilty. I'm
9 going to ask that you give very great freedoms to
10 those comments and those instructions. Listen to
11 them very carefully. It's concepts that presumption
12 of innocence that are the foundations of our
13 criminal justice system. That's what holds up the
14 courthouses. Take away those fundamental concepts
15 and you simply eliminate criminal justice as you
16 know it. Let me mention something you about what
17 you're doing here and how this kind of thing
18 happens.

19 Criminal court trial by a jury in the colonial
20 days before the American Revolution, a person would
21 be charged with a violation of the law and he would
22 be brought before a magistrate. If he asked for a
23 trial, the magistrates would do what is called order
24 him to be put upon his country. Now, what did the
25 magistrate mean? What that meant was that this

1 person charged with this offense ought to be tried
2 by the king. He wasn't going to be tried by some
3 selected king's court. He was going to be upon the
4 country, the country with its citizens and other
5 people that lived in the community with that person.

6 Why was that so important? The enormous
7 resources of the government, they arrest you, they
8 search you, they hold you after arrest, all manner
9 of things, because of the enormous resources that a
10 government has. An individual person would be
11 smushed flat if we didn't have basic concepts of
12 true justice. Only a jury, only a jury of people
13 from the community can make decisions about guilt or
14 innocence. And I am so thankful for that concept.
15 You should be too. Today, Daron Davis comes to
16 trial. He is put upon his country. That country is
17 you.

18 My name is John Mauldin and I represent Daron.
19 I'm going to spend a few moments talking about the
20 sequence of events that led to Daron being arrested
21 on January the 21st of '11. At about eight o'clock
22 that morning of January 19, a phone call was made by
23 Shalita Dawkins. Shalita, we learned, is the
24 natural mother of Child. A phone call was put into
25 the pediatric office of Greer which was treating

1 Child . That call was about eight o'clock. An
2 appointment was made for about 8:55 that morning.
3 But at 8:35, that morning, Shalita, Daron, the
4 natural father of the child, and Child appeared at
5 the pediatrician's office.

6 It was clearly an emergency. The baby just
7 wasn't breathing correctly. You will hear the
8 description of what. At 8:35, the pediatrician
9 noticed that there was a serious problem, calls EMS.
10 EMS immediately comes to Pediatric Associates of
11 Greer. They take over immediate emergency care of
12 Child .

13 Child is transported to Greenville Memorial
14 Hospital. She arrives there at 9:13 the morning of
15 January the 19th. While the ambulance was en route
16 to the hospital, from the pediatric office to the
17 hospital, Sergeant Pressley with the Greer Police
18 Department was asked to transport Tonya Anderson to
19 Greenville Memorial Hospital. Tonya had received a
20 text, a voice mail message regarding Child. At
21 9:30, they arrive at the hospital, the police
22 officer and Tonya Anderson.

23 Turns out that there were no visible signs of
24 injury with the child. The child was put on life
25 support at that point. Daron and Shalita consulted

1 with the doctors about the condition of their child.
2 For the next while they are at the hospital, while
3 they were waiting, they were in the Emergency Room.
4 Then they went to the Pediatric Intensive Care Unit.
5 They were throughout the hospital.

6 Some time between 10:45 and 12:15, that's 10:45
7 in the morning, 12:15, around lunchtime, Officer
8 Pressley with the Greer Police Department asked
9 Daron if Daron would agree to an interview about
10 what was going on with his child. Daron said of
11 course he would. He then -- Daron then got in the
12 automobile with Officer Fortenberry with the Greer
13 Police Department.

14 Officer Fortenberry drove with Daron down to
15 the Law Enforcement Center. They went into an
16 office. For the next two and a half hours, Daron
17 was in discussion with these two law enforcement
18 officers from the Greer Police Department about what
19 had happened over the period of time that Child was
20 with him and what had happened earlier that morning
21 on the 19th. You will hear the entire conversation.
22 It's a lengthy conversation but it was on tape.
23 You're going to have an opportunity to sit and
24 listen to every single word he told him. Daron told
25 him everything he knew, in fact, two or three times.

1 You will hear it.

2 During the time of that interview, the Greer
3 Police Department conducted a search of REDACTED
4 , which is where they lived at the time.

5 That's the residence. The Greer Police Department
6 conducted a search of the Pediatric Associates of
7 Greer office. To say the least, there was a lot
8 being done by the Greer Police Department.

9 At about 4:15 that afternoon, the Greenville
10 Sheriff's Department, different law enforcement
11 agency, was asked to come in and handle the
12 investigation of this case. At that time, Daron's
13 interview with the Greer Police Department was over.
14 It was on a disk. It was on tape. No interview, no
15 conversations or discussions with Shalita, the
16 mother at that point. They are talking to the
17 father.

18 Later that day -- later that day, Officer
19 Miller with the Greenville County Sheriff's
20 Department, realizing that no statement had been
21 made by the mother took a witness statement from
22 her. That statement was given some time after 4:15
23 on the afternoon of January 19th.

24 January the 21st, Daron was arrested. Two days
25 later. The child was still in the hospital in

1 intensive care on life support. On January 23rd,
2 Child died. Life support was disconnected.
3 Everyone who was involved in the treatment realized
4 that the child would not survive. Daron was then
5 charged with Homicide by Child Abuse. Now, Daron
6 comes to this court, he comes into this courtroom
7 and he is put upon his country. I said it was a
8 rush to judgement. I said it was a presumption of
9 innocence.

10 You will hear evidence that Tonya Anderson, the
11 lady at nine o'clock that was taken by the Greer
12 Police Department to the hospital that morning, that
13 lady was the grandmother of Child; the mother of
14 Shalita and an employee of the Greer Police
15 Department.

16 A little background, then I'll be done. Daron
17 and Shalita had met in January of 2009. You might
18 describe them as a couple. And Shalita became
19 pregnant in the holidays of 2009. Child was born
20 August the 20th of 2010. Child is the third child
21 for Shalita. September of '10, this is about three
22 weeks or so after the child had been born, Daron
23 moved in with Shalita. Shalita was working. Daron
24 moves in to help. She's working 3:15 to 12:00 at a
25 service call -- Verizon Call Center in Mauldin.

1 Quickly, let me go through a series of pieces
2 of information for you that you're going to hear,
3 then I'll finish up. On January the 18th, this the
4 day before Child was taken to the hospital, they had
5 lunch with Tonya Anderson. Shalita then left for
6 work. The prosecutor said about 2:30. I think it
7 was probably two o'clock. Whichever. It's going to
8 be some time around or after 2:00 p.m. She's
9 supposed to be at work at 3:15, but she was going to
10 go and have her eyebrows adjusted or whatever they
11 do to women's eyebrows. But she's got that
12 appointment before she goes to work.

13 The littlest, the two-year-old baby J.LNU who
14 was another child, uh, was with his grandfather. So
15 he really never was present during the particular
16 relevant times. P.A. -- Shalita's gone. P.A.
17 is the six-year-old first grader. P.A. goes to
18 bed between 8:00 and 8:30. You will hear in the
19 interview with law enforcement that Daron was --
20 P.A. went to sleep. The baby, Child, was in her
21 bassinet. He washes the dishes. He watches TV.
22 He's hanging out, waiting on Shalita to come home
23 some time after midnight.

24 She gets home. They do some talking. Just
25 imagine the environment. She's come home from work.

1 He's been with the children. They are talking in
2 the house.

3 It's a relatively small house. You will see
4 some pictures of the house. They go to the bedroom
5 where the child is, where Child is. The child was
6 fond as to their voices. Daron said the child
7 bobbed her head up. Just responding to the sound.
8 Shalita, in her statement to police, says that the
9 child responded to her voice. That's what Shalita
10 told law enforcement. All seemed very fine at that
11 point.

12 6:20 in the morning, Daron wakes up. His
13 responsibility is to get the six-year-old to the bus
14 stop and to take care of the needs of Child if
15 anything needs to be done. He checks on Child
16 before he takes P.A. to the bus stop, which is
17 just a couple of houses down. You will hear him
18 describe the weather was very bad. They get in the
19 car. That way, they can sit in an automobile
20 waiting on the bus. He doesn't have to just stand
21 there. Plus he's the only child picked up at that
22 bus stop. He was only six years old. Daron is
23 going down to the bus stop. The bus picks P.A.
24 up around seven o'clock.

25 Daron describes that he went to a Kwik shop to

1 get a box of Black & White Cigars that he smoked. He
2 came back and he told the police that he was gone
3 probably 20 to 30 minutes. Somewhere between 7:20
4 and 7:30 is when he came back. Took a shower. Goes
5 and takes a shower. He hears Shalita fussing at him
6 for making noises. She's been working. She's in
7 bed. It's still early.

8 Daron comes, gets in the bed after his shower,
9 picks up Child and puts Child on his chest. Then
10 after Child lays on his chest a minute, he lays her
11 down between them. Then he notices -- he tells the
12 police -- he says he notices that her sound of
13 breathing is not normal sound. So he wakes up
14 Shalita and says does this sound right to you? A
15 few moments later, they are on the way to Pediatric
16 Associates.

17 Let me say in closing, no question that I ask
18 in this trial or statement that I make in this trial
19 should be in any way viewed or interpreted by you as
20 a lack of respect for the horrible loss of this
21 innocent child. These questions have to be asked as
22 painful as they may be. These statements have got
23 to be made. I simply want you to realize that this
24 trial will not be easy on anyone but it must go on.
25 It must be faced from the beginning. It's going to

1 be an emotionally difficult time for all of us. We
2 must move forward. Daron is put up by his country.

3 It would be foolish, admittedly foolish for me
4 to think or us to think that we could somehow
5 separate the emotions from the trial. It's a five-
6 month-old innocent child. So sad of a lost. But we
7 must make every attempt that we can to both respect
8 the lost that has been shown and also well and truly
9 try the case from the evidence, from the testimony
10 and from the law the judge gives you. When you have
11 heard the evidence and when the judge instructs you
12 on what the law is to be applied to the evidence, we
13 will ask you to return a verdict. The verdict that
14 we will be requesting of you at closing is that
15 Daron Davis is not guilty of this crime.

16 **THE COURT:** Okay. Call your first witness.

17 **MS. SUSTAKOVITCH:** Thank you, Your Honor.

18 The State calls Dr. Susan Shelley.

19 **THE CLERK:** Dr. Shelley, please come forward.
20 If you would, please pause at the end of the bench.
21 Please place your left hand on your Bible and raise
22 your right hand.

23 **DR. SUSAN SHELLEY**

24 having first been sworn, testifies as follows:

25 **THE CLERK:** Thank you. Please be seated.

1 Please state your name for the record.

2 THE WITNESS: Dr. Susan Shelley.

3 DIRECT EXAMINATION

4 BY MS. SUSTAKOVITCH:

5 Q Good afternoon, Dr. Shelley. Where are you
6 employed?

7 A Pediatric Associates of Greer.

8 Q And what is your position there?

9 A I'm a pediatrician there.

10 Q As the pediatrician in that office, how many
11 patients do you generally see there?

12 A About 25 a day.

13 Q And in general, as a pediatrician, uh, are you
14 often called to treat critically ill children in your
15 practice?

16 A No, not at all.

17 Q What's the normal range of visits -- from the
18 children who are patients in your office, what are the
19 normal visits that you would have with these kids?

20 A Well, right now, the flu. Things like
21 bronchitis, pneumonia. We see our kids with asthma and
22 our kids who have trouble in school, but not critically
23 ill kids.

24 Q Did you know a little girl by the name of Child
25 ?

1 A Yes.

2 Q And was she a patient at your practice?

3 A Yes.

4 Q When was she a patient at your practice, Dr.
5 Shelley?

6 A Well, in -- let's see, in January, she would
7 have been almost five months old. I believe she had come
8 there since her first newborn visit.

9 Q And to clarify, January of 2011?

10 A Yes.

11 Q All right. I want to -- prior to Wednesday,
12 January 19th of 2011, had you ever personally met Child
13 ?

14 A No.

15 Q And, uh, prior to that date, had you ever met
16 this defendant before?

17 A No.

18 Q And prior to that date, you ever met the
19 victim's mom seated on the front row?

20 A No.

21 Q Dr. Shelley, I want to take you back to
22 Wednesday morning, January 19th, 2011. Did you come in
23 contact with Child on that date?

24 A Yes.

25 Q And how did you come into contact with this

1 little girl?

2 A Uh, her parents brought her into the office for
3 a sick visit.

4 Q When did your office get a call and from whom?

5 A Uh, well, our phones are open at about 8:15. I
6 believe the mother -- mom called shortly after that.

7 Q And what was the nature of, uh, you said a sick
8 visit. What was the concern with Child that morning when
9 the mom called?

10 A Uh, she described her as having congested
11 breathing.

12 Q Uh, what was the initial appointment time set
13 for Child on that morning?

14 A 8:55.

15 Q Did they arrive at that time or did they arrive
16 early?

17 A They came early, at around 8:35.

18 Q What do you recall when they came into the
19 office, who came into the office?

20 A Well, mom was carrying Child in a blanket.
21 Both parents were there.

22 Q Was the defendant seated at defense counsel's
23 table, was he present?

24 A He was.

25 Q And what was his connection to Child? Meaning

1 her father or --

2 A Oh, her father.

3 Q Okay. Go ahead. What do you recall from that
4 morning? The mom and father come in.

5 A Uh-huh. And they were signing in. Mom said
6 that Child was breathing funny. So I went ahead and
7 brought her back.

8 Q When you brought Child back, uh, what happened
9 at that point?

10 A Uh, mom laid her on the exam table and
11 unwrapped her from the blanket cause I couldn't see her
12 at first. And I immediately noticed that she wasn't
13 breathing.

14 Q At that point, Dr. Shelley, did Child have a
15 pulse?

16 A She had a pulse. She had a strong and central
17 pulse.

18 Q By that, does that mean was her heart beating
19 when she came in?

20 A Her heart was beating, yes.

21 Q And so you just testified that she was not
22 breathing. What, if anything, does it indicate to you
23 that she was not breathing but she still had a heart
24 beat.

25 A It couldn't have been long that she had stopped

1 breathing..

2 Q What do you do at this point? You see she's
3 not breathing. What is your response?

4 A I asked the nurses to get the bagging mask and
5 oxygen. I asked the staff to call 911. I started mouth-
6 to-mouth resuscitation.

7 Q How old is Child at the time?

8 A Almost five months.

9 Q And what was she dressed in?

10 A I don't recall.

11 Q All right. And I apologize. You said you
12 started mouth-to-mouth on her?

13 A I did.

14 Q Was that successful at all?

15 A Uh, no.

16 Q What happened at that point?

17 A The nurses brought in the bagging mask.

18 Q What does that mean? When you say bagging
19 mask, what does that mean?

20 A It's a mask that you place over the baby's
21 face. There's a bag that you compress. It forces oxygen
22 into the airway.

23 Q When you are treating Child at that point, did
24 you observe any physical signs of injury to her
25 externally?

1 A No.

2 Q Go ahead and tell the jury what happened next.

3 A We did have some positive signs from the
4 ventilation. We were able to get her oxygen level up.
5 She had good chest rise. She kept her pulse.

6 Q All right. Did you have any idea that Child
7 has suffered severe head injuries at the time you were
8 treating her?

9 A No.

10 Q And did you see the mother seated on the front
11 row present with you in that room?

12 A Yes.

13 Q And did you see this defendant as well?

14 A Yes.

15 Q Did you make a note as far as their demeanor or
16 anything like that when you were treating Child?

17 A Mainly, I was focused on Child so I didn't have
18 a lot of interaction with the parents. They seemed
19 concerned.

20 Q All right. How long was it before EMS arrived?

21 A It was very quickly. It was less than two
22 minutes.

23 Q And when you say you didn't have too much
24 interaction with the parents, your primary concern is
25 trying to save Child?

1 A Absolutely. I was primarily responsible for
2 her ventilation.

3 Q When EMS arrived, what happened?

4 A Uh, they took over the ventilation. They
5 weren't there long after arriving and took her to the
6 hospital.

7 Q Did you ever speak with anybody else in law
8 enforcement about what had occurred on the morning of the
9 19th?

10 A There was a detective that came to the office
11 later that morning.

12 Q Are you aware -- you testified that Child, you
13 never met her or this defendant or her mother before that
14 date?

15 A That's correct.

16 Q Are you aware of who her pediatrician was?

17 A Yes, one of my partners, Dr. Lynn Smith.

18 Q Did you have any further involvement after
19 Child was transported by EMS?

20 A No.

21 Q Please answer any questions defense counsel may
22 have.

23 CROSS-EXAMINATION

24 BY MR.. MAULDIN:

25 Q Dr. Shelley, uh, I've only got a couple of

1 things that I want to make sure that I clarify, I want to
2 make sure that I understand. So I'll only keep you for a
3 moment. Uh, the first is a followup to the question, the
4 prosecutor here, she asked you about the demeanor of the
5 parents and that is how they presented themselves, how
6 were they acting, how did it seem they were in such a
7 traumatic situation. And I want to make sure that I
8 understood that both parents were appropriately upset and
9 kept asking why, how --

10 MS. SUSTAKOVITCH: Your Honor, I'd object. I
11 don't believe she testified to what either one of
12 the parents were -- I mean, he's restating what he
13 believes this witness said and she did not testify
14 to that.

15 MR. MAULDIN: I didn't say she did, Your
16 Honor. I'm just asking her if that's what in fact --

17 THE COURT: Well, ask her. You can. Okay.

18 BY MR. MAULDIN:

19 Q All right. Were both parents appropriately
20 upset and continuing to ask how could this be, why is
21 this? Isn't that, in fact, accurate?

22 A I don't recall which parent asked why.

23 Q So you don't recall any particular statements?

24 A Correct.

25 Q But did you tell the police both parents had

1 acted appropriately upset?

2 A They didn't have any unusual behavior.

3 Q No unusual behavior under those circumstances?

4 A From what I recall. But again, I was mainly
5 focused on ventilating Child.

6 Q All right. And then finally that they were --
7 this is -- I'm asking you if this is what you -- you said
8 to the prosecutor just a moment ago that an officer came
9 and talked to you.

10 A Correct.

11 Q And his name, I believe, was Mr. Bash. Does
12 that name sound familiar?

13 A I don't recall.

14 Q But he was a Greer Police Department detective?

15 A Correct.

16 Q Do you recall telling Officer Bash, and this
17 would have been about 10 minutes after 10:00 that
18 morning, that both parents were appropriately upset?

19 A I can't say that I recall saying that.

20 Q You don't recall?

21 A I don't recall. No. I'm sorry.

22 Q Okay. Now, you testified to the prosecutor
23 that the mother had called about bringing the child in
24 that morning and that that call would have had to come in
25 after 8:15?

1 A That's correct.

2 Q That's when your phones get turned on?

3 A That's correct.

4 Q Do you recall the mother stating that the child
5 was fussy this morning?

6 A Yes.

7 Q Thank you.

8 REDIRECT EXAMINATION

9 BY MS. SUSTAKOVITCH:

10 Q Dr. Shelley, just to clarify, did you, uh, --
11 when did the mom say that? Are you saying in a phone
12 call to the pediatrician or just specifically? Did you
13 take that phone call?

14 A I did not take that phone call.

15 Q Was it with you in the room that she would have
16 said that?

17 A She may have told that to the other staff.

18 Q Okay. But you didn't personally hear her say
19 that?

20 A I don't recall.

21 Q Okay. Thank you.

22 MR. MAULDIN: One redirect, uh, recross, Your
23 Honor.

24 THE COURT: Very briefly.

25 MR. MAULDIN: Thank you.

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1 MR. MAULDIN: No problem, Your Honor.

2 THE COURT: Thank you.

3 MS. POALETTI: Your Honor, the State calls
4 Sergeant Dar Shaw.

5 THE CLERK: Sergeant Shaw, please come
6 forward. If you would, please place your left hand
7 on the Bible and raise your right hand.

8 DAR SHAW
9 having first been sworn, testifies as follows:

10 THE CLERK: Thank you. Please be seated.
11 Sir, please state your full name for the record.

12 THE WITNESS: Darwin Shaw, S-H-A-W.

13 DIRECT EXAMINATION

14 BY MS. POALETTI:

15 Q Sergeant Shaw, would you tell the jury who you
16 work for and what your job is please?

17 A I work for the Department of Public Safety,
18 Forensic Division in Greenville County. I'm a Sergeant
19 with the Forensic Division.

20 Q How long have you been with the Forensic
21 Division?

22 A The middle of this month will be 14 years.

23 Q Would you tell the jury what your duties are as
24 a forensic technician for the Department of Public
25 Safety?

1 A I respond to scenes and assist the agencies
2 with their investigations which includes either
3 processing for fingerprints, taking photographs,
4 collecting evidence, if necessary, and then doing a
5 report describing what actions I had taken.

6 Q All right. And before you, uh, started working
7 in forensics, what did you do?

8 A I was with another police department in
9 Nebraska for 21 years, seven years as a road officer and
10 14 years as an investigator.

11 Q And that's before you made the move to
12 forensics here in Greenville?

13 A That's correct.

14 Q In all your years as an investigator and also a
15 forensic technician, you had the chance to both
16 investigate and offer forensic services in child abuse
17 cases?

18 A Yes, I have.

19 Q I want to talk to you about this case involving
20 Child . Would you tell the jury how you became
21 involved in the investigation of this case?

22 A I was contacted by Detective Bash with the
23 Greer Police Department. He actually called our office
24 and requested a technician go to the hospital to take
25 photographs of an infant who had, uh, injuries. I was in

1 the office at that time. I told him that I would go
2 ahead and go to the hospital and take whatever
3 photographs were requested.

4 Q All right. I want to make sure that the jury
5 understands about the Greenville County Department of
6 Public Safety.

7 A Correct.

8 Q What agencies does the Greenville County
9 Department of Public Safety serve?

10 A We're an independent agency. We serve
11 everybody in Greenville county, the county, the city, all
12 the municipalities. We've done work for the FBI, DEA,
13 ATF. Whoever requests our services, we respond and work
14 for them.

15 Q All right. I want to talk to you, uh, about
16 the first location that you went to to take photographs
17 in this case.

18 A Yes, ma'am.

19 Q Would you tell the jury the first place that
20 you went?

21 A I went to Greenville Memorial Hospital.

22 Q I'm going to show you two photographs. They've
23 been marked as State's Exhibits number 28 and 30 and ask
24 you if you recognize those photos.

25 MR. MAULDIN: One moment, Your Honor. May I

1 approach?

2 (WHEREUPON, a bench conference is held off the
3 record.)

4 BY MS. POALETTI:

5 Q You do recognize those photos?

6 A I haven't seen them.

7 Q Sorry, Sergeant.

8 A (Reviewing.) Yes, I do.

9 Q All right. Were you, uh, -- would you tell the
10 jury what those pictures are of?

11 A The one photo is a closeup photograph just of
12 the face of an infant that I photographed at the hospital
13 on the 5th floor. The other photo is just a back of her
14 head.

15 Q All right. And I want to go back a little bit
16 and talk to you about responding to the hospital. Where
17 did you go?

18 A I went to the, uh, 5th floor, I believe the
19 pediatric section of Greenville Memorial.

20 Q And when you arrived, what did you do when you
21 got upstairs?

22 A As I got there, I was looking for an officer.
23 There was no officer there. I was advised by a nurse at
24 the nursing station that she thought he had left with a
25 male individual. I told them that I was there to take

1 photographs of an infant and was pointed right across the
2 hall. There was an infant laying in a bed. There was at
3 least one nurse and two females standing next to the bed.

4 Q Since you are the first person that the jury's
5 heard from who's actually been up to the hospital, can
6 you describe to the jury how the PICU is set up in the
7 rooms and the way you can see into the rooms.

8 A They have glass, uh, -- they have glass
9 windows. But where I was at, I would say it was right
10 across the hall from the nurse's station. The door was
11 standing open. There was, I guess, paraphernalia or life
12 support or so on in that room.

13 Q Did you ask the nurses to do anything before
14 you went in to take photographs?

15 A Once I determined this is where I needed to be
16 as far as taking photographs, excuse me, I asked who the
17 two ladies were and was advised that they were family
18 members. And I just asked the nurse if they could have
19 them step out of the room while I took the -- took
20 photographs.

21 Q All right. Did you also inquire about physical
22 injuries?

23 A I did. As I was looking at the, at the infant,
24 I didn't see anything. I asked one of the nurses if
25 there were any visible injuries to make sure I got them

1 documented and got them photographed and was told no,
2 that they were skull fractures. They were internal
3 injuries.

4 Q And when you went into the room and took
5 pictures of Child was that confirmed? Were you able to
6 see any visible injuries on her?

7 A I saw no visible injuries, correct.

8 Q All right. Uh, do these photographs that I've
9 already shown you, do they fairly and accurately
10 represent the way that Child looked in her hospital room,
11 uh, bed that afternoon?

12 A Yes, they are.

13 MS. POALETTI: Your Honor, at this time, the
14 State moves Exhibits 28 and 30 into evidence.

15 MR. MAULDIN: Subject to previous objections,
16 Your Honor.

17 THE COURT: Okay. All right.

18 (WHEREUPON, State's Exhibit 28 and 30 is admitted
19 into the record.)

20 BY MS. POALETTI:

21 Q As to State's Exhibit number 28, is that the
22 infant that you are testifying about, Child ?

23 A Yes, it is.

24 Q All right. This is State's Exhibit number 30.
25 We will zoom in. Just one second, Sergeant Shaw.

1 (Pause.)

2 Can you tell the jury what that photograph is
3 of specifically?

4 A I had requested the nurse to turn Child over so
5 I could get photographs of her back to make sure there
6 was nothing visible as far as on the shoulder, back,
7 buttocks and also just to see if I could see anything on
8 the back of her head. That's just a photograph showing
9 the back side of her head.

10 Q Again, you weren't able to see any visible
11 injuries?

12 A That's correct.

13 Q All right. I want to talk to you now about the
14 second location that you went to. Where did you go next?

15 A After I left the hospital, I went to REDACTED
16 in Greer and met with Detective Arteburn.

17 Q Is that in Greenville county?

18 A It is.

19 Q All right. You mentioned that Detective
20 Arteburn was present. Was anybody else present at the
21 home?

22 A There was -- not in the home. Outside, there
23 was another Greer office -- I believe, an investigative
24 detective that was there.

25 Q All right. And when you arrived, what did you

1 do?

2 A Uh, I just asked primarily what they were
3 looking for as far as, uh, working the scene and was told
4 that they needed photographs, but they were waiting for a
5 search warrant to be signed before going into the home.

6 Q All right. And, uh, what did you do while you
7 were waiting for the search warrant on the outside?

8 A I just basically told them I would take
9 photographs of the outside of the home prior to the
10 search warrant being drawn up.

11 Q All right. And, uh, was the search warrant
12 eventually issued?

13 A It was. I was advised that it was.

14 Q And did y'all go into the home?

15 A I went in originally. In fact, I told
16 Detective Arteburn that normally the way that I do things
17 is to go in first, photograph the entire scene as it is
18 to make sure nothing's disturbed and make sure that
19 nothing is moved, that it's in the same location as when
20 I first go in so I can testify that everything was in
21 that place when it was photographed.

22 Q All right. And I'm going to go ahead and let
23 you start looking at these photographs. They are State's
24 Exhibits numbers 7 through 15 and ask you if you
25 recognize those photographs.

1 A (Reviewing.) Yes, I do.

2 Q All right. And I'm going to go back and go
3 through some of those pictures individually. But would
4 you tell the jury what those photographs are of.

5 A These are photographs that I took of each room,
6 which includes the living room, the kitchen area. There
7 was a bedroom, a bathroom and a master bedroom.

8 Q Do these photographs fairly and accurately
9 represent the home as you found it and photographed it on
10 January 19th, 2011?

11 A Yes.

12 MS. SUSTAKOVITCH: Your Honor, the State --
13 at this time, the State moves Exhibit 7
14 consecutively through 15 into evidence.

15 MR. MAULDIN: No objection.

16 THE COURT: Okay.

17 (WHEREUPON, State's Exhibits 7 through 15 are
18 admitted into the record.)

19 BY MS. SUSTAKOVITCH:

20 Q What's that a photograph of, Sergeant Shaw?

21 A That's a photograph of just of the front of the
22 house.

23 Q And that?

24 A That's --

25 Q There's a pointer up there if you need it.

1 A Okay. This is the front door of the house as I
2 went in. What I would normally do is I would take
3 photographs at the entry way and then take sequential
4 photos of each room showing the location of furniture, et
5 cetera. This is a front door. I took a photo. There's
6 a love seat or a couch here. As you can see, the
7 kitchen, the refrigerator. The kitchen was in the back
8 part of the residence.

9 Q State's Exhibit number 8. This is State's
10 Exhibit number 9.

11 A All right. Directly, uh, inside of the door,
12 I'm still standing in the doorway. Directly to my left
13 was a carrier. You can see there was a coffee table and
14 then a couch on the backside of the coffee table.

15 Q State's Exhibit number 10. Is that the same?

16 A That is just another photograph over --

17 Q I'm sorry.

18 A This is the leg of the, uh, -- of that carrier.
19 This is just a more -- it's a photograph showing the
20 coffee table, the couch or love seat with a dining table
21 in the background.

22 Q This is State's Exhibit number 12.

23 A On the kitchen counter next to the sink, there
24 were bottles that had been washed that were not in a
25 strainer but they were right next to the sink.

1 Q All right. And State's Exhibit number 15. Let
2 me see if I can lighten this up. I'm sorry.

3 Ms. Cook, you might have to turn the light on
4 so we can see that one. I'm sorry.

5 THE BAILIFF: Is that too much?

6 THE COURT: Yes, ma'am.

7 MS. POALETTI: I'm going to just bring you
8 down here in a second, Sergeant Shaw.

9 THE BAILIFF: I think it's the operator,
10 don't y'all?

11 THE COURT: No, ma'am.

12 BY MS. POALETTI:

13 Q This is State's Exhibit number 13.

14 THE COURT: Ms. Cook, if you can turn these
15 lights off right here, that would probably be good.

16 THE BAILIFF: Like that?

17 THE COURT: Yeah. Don't you think that's a
18 little better? Is that better? Okay.

19 BY MS. POALETTI:

20 Q Sergeant Shaw, are you able to see that?

21 A Not very well. I know this is the master
22 bedroom and this is a bassinet that was, uh, next to the
23 bed.

24 Q This is State's Exhibit number 14. Is that the
25 same bassinet?

1 A It is. The prior photo had like a sweatshirt
2 or something that was draped over the bassinet. I took
3 the sweatshirt out so I could photograph the, uh, inside
4 of the bassinet.

5 Q All right. I'm going to put State's Exhibit
6 number 13 back up and see if you are able to -- I know
7 that's dark. Are you able to see where that sweatshirt
8 is specifically that you're speaking about?

9 A The sweatshirt was on the very bottom of the
10 bassinet in this area.

11 Q Okay. I'm going to show you State's Exhibit
12 number 15, which is a little bit dark, and ask you if you
13 can look at that photo and tell the jury what that's a
14 picture of.

15 A It's actually a -- it's a photograph showing
16 the very bottom of the bassinet. It's just inside the
17 door of the master bedroom. To the immediate left was a
18 dresser. Beyond that was the bed. The bassinet just to
19 the right of it.

20 Q All right. Thank you, Sergeant Shaw. After
21 you were finished photographing the inside of the house,
22 what did you do?

23 A Knowing the extent of the injury, I wanted to
24 see if I could find anything that might indicate how the
25 infant may have received the injuries. Being that there

1 was a hardwood floor, I felt it was much easier to
2 examine the floors or any possible evidence, not only in
3 the bedrooms, but in the kitchen as well as in the
4 bathroom, the linoleum. The -- normally what I -- in the
5 past in cases I've worked, if you have a couch, you know
6 how far off the ground the couch is. If the child may
7 have fallen on the floor from the couch, I wanted to look
8 to see if I could find any physical evidence, even though
9 there were no visible injuries at the hospital. If a
10 child may have a little bit of blood that might come out,
11 that might be visible on the floor. That's what I look
12 for.

13 Also if the child is laying on the floor for
14 any length of time, there sometimes is saliva, formula,
15 something to indicate that something happened. So every
16 area, the love seat, the couch, the carrier in the
17 bedroom next to the bed, I checked all the hardwood
18 floors looking for anything that might indicate that
19 something had happened in any of those rooms.

20 Q Were you able to find any evidence?

21 A No, I could not.

22 Q Was that the extent of your involvement in the
23 investigation of this case?

24 A Yes, it was.

25 Q Thank you, Sergeant. If you will, answer any

1 questions Mr. Mauldin might have.

2 CROSS-EXAMINATION

3 BY MR. MAULDIN:

4 Q Officer Shaw ---

5 A Yes, sir.

6 Q --- how are you?

7 A Fine. Thank you.

8 Q Good. Uh, in your report, if I'm reading it
9 right, you received the request from the Greer Police
10 Department to do some activity?

11 A Yes, sir. That's correct.

12 Q That request was made of you some where around
13 11:25 a.m. or right before 11:30 in the morning.

14 A That would be correct, yes.

15 Q So from 11:25 the morning of January 19th until
16 -- that would be, let's see, 13:45 is --

17 A A quarter to 2:00.

18 Q A quarter to 2:00. So from about 11:30 to
19 about a quarter to 2:00 is when you did what you have
20 described?.

21 A Yes, sir.

22 Q Trip to the hospital, photographs of Child,
23 trip to REDACTED , photographs of the house. Is that
24 right?

25 A Yes, sir.

1 Q Okay. And that was completed by about a
2 quarter to 2:00 that afternoon?

3 A Yes, sir.

4 Q Now, uh, if I -- and you were in the presence
5 of Officer Arteburn from Greer -- Greer Police Department
6 was there at the REDACTED or REDACTED house?

7 A Yes, sir.

8 Q Okay. So that was in your presence with you,
9 So when you told the jury a few minutes ago that your --
10 what you call your office?

11 A Forensic.

12 Q But what kind of department?

13 A Crime Scene, Department of Public Safety.

14 Q Okay. At the Department of Public Safety, you
15 were working in conjunction and at the request of the
16 Greer Police Department when you did this stuff?

17 A That's correct.

18 Q And Arteburn is a Greer City policeman?

19 A Yes, he is.

20 Q Now, uh, one thing I want to make sure I
21 understand about the photos that you were taking of the
22 residence, my note was you go in as is. I just use that
23 term for myself. But I understood you to say that what
24 you try to do is just not to do anything to anything but
25 just take pictures of what things are right then.

1 A That's correct.

2 Q So you are not -- your protocol or your
3 procedure would be to take pictures as they are, good or
4 bad. This was just the way it was.

5 A Yes, sir.

6 Q And were you -- I realize now, and of course
7 the jury realizes that you had seen the child and had
8 gotten, I guess, some sort of preliminary, uh, statement
9 about what this was about.

10 A Yes, sir.

11 Q So when you were taking pictures at the
12 residence like the bassinet and the carrier, you would
13 have been particularly attentive to those?

14 A That's correct.

15 Q But I also am understanding you that you
16 except for what you described to Ms. Poaletti a minute
17 ago about looking for evidence where a child may have
18 fallen on the hardwood floors or the tile floors in the
19 bathroom --

20 A Yes, sir.

21 Q You were looking for that, looking for evidence
22 of that, right?

23 A Yes, sir. That's correct.

24 Q But you found none?

25 A That's correct.

1 Q Other than that, you were not looking for any
2 particular thing. Is that fair to say?

3 A That would be fair.

4 Q That you were not in there looking for a
5 particular object or a particular thing.

6 A That would be correct.

7 Q That's all. Thank you.

8 THE COURT: Anything else?

9 MS. POALETTI: No redirect, Your Honor. May
10 Sergeant Shaw be excused?

11 THE COURT: Any --

12 MR. MAULDIN: No objection.

13 THE COURT: Okay. Thank you, sir.

14 THE WITNESS: Thank you, sir.

15 MS. SUSTAKOVITCH: Your Honor, may we briefly
16 approach as to scheduling?

17 THE COURT: All right.

18 (WHEREUPON, a bench conference is held off the
19 record.)

20 MS. SUSTAKOVITCH: Thank you, Your Honor.

21 The State calls Dr. James Fulcher.

22 THE CLERK: Dr. Fulcher, please come forward.

23 If you would, please pause at the end of the bench
24 and place your left hand on the Bible and raise your
25 right hand.

1 DR. JAMES FULCHER

2 having first been sworn, testifies as follows:

3 THE CLERK: Thank you. Please be seated.

4 THE WITNESS: Thank you.

5 THE CLERK: Please state your name for the
6 record.

7 THE WITNESS: Dr. James Fulcher.

8 DIRECT EXAMINATION

9 BY MS. SUSTAKOVITCH:

10 Q Good afternoon, Dr. Fulcher.

11 A Hello.

12 Q Uh, where are you employed, sir?

13 A I'm the Deputy Medical Examiner for Greenville
14 County, South Carolina.

15 Q And, uh, are you licensed to practice medicine
16 in South Carolina?

17 A I am. I'm licensed to practice in South
18 Carolina and in North Carolina.

19 Q What exactly -- for the jury, what does a
20 medical examiner do? What does that mean?

21 A Sure. I'm a board certified anatomic clinical
22 and forensic pathologist. I'm a physician. I went to
23 medical school. I perform autopsies for the state in
24 cases where there is a suspicion that someone has been
25 injured or there is some unjust act been performed to

1 them. I've been trained, uh, four years of medical
2 school, four years of anatomic and clinical pathology
3 residency and one year of forensic fellowship.

4 Q Where did you go to medical school, sir?

5 A I went to medical school at the Medical College
6 of Virginia in Richmond, Virginia.

7 Q I'm just briefly going to touch on your
8 speciality. You said in forensic pathology. Could you
9 describe exactly what forensic pathology -- a little bit
10 more about that.

11 A Sure. Forensic pathology is the postmortem
12 examination of the body, the human body to determine a
13 cause and manner of the person's demise. That's really
14 my sole focus is to look at the body and determine a
15 correct cause and manner of death.

16 Q Are you certified with the American Board of
17 Pathology?

18 A I am, yes. Board certification in anatomic,
19 clinical and forensic pathology.

20 Q And with your current -- uh, where are you
21 currently employed? I believe you stated it first.

22 A I am -- I'm the Deputy Medical Examiner for
23 Greenville County, South Carolina. I did this autopsy in
24 that capacity. I'm a private physician employed with
25 Pathology Associates of Greenville as well.

1 Q How many autopsies would you estimate that you
2 performed?

3 A I've done approximately 1000 autopsies in my
4 three years here.

5 Q And you've been qualified in the courts of this
6 state as an expert in forensic pathology?

7 A I have.

8 MS. SUSTAKOVITCH: Your Honor, at this time,
9 the State moves to admit Dr. Fulcher as an expert in
10 forensic pathology.

11 THE COURT: Any voir dire?

12 MR. MAULDIN: As to particular limitation,
13 Your Honor, no objection.

14 THE COURT: I'm sorry. What?

15 MR. MAULDIN: As to forensic pathology, no
16 objection.

17 THE COURT: Okay. All right.

18 BY MS. SUSTAKOVITCH:

19 Q Dr. Fulcher, did you happen to perform an
20 autopsy on a child by the name of Child ?

21 A I did.

22 Q And when did you perform that autopsy, sir?

23 A I performed that autopsy January 25th, 2011.

24 Q How old was Child at the time of her death?

25 A Approximately five months.

1 Q Can you tell the jury when you are performing
2 an autopsy how you go about doing that? What's the first
3 thing that you --

4 A Sure. An autopsy, first, is a brief chart
5 review to familiarize yourself with the clinical history.
6 We work with the Greenville Coroner's Office. They
7 provide scene background data about how the decedent was
8 found, what may or may not have happened to them. At
9 that point, we do an external examination of the body
10 looking for visible injuries. Then we actually perform
11 the autopsy where we remove organs of the body to look
12 for damage to internal organs.

13 Q And I believe you testified in voir dire that
14 as a forensic pathologist, is part of your job to try to
15 determine what the cause and manner of death was?

16 A Absolutely. That's the main focus of a
17 forensic autopsy is to determine cause and manner.

18 Q We're going to talk more in depth about Child's
19 head and her brain in just a few moments. But first on
20 your physical examination of Child, did you note any
21 physical injuries to her body?

22 A There were no external physical injuries.

23 Q As far as -- did you note where there had been
24 any -- I believe Child had had her organs donated in this
25 case; is that correct?

1 A She had organs absent. I'm going to refer to
2 my notes here. Organs absent included the heart,
3 bilateral lungs -- both lungs -- the liver, kidneys,
4 pancreas, vertebral bodies, which are the pieces of bone
5 in the spine, stomach and small bile. Organs present
6 were, of course, the brain, which I did examine and is
7 paramount in this case, let's see, uh, small portion of
8 pancreas, spleen and a small portion of large bile. A
9 little bit of large and small bile.

10 Q Dr. Fulcher, did the fact that some of Child's
11 organs had been donated, did that have any impact on your
12 autopsy at all?

13 A No, uh, I'm the one that has the ultimate say
14 in whether donation can occur. In this case, I had
15 reviewed the medical records and felt that there was
16 sufficient medical evidence that the trauma in this case
17 was to the head. Therefore, I did not need to examine
18 any other organs. They were essentially irrelevant in
19 the case.

20 Q For clarification, as far as the physical
21 examination, the external examination, you testified that
22 you did not see any external injuries.

23 A Correct.

24 Q Apart from the incisions to have her organs
25 taken out.

1 A Correct.

2 Q As far as the head, uh, Child's head, did you
3 see any external injuries to her head that were apparent
4 before you began the internal?

5 A I did not see any external injuries on the
6 decedent's head. No.

7 Q All right. Dr. Fulcher, I would like to now
8 turn to the internal examination. Can you explain the
9 next phase in an autopsy?

10 A Sure. The next phase is the evisceration of
11 the body, removal of organs, including the brain. An
12 incision is made -- and I'm going to gesture -- on the
13 back of the head. The scalp is reflected. The skull is
14 removed with a saw, the top of the skull and the brain is
15 carefully removed and then examined. In this particular
16 case, the brain was actually fixed for a while in
17 formaldehyde to better preserve structures and allow a
18 more detailed examination. Additionally, in this case,
19 something I don't always do cause it can be slightly
20 disfiguring the body, because I knew that the decedent
21 had retinal injuries, which are important in this case,
22 I actually removed the decedent's eyes and optic nerves
23 and examined those microscopically.

24 Q Dr. Fulcher, let's go point by point.

25 A Sure.

1 Q As far as the injuries to Child in her head,
2 can you please explain to the jury what, if anything, you
3 -- what your findings were in this autopsy?

4 A Sure. Upon reflecting the scalp, I found a --

5 Q I'm sorry. What does reflecting the scalp
6 mean?

7 A I'm sorry. Upon taking the scalp back and
8 looking at the skull, I found a significant amount of
9 blood there measuring -- and we're going to do this in
10 centimeters -- 7.5 by 5 by .3 centimeters thick. So a
11 fairly sizable portion of blood overlying the left side
12 of the head. There was no external trauma at this site.
13 This was -- I basically call it a deep tissue injury but
14 there was no grossly visible -- with the naked eye,
15 visible hemorrhage or damage to the external head at that
16 point.

17 Q All right. Dr. Fulcher, I'm going to show you
18 what is marked as State's Exhibit 27.

19 A Yes.

20 Q Would you -- do you recognize that photograph?

21 A I do. This is a photograph I took during
22 autopsy.

23 Q All right. And what is that photograph of?

24 A This is a photograph of Child's skull showing a
25 large linear skull fracture that is filled with blood.

1 Additionally, it shows a significant amount of the
2 hemorrhage that I previously scraped off to reveal the
3 fracture.

4 Q Does this picture fairly and accurately reflect
5 the way Child's skull fracture looked on that day when you
6 performed this autopsy?

7 A Absolutely. This is a very large skull
8 fracture.

9 MS. SUSTAKOVITCH: Your Honor, at this time,
10 the State moves to admit State's Exhibit 27.

11 MR. MAULDIN: Subject to our stated position,
12 Your Honor.

13 THE COURT: All right.

14 (WHEREUPON, State's Exhibit 27 is admitted into the
15 record.)

16 BY MS. SUSTAKOVITCH:

17 Q Dr. Fulcher, uh, I want to clearly go through
18 each one of the findings in your autopsy. Again, what
19 are we looking at here?

20 A We are looking at the skull of the infant.
21 This large red line you see in the middle of this picture
22 should not be there. That's a fracture. The bone is
23 broken at that point. There is blood protruding up from
24 it. The surrounding --

25 THE COURT: All right. Hang on one second.

1 (Pause.)

2 MS. SUSTAKOVITCH: Sorry, Your Honor.

3 THE COURT: Ladies and Gentlemen, I just
4 instruct you to disregard emotional outbursts.
5 Okay.

6 Go ahead.

7 BY MS. SUSTAKOVITCH:

8 Q Dr. Fulcher, please begin again. What are we
9 observing here?

10 A We are observing the skull of the infant. This
11 large curvilinear crack you see is a fracture. I
12 describe it as a fracture that's grossly filled with
13 blood. It measures -- let's see. I have the length here
14 in my report.

15 Q Take your time.

16 THE COURT: Can you see?

17 THE WITNESS: It's hard, but I think I can
18 make out here. Uh, the skull fracture is 10.5 by
19 .3. We do everything in the metric system, but
20 that's several inches long and a third of a
21 centimeter, .3 centimeters wide. In this particular
22 case, you can see the scale. Each of those numbers
23 at the top represent a single centimeter.

24 BY MS. SUSTAKOVITCH:

25 Q Could you -- for people that don't do the

1 metric system, could you break that down into inches that
2 we might be more familiar with?

3 A I was afraid you were going to ask me that.
4 Approximately two and a half centimeters per inch, I
5 think.

6 Q Okay.

7 A That's general statement. I'm not exactly sure
8 about the ration.

9 Q Okay. Would this be -- in relation to this
10 infant's head, how would you classify the scope of this
11 skull fracture?

12 A Uh, if I could point to my own head, it would
13 extend from the frontal and occipital sutures and
14 basically go all the way front to back across.

15 Q So this skull fracture is encompassing the
16 majority of Child's head?

17 A Absolutely.

18 Q Uh, thank you. As far as, you stated that
19 there was the skull fracture as well as -- what is a
20 subgaleal hemorrhage? I'm not certain if you testified
21 to that.

22 A Sure. Subgaleal hemorrhage, in that picture,
23 there was some blood overlying that. That galeal
24 hemorrhage has been strapped off. The galeal membrane
25 covers the scalp, I'm sorry, the skull. There is a

1 significant amount of blood under that at that point.
2 That blood's been removed.

3 Q All right. Dr. Fulcher, do you have any
4 opinion as to the amount of force that it would take to
5 have this kind of a skull fracture on the head of an
6 infant child?

7 A Sure. We typically see fractures of this
8 caliber in motor vehicle accidents, serious trauma.
9 Forensic pathologists have done studies at which infants
10 dropped from a normal height, three or four feet, have
11 hit the ground, but they don't have fractures. This is a
12 significant impact.

13 Q So in your expert opinion, is this the kind of
14 skull fracture you would see from something accidental, a
15 short fall, a moderate fall, something like that?

16 A No.

17 Q In your opinion, is this an inflicted injury?

18 A Yes.

19 Q Uh, next, Dr. Fulcher, I would like to move on
20 to the next finding in your autopsy. Apart from the
21 large skull fracture and the subgaleal hemorrhage, what
22 else, if anything, did you find with Child's autopsy?

23 A Upon removing the skull, I found additional
24 trauma to the brain which, of course, is the cause of
25 death in this case. A large subdural hemorrhage, there

1 are several membranes that cover your brain. Underneath
2 one of them was an additional amount of hemorrhage that
3 covered the entire right hemisphere of the brain. So
4 literally, the entire right half of the brain was covered
5 in blood approximately .3 centimeters thick, or a third
6 of a centimeter thick. I'm sorry. One centimeter thick.
7 I apologize. I saw the wrong thing. This blood tracks
8 into the brain stem area, the middle fossa. At that
9 point, the actual day of the autopsy, I removed the
10 brain. The brain was fixed for examination after it was
11 more firm and able to be processed better.

12 Q Uh, educate the jury about a subdural hematoma,
13 how does that occur?

14 A Sure. The infant skull or an adult skull has
15 bridging veins that goes between the skull through the
16 dura into the brain. When this trauma is inflicted and
17 the brain and the skull are moving together, sometimes
18 independently, it shears off those vessels. Those
19 vessels then bleed into that space.

20 Q Apart from the skull fracture, and now we have
21 discussed the subdural hematoma, any other findings?

22 A Yes. When I examined the brain, I found
23 significant necrosis and hemorrhage of the frontal lobes,
24 the brain stem, the cerebellum. These are all portions
25 of the brain which I will describe later. I'm just

1 naming them all now. Cerebellar peduncles, anteripons
2 and medulla. So many parts of the brain.

3 Q You mentioned previously taking and removing
4 Child's eyes?

5 A I did.

6 Q What, if anything, did you observe in her eyes
7 that were worth noting?

8 A The eyes were taken and fixed in formaldehyde
9 for several weeks to solidify the structure. I then took
10 a knife and cut them from one side to the other to
11 examine the retinas. What I found was, uh, a, uh, -- in
12 all the autopsies I've done, a fairly extreme amount of
13 hemorrhage in the retina.

14 Q In your opinion, what can cause that kind of
15 hemorrhage in a retina?

16 A In our literature, in forensic pathology, you
17 do occasionally see retina hemorrhages with minor trauma,
18 falling, car wrecks. Usually those are isolated retinal
19 hemorrhage, very small retina hemorrhages. I'm not lying
20 when I said every section of her eye was filled with
21 blood in the retina.

22 Q What is -- when you say every section of her
23 eye, what does that indicate as far as the force that was
24 involved in the injuries that were inflicted on Child?

25 A Uh, these retinal hemorrhages are due to

1 traction on the retina, which is a membrane in the back
2 of the eye. It actually captures light and allows you to
3 see. These injuries in this magnitude are normally found
4 in non-accidental trauma due to extreme acceleration and
5 deceleration injuries of the eye and traction on the
6 eyes, the head's being jostled back and forth.

7 Q Let me ask you. You've now discussed a very --
8 a rather large skull fracture.

9 A Yes.

10 Q That went across her head. You discussed
11 subdural hematoma, retina hemorrhaging through all layers
12 of her eyes. In your expert opinion, would this all come
13 from one mechanism of injury or would there be more than
14 one mechanism that would cause this constellation of
15 injuries to this child?

16 A Uh, it would have been a series of events.
17 This constellation of findings implies that there's a
18 series of events that occurred. Typically, the retinal
19 hemorrhages are associated with a shaking or acceleration
20 or deceleration injury. However, that shaking can never
21 cause a skull fracture. There also must be an impact.
22 So presumably, there was both an impact with something
23 soft enough not to cause external damage but to fracture
24 the skull and enough shaking to cause significant retinal
25 hemorrhages.

1 Q So to be clear, in your opinion, this skull
2 fracture, the impact from this, did not lead to all the
3 other damage that occurred --

4 MR. MAULDIN: I'm going to object to the form
5 of the question.

6 THE COURT: Okay. All right. Don't lead.

7 BY MS. SUSTAKOVITCH:

8 Q Dr. Fulcher, I believe you already answered
9 that. I withdraw that question.

10 A Okay.

11 Q Uh, as far as you stated that there was no
12 external injury to her head, yet we see this skull
13 fracture.

14 A Yes.

15 Q Do you have any opinion as to what the
16 mechanism could have been that would have caused this
17 kind of damage to her head?

18 A Typically, with a fracture like that with no
19 external trauma, the head is, for lack of a better term,
20 struck or slammed on a soft surface. I can't tell you
21 what it was. Forensic pathology can't do that. All I
22 can tell you is it was hard enough to cause the fracture,
23 but it gave enough not to cause a significant scalp
24 injury. These infant skulls are, you know, .3
25 centimeters thick, a quarter of an inch thick, maybe less

1 in certain areas. So they are quite thin.

2 Q When you say quite thin, would it still, in
3 your opinion, -- what degree of force would it take you
4 to create that?

5 A That degree of force would be significant. It
6 would not be an accidental fall. It would be a
7 significant traumatic event to the end.

8 Q As far as timing of these injuries, do you have
9 any ability -- let me take you back. Are you aware that
10 Child presented to the hospital on January 19th?

11 A I am.

12 Q When did Child -- or are you aware of when
13 Child passed away?

14 A January 23rd is what I have.

15 Q And again, when did you conduct your autopsy?

16 A January 25th.

17 Q When you were observing these injuries to
18 Child's head, are you able in your field as a forensic
19 pathologist to time when these injuries would have
20 occurred with any degree of specificity?

21 A Sure. While forensic pathologists can
22 sometimes time injuries and give an approximate time when
23 these injuries occurred, the survival window where Child
24 was alive in the ICU makes that very difficult for a
25 forensic pathologist to do with any real certainty.

1 Q And when you say the survival window, the
2 survival window, excuse me, are you referring to when she
3 was on life support?

4 A Correct. She was on life support from the 19th
5 to the 23rd when she died. Changes were occurring in the
6 brain. Inflammation was still occurring. When you have
7 that confounding the original injury, it can be -- well,
8 not challenging -- it is impossible to differentiate a
9 cellular level which inflammatory cell came from the
10 original injury versus what occurred on the 21st day.

11 Q Please answer any questions defense counsel
12 has.

13 A Thank you.

14 CROSS-EXAMINATION

15 BY MR. MAULDIN:

16 Q Dr. Fulcher ---

17 A Yes.

18 Q I'm going to ask you just a few questions.

19 A Yes, sir.

20 Q Your examination would have demonstrated to you
21 that there was one injury. There was an impact injury.

22 A There was one impact.

23 Q Right. So there was one injury. From this
24 autopsy and my reading of it, you're talking about one
25 injury with resulting circumstance that we're going to

1 talk about, but there's only one injury.

2 A I don't think I can agree with that.

3 Q You don't think you could say that?

4 A I would say there was a series of events,
5 including shaking, which caused the retinal hemorrhages
6 and one impact. I would document that and argue that the
7 shaking counts as an injury.

8 Q Is your ability to make such a statement at all
9 affected by the fact that the child went into the
10 hospital at 9:13 on the morning of January the 19th and
11 was maintained on life support for four days, during that
12 period of time, the child would have had bleeding, right?

13 A Yes. Bleeding could continue.

14 Q In other words, the vessels that you been
15 describing would continue to bleed during the time she's
16 been maintained on life support?

17 A It is possible, yes.

18 Q Pardon me?

19 A It is possible that they continued bleeding.

20 Q If I told you she was put on life support on
21 January the 19th after an injury had been received --

22 A Uh-huh.

23 Q There were no subsequent injuries or shakings
24 or anything.

25 A Sure.

1 Q But she was kept in that condition that we've
2 seen on the scene --

3 A Right.

4 Q Would the hemorrhaging that you have gone
5 through great lengths to describe have continued to occur
6 while she was being kept on life support?

7 A That's difficult to answer. The issue would
8 be, uh, comparing -- a radiologist would be better to ask
9 that -- comparing sizes of -- I'm seeing a snapshot in
10 time.

11 Q Right.

12 A I can speculate that it would have -- it would
13 have changed during the time. But I didn't examine her
14 at the time she was injured, of course.

15 Q You examined her six days ---

16 A Yes.

17 Q --- after the injury?

18 A Correct.

19 Q Realizing at the time of that examination that
20 she had been kept alive. Her blood vessels and organs
21 would have continued to function?

22 A Yes.

23 Q During that four days before her death?

24 A Correct.

25 Q And when you examined and described to this

1 jury the hemorrhaging, the areas of bleeding in and
2 around the brain ---

3 A Yes.

4 Q --- the eyes and so forth, all of that was an
5 accumulation of factors that could very well have been
6 affected by the four days she was kept alive, isn't that
7 correct?

8 A That's possible. Yes.

9 Q All right. In fact, according to the direct
10 examination, your quote that I wrote was "changes were
11 occurring during that four days." That's what you told
12 her.

13 A Yeah. You can say there were changes.

14 Q All right. And you did describe the fact that
15 a -- a five-month old -- if I'm -- and you correct me if
16 I'm wrong.

17 A Okay.

18 Q But the way children are designed, ---

19 A Uh-huh.

20 Q --- when they are born they are very flex --
21 their bones and their skull and so forth are at least
22 flexible enough as they are developing and hardening as
23 you get older?

24 A That's correct.

25 Q So at the five-month old stage, the skull was

1 very thin. How many centimeters?

2 A It's less than one centimeter, approximately
3 about one-half of one centimeter in thickness .3 to .5.

4 Q So it would be one half of a centimeter.

5 A Very thin.

6 Q And you said when they had that thing up on the
7 screen talking about how many centimeters there were in
8 an inch, I think you said there were two and a half?

9 A Something like that. I'm not exactly sure of
10 the conversion.

11 Q So two and a half centimeters to an inch.

12 A It's quite thin.

13 Q Okay. All right. And then the question, the
14 other -- I've only got two other questions.

15 A That's okay.

16 Q I know it's getting late. But, uh, the -- when
17 you do an autopsy -- when you're doing an autopsy, if I'm
18 not mistaken, autopsies are done by request of somebody?
19 Somebody, a law enforcement or a family member of a
20 deceased submits a request that an autopsy then be
21 conducted?

22 A Yes. That's correct.

23 Q Okay. So does your -- are you able to look and
24 see the person or people or agency or whatever that
25 requested that an autopsy be conducted?

- 1 A It's not part of my report.
- 2 Q Okay.
- 3 A The coroner typically authorizes the autopsy.
- 4 Q Okay.
- 5 A And they get their information from law
6 enforcement and the hospital.
- 7 Q All right. And in your report, as you are in a
8 room doing an autopsy on a deceased, does your report
9 actually record who is present at the time of the autopsy
10 and --
- 11 A It does.
- 12 Q Like I said, I'm not asking for you to
13 speculate about who you think might have been.
- 14 A Yes.
- 15 Q I'm just saying --
- 16 A It's written there, yes, sir.
- 17 Q Okay. Hang on. All right. Who?
- 18 A I got Sharon Knight, my autopsy technician,
19 Chris Miller from Greenville County Sheriff and a
20 representative from forensics.
- 21 Q Okay. So the Greenville County Sheriff's
22 Office had a representative?
- 23 A Absolutely.
- 24 Q That would have been Chris Miller?
- 25 A Yes.

1 Q An investigator?

2 A Yes.

3 Q Okay. Now, the last thing, uh, I want to ask
4 you and I may have written this down wrong ---

5 A Uh-huh.

6 Q --- in your direct examination. But you said
7 that an injury of this nature would normally have
8 occurred, for example, from a car wreck, I think was
9 your --

10 A Serious trauma.

11 Q Right. So -- so it's not that we know that
12 this is non-accidental. Nobody can say this wasn't
13 accidental. I mean, it's obviously a serious injury. You
14 described how serious it was.

15 A It is a serious injury.

16 Q But car wrecks are serious.

17 A That's right.

18 Q Uh, you remember that picture -- you remember
19 that picture of Michael Jackson dangling that baby over
20 that banister? You remember that?

21 A Sure. Yes.

22 Q If he had dropped that baby, that would have
23 been a horrible accident, but that baby could have had
24 his head fractured.

25 A He wouldn't have had the retina hemorrhages.

1 Q Okay. Thank you.

2 MS. SUSTAKOVITCH: Your Honor, just briefly
3 in redirect.

4 REDIRECT EXAMINATION

5 BY MS. SUSTAKOVITCH:

6 Q To clarify, whatever the blow was that caused
7 this skull fracture, Dr. Fulcher, ---

8 A Yes.

9 Q --- is it your opinion that the same mechanism
10 of injury caused the retinal hemorrhages or was it a
11 secondary mechanism in your opinion?

12 A In my opinion, it was a secondary action.

13 Q And as far as accidental versus non-accidental,
14 were you -- defense counsel -- you testified you would
15 see this type of injury in something very significant
16 like a car wreck which would be an accident, correct?

17 A Yes.

18 Q Were you provided with any, any explanation
19 that would be accidental that would help explain the
20 injuries to this child's head?

21 A No, I was not.

22 Q Thank you.

23 THE COURT: Okay. You can step down. Thank
24 you.

25 Release him from subpoena?

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 4th day of December, 2012 at approximately 9:51 a.m.)

THE COURT: All right. Y'all ready to go?

MS. SUSTAKOVITCH: Yes, sir.

THE COURT: We had a juror who was in a little bit of a bump up which is why we're slow getting started. A fender bender in a parking garage. Don't know which one it was. And your foreperson is Lori A. Anderson.

(WHEREUPON, Court's Exhibit 5 is marked for identification purposes.)

THE BAILIFF: You want me to get them?

THE COURT: Yes, ma'am.

(WHEREUPON, the jury enters at approximately 9:54 a.m.)

THE COURT: All right. Ladies and Gentlemen, welcome back. Hope everyone is okay and ready to go.

Ms. Anderson, thank you for your willingness to serve. All right.

MS. SUSTAKOVITCH: Thank you, Your Honor.
The State calls Dr. Lynn Smith.

THE COURT: Okay.

THE CLERK: If you would, please pause at the

1 end of the bench. Place your left hand on the Bible
2 and raise your right hand.

3 **Dr. LYNN SMITH**

4 having first been sworn, testifies as follows:

5 **THE CLERK:** Thank you. Please be seated.

6 Please state your name for the record.

7 **THE WITNESS:** Uh, my name is Dr. Lynn Smith.

8 **DIRECT EXAMINATION**

9 **BY MS. POALETTI:**

10 **Q** Dr. Smith, will you tell the jury what kind of
11 doctor you are.

12 **A** I'm a general pediatrician.

13 **Q** And starting with your undergraduate education
14 and going through law school, would you tell them where
15 you went to school.

16 **A** Through medical school, you mean?

17 **Q** Medical school. Sorry.

18 **A** I did my undergraduate at the University of
19 Chicago and I did my medical school also at University of
20 Chicago, Pritzker School of Medicine. I did my
21 internship at the Mayo Clinic in Rochester, Minnesota. I
22 finished up with my residency at Brown University in
23 Rhode Island.

24 **Q** Are you a board certified physician?

25 **A** Yes, I am.

1 Q In pediatrics.

2 A In pediatrics.

3 Q All right. And how long have you been
4 practicing as a pediatrician?

5 A I began my practice in Rhode Island in 1993. I
6 practiced there for 16 years until 2009. Then I
7 relocated here and began practicing at Pediatric
8 Associates of Greer in 2009 where I am today. And I
9 serve as the medical director there at that practice as
10 well.

11 Q All right. Was Child your patient?

12 A Yes, she was.

13 Q How many times did you see Child before she
14 died?

15 A I saw her for five visits.

16 Q And during these first five visits, would you
17 characterize those as well baby visits?

18 A They were well baby visits and also some visits
19 for her to come in and check how she was feeding and
20 growing and whether she was gaining weight or not.

21 Q Okay. And we'll talk about that a little bit
22 more in just a minute.

23 A Uh-huh.

24 Q Is it your practice to discuss infant safety
25 during one of these early well visits?

1 A Yes, it is.

2 Q Did you do that with the parents of Child

3 ?

4 A Yes, I did.

5 Q Would you describe to the jury what you talked
6 to the parents about generally as far as infant safety?

7 A Usually for infant safety, we, uh, want to make
8 sure that they are having the baby sleep on their back so
9 they don't have a risk factor for the Sudden Infant Death
10 Syndrome. We want to make sure that when they are in the
11 car, they are in a rear-facing car seat. We ask whether
12 or not they are exposed to cigarette smoke at the home.
13 We remind them not to be harsh with the baby or shake the
14 baby, make sure that they know how to hold the baby and
15 hold the head, especially of a newborn. Those type of
16 things.

17 Q All right. And did you indicate in your
18 medical records for Child that you talked to the parents?

19 A That's considered anticipatory guidance. It's
20 checked off so I did talk to them about that.

21 Q All right. Let's talk about Child's general
22 health. Did she have a normal delivery?

23 A Yes, she did. Mom was 38 weeks gestation,
24 which is full term. Anything above 37 weeks. There was
25 no prenatal problems with mom's pregnancy. It was a

1 vaginal delivery. The (inaudible) were 9 and 9 which is
2 near perfect. Uh, normal birth weight, 6 pounds, 12
3 ounces, I believe. No issues around her birth or her
4 delivery or her stay in the hospital.

5 Q She required no special care after she was born
6 in August?

7 A No.

8 Q Was she ever on any medications?

9 A No.

10 Q You mentioned that she gained weight slowly
11 after -- immediately after she was born. Was that ever a
12 medical issue?

13 A I was concerned about her weight gain.
14 Typically, babies, when they are born, will lose some of
15 their birth weight. We want to make sure they are back
16 to birth weight by two weeks of age and she was not. So
17 she had at least one extra visit, if you will, so I could
18 have her come back in and check her weight.

19 Babies, uh, usually lose weight when they are
20 in the hospital and then when they go home, especially if
21 they are on formula and not waiting for mom's breast milk
22 to come in, they don't lose any further weight once they
23 are home. They turn around and start gaining weight.
24 Then they are back to birth weight by -- we like them to
25 be back by at least two weeks of age. Some babies are

1 back to birth weight before that. When she initially
2 came in, she had lost more weight. She went home at 6
3 pounds, 11 ounces. Her first visit with me, she was --
4 I'd have to check. 6 pounds, 6 ounces, I think.

5 Q Let me -- Okay. Let me ask you this. Did that
6 problem resolve itself during your care?

7 A Yes. I talked with them about how they were
8 doing the formula, how much they were feeding her,
9 whether she was spitting up too much or losing the
10 formula. And by all indications, she just needed to eat
11 a little bit more and a little bit more frequently. The
12 next visit, she came in. She was gaining weight. She
13 was still not back to her birth weight. So I had an
14 extra visit in there. Where then she was back to birth
15 rate. At that point, I knew she was feeding well and
16 taking the formula properly and not having any issues.
17 Then she came in after that for the routine one-month
18 visit.

19 Q Let's talk about the spitting up that you just
20 mentioned. The parents reported to you that she was a
21 spitter-upper?

22 A Almost all babies spit up little bit. It's
23 very common. Very typical. She was sleeping well. They
24 had reported in my notes it says that she was sleeping
25 five, six hours at night pretty quickly. Babies with

1 significant reflux who have stomach acid and pain aren't
2 going to sleep that long when they are two or three weeks
3 old because they'll be in pain from the reflux and they
4 would be waking up. So she was sleeping well.

5 She was feeding within -- taking her bottles
6 within 10 or 15 minutes. So that's also typical and
7 normal. A little bit of spitting up when they are
8 burping her is very normal. I did not see any indication
9 to believe that she had significant reflux. If I had
10 thought that, she would have been on Zantac medication
11 for the acid or sometimes we thicken the formula with the
12 cereal and there's no indication that that was needed.

13 Q All right. At the last visit that Child had at
14 your office, she was two months old; is that correct?

15 A Yes. Her two-month well visit.

16 Q Uh, who was with her?

17 A For the first four visits, mom and dad were
18 together. For the last visit, dad came by himself.

19 Q All right. Did the defendant report anything
20 about Child's breathing at that visit?

21 A Uh, he reported that she every very stuffy and
22 congested and had some funny-sounding breathing noises.

23 Q All right. Is the -- that report something
24 that you commonly hear from parents of newborns?

25 A Yes. Newborn babies have very small nasal

1 passages. Initially, the first few days, they can be
2 very mucousy and congested just because of still having
3 amniotic fluid on their lungs. After that, that clears
4 and then they start making nasal mucus. If they are
5 exposed to cigarette smoke or other kind of smoke, the
6 mucus is going to get a lot worse. But even without the
7 cigarette smoke or other exposures, they have very small
8 nasal passages. They start making mucus and their nasal
9 passages get all congested and clogged. When you listen
10 with the stethoscope, their breathing is perfectly clear.

11 What the parents are hearing is the baby trying
12 to breath through their nose. Babies breath through
13 their nose especially when they are feeding. So the
14 breathing can be very loud and very noisy and sound very,
15 very congested. But it's all very typical. If it's
16 excessive, I have them do saline drops into the nose
17 three, four, five times a day, suction it out, make sure
18 they are running a humidifier.

19 Q Let me ask you this. You examined Child all ---

20 A Five times.

21 Q --- five of these visits. You listened to her
22 lungs?

23 A Uh-huh.

24 Q She had any respiratory illnesses?

25 A No. Every indication was it was just routine

1 newborn, one, two-month old baby nasal congestion.

2 Q You don't prescribe any breathing treatments
3 for her?

4 A I didn't prescribe any breathing treatments.
5 There's nothing in the notes saying that I recommend that
6 they even do the saline drops or the humidifier or
7 elevate the head of the bed, all the routine things I do
8 if the congestion is very significant.

9 Q Did she have any allergies when you --

10 A No.

11 Q Let's talk about her original birth examine.
12 The records indicate -- will you tell the jury what the
13 records indicate about initial eye examine?

14 A Babies, when they are first born in the
15 hospital, many times as pediatricians, we are able to
16 examine all aspects of their body except for their eyes.
17 The reason is twofold. One, a lot of times their
18 eyelids, upper and lower, is just kind of swollen just
19 from the birth process and it's hard to get them to open
20 their eyes. And two, the nurses have to put medicine in
21 their eyes to prevent any transmission of any infection
22 that could cause them to go blind. When they are first
23 born, it's very difficult to see inside of their eyes, to
24 get them to open and whatnot.

25 Q Did you examine Child's eyes?

1 A In the hospital when she was born, there was
2 another doctor. So I didn't then.

3 Q During your visits.

4 A At her first visit at four days of age when I
5 saw her, that was when I believe she had her first eye
6 examine. It was perfectly normal and normal at all the
7 other visits as well.

8 Q All right. Before Dr. Shelley saw Child on
9 January 19th of 2011, when was the last time that she had
10 been in your office?

11 A She was in for her two-month well visit.
12 October -- I don't know the date offhand.

13 Q Okay.

14 A It's in the notes.

15 Q But for her two-month --

16 A It was her two-month well visit. October --
17 uh, was it October 12th? I forgot the date.

18 Q I'll show you your notes and see if that
19 refreshes your recollection.

20 A October 21st. That was her two-month
21 examination.

22 Q All right. And that was the last time you saw
23 her?

24 A Yes.

25 Q And just so that we're clear about January 19th

1 of 2011, were you in the office when Child's parents
2 brought her in that morning?

3 A No, I was not.

4 Q And I want to go back to something you said
5 before. On this last visit, October 21st of 2010, what
6 did the defendant report the baby's sleeping habits were?

7 A That she was sleeping fine, I believe he said.
8 Is that what he said? I don't want to misspeak.

9 Q No, it's fine.

10 A (Reviewing.) Yeah, she was sleeping fine from
11 about 11:00 p.m. to 6:30 a.m. which is wonderful for a
12 two-month old.

13 Q Would you answer any questions that Mr. Mauldin
14 might have for you?

15 A Sure.

16 CROSS-EXAMINATION

17 BY MR. MAULDIN:

18 Q Dr. Smith, uh, the, uh, -- I been making some
19 notes. Essentially, this child was seen by you. What
20 you testified to -- I know the prosecutor been showing
21 you some papers.

22 A Uh-huh.

23 Q You been testifying to what you personally were
24 involved in. You're not testifying to what some other
25 doctor said or visited or whatever, right?

1 A There was one visit where my nurse practitioner
2 student saw her first. Then I saw her after.

3 Q Okay.

4 A But I still saw her and did all the questions
5 and asked all the questions and did the exam because I
6 wasn't having her do it on her own for a brand new baby.

7 Q The question is she was born on REDACTED DOB

8 ---

9 A Yep.

10 Q --- of 2010?

11 A Uh-huh.

12 Q Between August the 20th and October the 21st,
13 you personally saw this child five times?

14 A Yes.

15 Q All five times, you determined -- made a
16 determination that the child was normal?

17 A Uh-huh.

18 Q It had some weight loss, which is routine, but
19 that was resolved ---

20 A Yes.

21 Q --- during that two months.

22 A Yes.

23 Q There was no evidence of any physical injuries
24 or any abnormalities or anything with regard to this
25 baby?

1 A Correct.

2 Q Uh, you said that she was sleeping well. You
3 said that you discussed with them safety suggestions or
4 ideas about maintaining this child safely.

5 A Yes.

6 Q And you mentioned -- and it was in passing to
7 some extent, but you mentioned something about breast
8 milk. Was this baby breast-fed?

9 A No.

10 Q Okay. The baby was formula-fed ---

11 A Yes.

12 Q --- from the beginning.

13 A Uh-huh.

14 Q Never breast-fed.

15 A Not that I'm aware of, no.

16 Q Right. I mean you had just mentioned it. I
17 wanted to clarify for the jury.

18 A Well, some moms might attempt it in the
19 hospital at birth. There were no notes that said that
20 she tried to nurse at birth, but I didn't see her at
21 birth.

22 Q Okay.

23 A So based on the newborn hospital records, she
24 did not attempt to be nursed at birth.

25 Q The last visit was October 21st. That was at

1 Pediatric Associates of Greer office.

2 A Yep.

3 Q You saw her.

4 A Yep.

5 Q In that visit, the mother was not with her?

6 A No.

7 Q The father had brought the baby in?

8 A Yes.

9 Q He was alone with the baby?

10 A Yes. My understanding was mom was at work.

11 Q All right. And you fully examined the child
12 then?

13 A Uh-huh.

14 Q If I'm not mistaken, there was one interim
15 appointment between October the 21st and January. There
16 was one appointment maybe during December that was not
17 kept.

18 A Correct. That would have been the four-month
19 visit.

20 Q Right. And that appointment just wasn't kept?

21 A Correct.

22 Q Okay. That's all.

23 MS. POALETTI: I don't have anything on
24 redirect, Your Honor. May Dr. Smith be excused?

25 THE COURT: Any objection to releasing --

1 **MR. MAULDIN:** No objection.

2 **THE COURT:** All right. Thank you, ma'am.

3 **THE WITNESS:** Thank you.

4 **MS. POALETTI:** Your Honor, the State calls
5 Detective Dale Arteburn.

6 **THE CLERK:** Sir, please place your left hand
7 on the Bible and raise your right hand.

8 **DALE ARTEBURN**
9 having first been sworn, testifies as follows:

10 **THE CLERK:** Thank you. Please be seated.
11 Please state your name for the record.

12 **THE WITNESS:** Detective Dale Arteburn.

13 **DIRECT EXAMINATION**

14 **BY MS. POALETTI:**

15 **Q** Detective, will you tell the jury who you work
16 for please.

17 **A** Work for City of Greer Police Department.

18 **Q** And what's your position with Greer P.D.?

19 **A** I am an investigator in the Criminal
20 Investigation Division.

21 **Q** How long have you been an investigator?

22 **A** I've been an investigator for 10 years.

23 **Q** What about that -- before that?

24 **A** I spent six and a half years on patrol, in
25 uniform patrol.

1 Q All right. I'm going to take you directly to
2 your involvement into the investigation to the death of
3 Child . Would you tell the jury how you first
4 became involved in this case?

5 A Yes, ma'am. I was, uh, contacted by Detective
6 Jason Bash. I believe it was the date of the incident.
7 He contacted me via phone and asked me to obtain a search
8 warrant for the residence at REDACTED , Greer,
9 South Carolina.

10 Q All right. Tell the jury whose home is at
11 REDACTED in Greer.

12 A From my understanding, the home was occupied
13 by, uh, Shalita Dawkins, Daron Davis and her children.

14 Q All right. Did you apply for the search
15 warrant for the house?

16 A I did. I sought a search warrant. Prior to
17 seeking the search warrant, I did go by the residence to
18 visually observe the location so I could have a detailed
19 description for the search warrant preparation. Did go
20 back and prepare a search warrant and presented it before
21 a judge to be issued.

22 Q All right. When you first responded to the
23 house, what was the purpose of responding and making sure
24 of what was going on in the house?

25 A As I initially testified, I approached the

1 home. We had investigators already present at the house
2 just to hold the scene from anybody entering or exiting
3 the residence. They remained at the scene as I left to
4 go get the search warrant. Nobody had entered the home.
5 They were standing by in the roadway there.

6 Q All right. The purpose of that is what?

7 A To control the preservation of the scene at
8 that point.

9 Q All right. And the search warrant was issued;
10 is that correct?

11 A Yes, ma'am. It was.

12 Q And after the search warrant was issued, what
13 happened?

14 A After the search warrant was issued, I returned
15 to the address of REDACTED where the search
16 warrant was then executed. At that point, Forensics
17 Division, Sergeant Shaw was present with me. He, at that
18 time, went into the residence and started to document
19 upon executing that search warrant.

20 Q All right. I'm getting ready to show you a few
21 photographs. Tell the jury was anything seized from the
22 home or taken from the home?

23 A The only thing that was taken from the home was
24 documentation photos that were taken by Sergeant Shaw of
25 the Forensics Division.

1 Q All right. I'm going to ask you to look here
2 at State's Exhibits number 6, 31 and 32 and ask you if
3 you recognize those photographs.

4 A I do.

5 Q Did those photographs -- tell the jury what
6 they're pictures of.

7 A On -- State's Exhibit number 31 is a picture
8 describing -- or a picture showing a bedroom, the boys'
9 bedroom of the residence at REDACTED : Multiple
10 toys and beds and mattresses among items in that picture.

11 Q Does that photograph fairly and accurately
12 represent that room as you observed it that day?

13 A It does.

14 Q And let me make sure that I'm clear. Sergeant
15 Shaw is taking photographs ahead of you through the
16 house; is that correct?

17 A That's correct. And I believe as he testified
18 yesterday, he entered the home and started documenting.
19 I followed behind him is how that took place. He would
20 photograph a room and I would follow behind observing
21 areas of the home to see if anything looked out of place
22 or anything that would be detailed that we may need for
23 further pinpointed investigation.

24 Q All right. And so as to State's Exhibit 31,
25 you said that's what that one bedroom looked like on that

1 day?

2 A That's correct.

3 Q All right.

4 A State's Exhibit number 6 is, uh, -- it's inside
5 the master bedroom. There's obviously a white doorway
6 open there. There's a TV, a medicine bottle on top of
7 the TV along with miscellaneous items, boxes, paperwork.

8 Q All right. And then number 32?

9 A Number 32 is a large picture of the medicine
10 bottle. It's made out to Shalita Dawkins. It's on the
11 top of the TV as described in number 6.

12 Q All right. Uh, --

13 A I can't make out what the prescription is but
14 it is made out to her. It has her name.

15 Q All right. State's Exhibits number 6 and 32
16 fairly and accurately represent the state of the master
17 bedroom in that specific area as you observed it that
18 day?

19 A That's correct.

20 MS. POALETTI: Your Honor, at this time, the
21 State moves number 6, 31 and 32 into evidence.

22 THE COURT: Any objection?

23 MR. MAULDIN: 6, 31 and 32?

24 MS. POALETTI: Yes, sir.

25 MR. MAULDIN: No objection.

1 **THE COURT:** All right.

2 (WHEREUPON, State's Exhibits 6, 31 and 32 are
3 admitted into the record.)

4 **BY MS. POALETTI:**

5 **Q** All right. This is State's Exhibit number 6.
6 Tell the jury what that is. They weren't looking at it
7 when you were describing it.

8 **A** Yes, ma'am. That is -- there is a white door
9 there to the left of the scene. That is inside the
10 master bedroom. There is a black TV with prescription
11 bottle on top of it, miscellaneous paperwork and a little
12 colorful box.

13 **Q** All right. And this is number 32.

14 **A** That is a -- the same picture as previously
15 described. It is an enhanced photo of just the pill
16 bottle. It's showing some of the miscellaneous paperwork
17 and items on top of the TV in the master bedroom.

18 **Q** And then this is number 31.

19 **A** That's going to be another bedroom within the
20 home there. It appears to be the little boy's bedroom.
21 As you can see, there's mattresses and toys consistent
22 with that.

23 **Q** I want to talk to you now about the video from
24 the Kwik Store.

25 **A** Sure.

1 Q Uh, tell the jury, after the scene or the home
2 was processed, what you did regarding the Kwik Store.

3 A While we were wrapping up the final portions of
4 the search warrant --

5 MR. MAULDIN: One moment please. (Pause.)

6 THE COURT: Okay. Go ahead.

7 BY MS. POALETTI:

8 Q Go ahead, Detective.

9 A Sure. We were finishing up our execution of
10 the search warrant at that point and securing the
11 residence. I had received a phone call from Lieutenant
12 Pressley advising me that during his interview, uh, he
13 was conducting with the father, Daron Davis, that he had
14 made mention that he had gone to a Kwik Store within
15 Greer which is situated at Highway 101 and Bennett Street
16 to purchase cigars or something like that. So I did at
17 that point. I left the scene. I was requested to go to
18 the scene and see if there was video or surveillance
19 capabilities there.

20 Q When you say the scene, you talking about the
21 Kwik Store?

22 A Well, when I left REDACTED, I then
23 drove to the Kwik Store, yes, ma'am.

24 Q Okay.

25 A As I had gone into the store, I met with

1 managers. I asked if they had surveillance capabilities.
2 They did. At which point, I had to have another, I
3 believe it was the owner, arrive at the scene to show the
4 other employees how to use the equipment. We were able
5 to pull the video up on the monitor.

6 Q And what was the format?

7 A The format was very grainy. The date was off
8 quite a bit showing the date of, I believe it was June
9 5th, 2012.

10 Q So it was in the future?

11 A It was in the future, yes, ma'am. The hours
12 were off on the screen by about two and a half hours.

13 Q What about the quality of the video?

14 A The quality was very grainy. It was very, uh,
15 hard to see what we were looking at. At that point, I
16 asked them to just go ahead and stop the video. We were
17 just going to take it from them until it could be
18 enhanced or reviewed with different capabilities.

19 Q And just so that the jury understands, describe
20 this surveillance system. How would you describe it?

21 A Very poor. Very poor quality surveillance
22 equipment. The -- I believe it was multi-place type of
23 system which was showing several pictures, but several of
24 the cameras were not working. It was not very, uh, --

25 Q Would you call it high tech?

1 A Not at all. It was actual --

2 Q What was the actual format --

3 A The format was on a VHS tape. It was certainly
4 behind the times on surveillance equipment.

5 Q Did you take the video --

6 A I did. I did. It was seized by myself and
7 held.

8 Q How far is the Kwik Store from REDACTED

9 ?

10 A It's about a half mile.

11 Q Is that the extent of your investigation in
12 this case?

13 A It is.

14 Q Answer any questions Mr. Mauldin might have.

15 A Yes, ma'am.

16 MR. MAULDIN: One moment, Your Honor.

17 (Pause.)

18 **CROSS-EXAMINATION**

19 BY MR. MAULDIN:

20 Q According to the records or the reports made,
21 the search warrant request application was made at
22 approximately 12:36 p.m. the afternoon, soon after noon
23 on the 19th, right?

24 A I would have to -- I don't know that it's on
25 there. Some judges will --

- 1 Q Let's do the date first.
- 2 A That's fine.
- 3 Q Does that have a date?
- 4 A It does.
- 5 Q What is the date?
- 6 A January 19th, 2011.
- 7 Q Okay.
- 8 A Yes, sir.
- 9 Q And does this report have a time -- and I have
- 10 circled. Does it have a time?
- 11 A It does.
- 12 Q What is the time?
- 13 A 12:36 p.m.
- 14 Q Okay. Okay. So we've got that.
- 15 A Yes, sir.
- 16 Q So at 12:36 p.m., you made application for and
- 17 received a search warrant for REDACTED ?
- 18 A I believe that's when it was executed. That's
- 19 correct.
- 20 Q REDACTED ?
- 21 A Yes, sir. Yes, sir.
- 22 Q Okay. And when you went to REDACTED , it
- 23 had been secured by other officers while you were getting
- 24 the search warrant?
- 25 A Yes, sir. There were officers present.

1 Q So it could not be disturbed?

2 A Yes, sir.

3 Q And when the execution of a search warrant
4 actually took place, you were a participant in the
5 execution of that search warrant?

6 A Absolutely.

7 Q So you were present in these rooms where these
8 photographs were taken?

9 A Yes, sir.

10 Q Do you remember Officer, uh, Arteburn, about
11 what time you would have completed the search of the
12 residence?

13 A I do not recall.

14 Q All right. Well, then let's see if we can kind
15 of get an idea on maybe how long it took.

16 A We would have been there long enough to
17 photograph each room at which point we were also looking
18 for any areas of where this incident could have occurred
19 or what may have occurred. I could give you a rough time
20 of being there maybe several hours. I don't know exactly
21 how long we remained at that scene.

22 Q Let me tell you. I don't want you to guess.
23 I'm not asking you to guess.

24 A Yes, sir.

25 Q I'm just asking you if you remember --

1 A I don't.

2 Q -- of how long you were on that property?

3 A I do not.

4 Q Okay. The only thing that was taken from the
5 property was photos.

6 A That's correct.

7 Q There's not anything taken into custody, if you
8 will, or kept in the files or anything like that?

9 A Not from REDACTED , no, sir.

10 Q All right. In order to get from the residence
11 -- this is the State's Exhibit number 7. This, I would
12 show you, is that the residence you identified?

13 A Yes, sir.

14 Q All right. In order to get from that residence
15 to the Kwik Stop which you testified to, you said it was
16 about a half mile away?

17 A That's correct.

18 Q You are familiar with the streets over there?

19 A Yes, sir. Very familiar, yes, sir.

20 Q If you are on REDACTED and go up REDACTED
21 and turn right on REDACTED it would take you out to 101,
22 right?

23 A You could. But that would be out of the way.
24 Yes, sir.

25 Q Or you could go down the street and go back up

1 Line Street.

2 A That would also be out of the way. That would
3 not be the most direct. Yes, sir.

4 Q But either way, whichever direction you might
5 take, it's about the same distance. In other words, not
6 a big difference in the distance of those two?

7 A I would disagree with that.

8 Q And either way, either direction, it's less
9 than a mile. Is that fair to say? And again, I don't
10 want you to guess. I'm just saying.

11 A Less than a mile, probably yes. Either way, I
12 would suspect it would be less than a mile.

13 Q So this particular Kwik Shop is clearly close
14 to the residence.

15 A Yes.

16 Q Convenient to the residence?

17 A I would say so.

18 Q If a person was going to make a small purchase,
19 for example, a soda or a pack of cigarettes or cigars or
20 anything like that, that would be a convenient location
21 to go to.

22 A Yes.

23 Q In your investigation, your understanding was
24 that that Kwik Shop was relevant to this investigation.

25 A That was my understanding.

1 Q And when you went to the Kwik Shop to discuss
2 the surveillance, you discovered that the surveillance
3 equipment and resulting, what I will loosely describe,
4 video was essentially impossible to see or to draw any
5 conclusions from.

6 A That day, yes, sir.

7 Q You would agree with me it was impossible.

8 A On that day, yes, sir. From what we had that
9 day, it was not able to be viewed.

10 Q Right. And the gentleman there at the Kwik
11 Shop had he been there earlier during the day? Was he
12 the same person that had been there at seven o'clock that
13 morning, or do you know?

14 A Who?

15 Q You say you spent time on REDACTED . . .

16 A Yes, sir.

17 Q And the trip to the Kwik Shop was after REDACTED

18

19 A Correct.

20 Q When you went to the Kwik Shop, did you
21 determine that the person you were talking to was the
22 same person who would have been at the Kwik Shop at seven
23 o'clock in the morning?

24 A I did speak to the person who had been there at
25 the Kwik Shop that morning, yes.

1 Q All right. So you actually did have contact
2 with an employee?

3 A I did.

4 Q Who had been there that morning?

5 A Yes, sir.

6 Q All right. One moment. (Pause.)

7 That's all.

8 MS. POALETTI: I don't have anything else,
9 Judge.

10 THE COURT: Thank you.

11 MS. POALETTI: May the detective be released
12 from his subpoena?

13 THE COURT: Yep.

14 THE WITNESS: Thank you.

15 MS. POALETTI: Your Honor, the State calls
16 Detective Jason Bash.

17 THE CLERK: Sir, please place your left hand
18 on the Bible and raise your right hand.

19 JASON BASH
20 having first been sworn, testifies as follows:

21 THE CLERK: Thank you. Please be seated.
22 Please state your name for the record.

23 THE WITNESS: Jason Bash.

24 DIRECT EXAMINATION

25 BY MS. POALETTI:

1 Q Detective Bash, please tell the jury who you
2 work for please.

3 A Work for the Greer City Police Department.

4 Q And how long have been with Greer?

5 A Since 2002.

6 MR. MAULDIN: Officer Bash, could you sit
7 closer or pull that microphone. Thank you.

8 THE WITNESS: Yes, sir.

9 MR. MAULDIN: I'm having a little difficulty.

10 BY MS. POALETTI:

11 Q How long you been at Greer? I'm sorry.

12 A Since 2002.

13 Q All right. And is that the extent of your law
14 enforcement experience?

15 A Prior to that, 1999, I began working at the
16 Greenville County Detention Center as a detention
17 officer.

18 Q You went straight from the detention center to
19 Greer in 2002?

20 A Yes, ma'am.

21 Q And you are a detective for Greer?

22 A Yes, ma'am.

23 Q I want to take you directly to the
24 investigation as to the death of Child and ask you
25 to tell the jury how you became involved.

1 A Approximately 9:15 on the morning on that date
2 of January 19th, 2011, I received a phone call from the
3 deputy coroner, Greenville County Coroner's office. He
4 stated to me that there was a child being transported
5 from the Pediatric Associates of Greer to Greenville
6 Memorial Hospital and was not breathing.

7 Q Was that protocol for the coroner's office to
8 call a detective when they get information like that?

9 A Yes, it is. When there is an incident to where
10 an infant, a child, a young adult stops breathing, it's
11 not normal. So they call us to investigate to see why
12 the child stopped breathing.

13 Q At that point, did you have any idea who the
14 child was or anything about that?

15 A No.

16 Q From the coroner.

17 A Well, the coroner gave me the child's name but
18 I did not know who that child was.

19 Q Okay. What's the first thing you did after you
20 spoke to the coroner as part of your investigation?

21 A I notified Lieutenant Pressley who is one of my
22 immediate supervisors. I notified him of the situation
23 that we may need to start an investigation in this case.
24 He advised me that he was just made aware of it and he
25 was on his way to Greenville Memorial Hospital.

1 Q And is it protocol -- we heard testimony from
2 Detective Arteburn already and now you. Is it protocol
3 for all of y'all in Greer to immediately mobilize on a
4 case like this?

5 A On a case like this, it is. There is going to
6 be so much that has to be done quickly to preserve things
7 such as evidence and everything. One officer typically
8 can not do this by himself in a timely manner. There's
9 five investigators in the city of Greer that work
10 Criminal Investigations. There are two that are
11 narcotics investigators. They will assist us as well.
12 In a case like this, we need to do a lot of things in a
13 short period of time. It's just impossible for one
14 officer to do it. So we commonly help each other out.

15 Q And what did you do first?

16 A After I notified Lieutenant Pressley, I made
17 the determination to go to the residence at REDACTED
18 in the city of Greer. At this point, I did not
19 know whether or not anybody else was at the residence.
20 There may be potential witnesses. We didn't know if it
21 was going to be a criminal case at this point, but we had
22 to interview anybody that was from that house. After
23 talking with the deputy coroner, it was apparent that
24 prior to the child and the mother and the father arriving
25 at Pediatric Associates of Greer, they came from the

1 residence at REDACTED .

2 Q Okay. What did you do when you got there to
3 make sure the residence was secure?

4 A When I got there, I parked out front. Went to
5 the front door. Knocked on the door. I got no answer.
6 Didn't hear any rustling or anything inside. So I just
7 stayed out front to secure the residence so no one would
8 go in or out.

9 Q And did someone eventually come to relieve you
10 from that?

11 A Yes, detective -- Sergeant O'Shields and
12 Detective Crawford came to relieve me. I briefed them of
13 the situation and asked to -- not to allow anybody in or
14 out of the house.

15 Q All right. Where'd you go from there?

16 A Uh, from there, after talking with our
17 supervisors, I went to the Pediatric Associates of Greer
18 to briefly speak with any of the staff about the
19 incident.

20 Q Were you able to speak with Dr. Shelley when
21 you first responded?

22 A Yes, I did.

23 Q You didn't yet have the search warrant for her
24 medical records; is that correct?

25 A Correct. Later on, I received a search warrant

1 for the medical records of the victim.

2 Q And why did you have to get a search warrant
3 for the medical records?

4 A Part of the privacy policies. They can't just
5 turn over anybody's medical records to us. So it
6 requires us to get a search warrant and to give probable
7 cause as to why we need to get the records and that it
8 will help in the investigation.

9 Q And did you eventually get that search warrant
10 and get her records?

11 A Yes, I did.

12 Q Just to be clear, did your search warrant
13 encompass searching the physical building of the
14 pediatrician's office?

15 A No. Typically in a situation like this,
16 including sometimes we have to get phone records and
17 stuff, we don't actually search the physical premise of
18 the building. I went there. The doctors had, I think,
19 19 pages of medical records. They simply handed it to me
20 and said this is all the medical records we have for this
21 child. I didn't go through any cabinets or drawers,
22 files or anything like that. They give me the records.

23 Q I think there was some confusion on that issue.
24 Did you request assistance from the Department of Public
25 Safety Forensics Division at some point?

1 A Yes, I did. While doing the search warrant and
2 everything, I notified Sergeant Shaw, who testified
3 yesterday. I believe he was already aware of the
4 situation. I asked him to go to the hospital first and
5 take photographs of Child .

6 Q And did you ask him to do anything else?

7 A Later -- I believe he stated to me that he was
8 going to go to the residence at REDACTED . I
9 asked him since their office is close to Greenville
10 Memorial, I asked him to go ahead and take the
11 photographs of the child first. The residence was
12 secure, but we like to get photographs immediately, as
13 soon as possible, of any victim, especially in a hospital
14 situation where doctors are physically examining the
15 patient. We try to get photographs before anything is
16 disturbed.

17 Q And you said that was around 11:20 in the
18 morning that you called Sergeant Shaw, do you remember?

19 A I believe so.

20 Q I just want to make sure that --

21 A Approximately 11:22 a.m. was on my phone.

22 Q All right. And then after that, did you go
23 back to Greer Pediatrics with a search warrant to collect
24 the records?

25 A Yes, I did.

1 Q You made two trips to the pediatrician's
2 office.

3 A Correct. The first was without the search
4 warrant. Just to let them know that I would be obtaining
5 a search warrant and to try to get a little bit of
6 information. Then, uh, the second time, I went there to
7 talk with Dr. Smith and Dr. Shelley. They turned over
8 the medical records upon issuing them the search warrant.

9 Q All right. So after you got the medical
10 records from the pediatrician's office and spoke to the
11 doctors there, what did you do next?

12 A It was determined that I would interview the
13 mother of the child. I was advised that the mother was
14 at Greenville Memorial Hospital. I started making my way
15 over to Greenville Memorial Hospital. In route to the
16 hospital, I contacted Detective Arteburn. I knew he was
17 at the residence 506 Poplar Drive. I believe it was
18 close to 2:30 p.m. He stated he was wrapping up the
19 search warrant of the house. I asked him to hold and
20 preserve the house and make sure nobody goes in or out
21 even if they were done. Oftentimes after talking with
22 any witnesses, any suspects, anybody else, they may give
23 us other clues of what sort of evidence we may need to
24 collect. So I asked him to preserve the house or have
25 somebody stand by the house until we're done talking with

1 any witnesses, victims or suspects in the case.

2 Q Did you ever interview the mother in this case?

3 A No, I did not.

4 Q When you got to Greenville Memorial, what did
5 you learn about the investigation of the case?

6 A Shortly after I arrived at Greenville Memorial,
7 I met up Lieutenant Pressley, my immediate supervisor.
8 And he advised me --

9 MR. MAULDIN: Your Honor, hearsay. I'm
10 really not sure. So I'm just going to object to the
11 hearsay.

12 THE COURT: Okay. I sustain. Don't testify
13 to hearsay.

14 BY MS. POALETTI:

15 Q Let me ask you this. Did Greer Police
16 Department complete this investigation?

17 A No.

18 Q Who did you turn over the evidence, the medical
19 records that you had collected that morning?

20 A After I had completed my incident report and
21 all my notes and copies of the search warrant, I believe
22 I turned it over to Lieutenant Pressley who turned it
23 over to Greenville County Sheriff's Office.

24 Q Is that the extent of your involvement in the
25 investigation of Child's death?

1 A Yes, ma'am.

2 Q Would you answer any questions the defense may
3 have.

4 MR. MAULDIN: One moment, Your Honor.

5 (Pause.)

6 CROSS-EXAMINATION

7 BY MR. MAULDIN:

8 Q I've only got a couple of questions.

9 A Yes, sir.

10 Q You are with Greer Police Department?

11 A Yes, sir.

12 Q And how long have you been with Greer Police
13 Department?

14 A 2002. May of 2002.

15 Q That would be 10 years?

16 A Yes, sir.

17 Q All right. Your involvement, if my notes are
18 correct from your direct testimony, was that you received
19 the first contact at 9:15 the morning of January the
20 19th?

21 A Yes, sir.

22 Q 9:15 a.m.

23 A Yes, sir. And that's just based on my phone.
24 It gave me a reference.

25 Q Right.

1 **A** So I -- that's what I have.

2 **Q** In other words, when you did your report --
3 when you did your report, you actually cited at
4 approximately 9:15 hours?

5 **A** Yes, sir.

6 **Q** So that's 9:15 a.m. in the morning?

7 **A** A.M.

8 **Q** And when you concluded your report on this
9 matter, at approximately 16:15 hours, is that when you
10 were -- when you concluded your activity?

11 **A** That's when I exited the Greenville Memorial
12 Hospital, yes, sir. 4:15 p.m. that same day.

13 **Q** Right. In other words, you had received
14 information about the Greenville County Sheriff's Office
15 taking it over?

16 **A** Yes, sir.

17 **Q** And at 4:15, in the afternoon, you exited the
18 hospital and pretty much stopped your investigation?

19 **A** Yes, sir.

20 **Q** All right.. That's all.

21 **MS. POALETTI:** Nothing else, Judge.

22 **THE COURT:** All right. You are released from
23 subpoena.

24 **THE WITNESS:** Thank you..

25 **MS. SUSTAKOVITCH:** Your Honor, may we briefly

1 approach?

2 (WHEREUPON, a bench conference is held off the
3 record.)

4 THE COURT: All right, Ladies and Gentlemen.
5 We're going to take just a short recess this
6 morning. This is probably not a bad time to do it.
7 Don't discuss the case. We'll get back with you in
8 just a few minutes. Okay.

9 (WHEREUPON, the jury exits at approximately
10 10:43 a.m.)

11 THE COURT: All right.

12 MS. SUSTAKOVITCH: Thank you, Your Honor.

13 THE COURT: We'll take a short break.

14 (WHEREUPON, a recess is taken.)

15 THE COURT: Okay. Let's go ahead and get
16 them.

17 (WHEREUPON, the jury enters at approximately
18 10:58 a.m.)

19 THE COURT: All right. Call your next
20 witness.

21 MS. SUSTAKOVITCH: Thank you, Your Honor.
22 The State calls Shalita Dawkins.

23 THE CLERK: If you would, please pause at the
24 end of the bench and place your left hand on the
25 Bible and raise your right hand.

SHALITA DAWKINS

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please be seated.

Please state your name for the record.

THE WITNESS: My name is Shalita Dawkins.

DIRECT EXAMINATION

BY MS. SUSTAKOVITCH:

Q Ms. Dawkins, is it okay if I call you Shalita?

A Yes.

Q Shalita, how old are you?

A I'm 25.

Q And where do you live?

A I live at REDACTED in Greer.

Q How long have you lived there, Shalita?

A Uh, six years.

Q Do you have any children, Shalita?

A I do. Uh, P.A. is my oldest son. He's eight. J. LNU is my youngest son. Four.

Q Do you have any children that are no longer living?

A Yes, Child. She would have been two.

Q Would have been two when?

A She would have been two REDACTED DOB

Q All right. We're going to talk more about Child in a few moments. But first, I want to find out a

1 little bit about yourself to tell the jury. Where were
2 you born, Shalita?

3 A In Springfield, Massachusetts.

4 Q And how long did you live in Springfield,
5 Massachusetts?

6 A Uh, until I was about the age of nine.

7 Q Who did you live with in Springfield?

8 A My mom.

9 Q Do you have any other siblings?

10 A I do. I have a younger sister that's 21 and I
11 have another sister that's 13.

12 Q All right. When did you move -- did you move
13 down to South Carolina at some point?

14 A Uh-huh. Uh, we moved to South Carolina when I
15 was nine. My mom was an on-the-road truck driver at the
16 time. Her terminal was based out of South Carolina. She
17 liked it. So we moved here.

18 Q Tell me about your mom. When you moved down
19 here, was your dad in the picture or just your mom
20 raising you?

21 A No. My dad was not in the picture. My parents
22 had, uh, separated when I was younger, maybe about six or
23 seven.

24 Q All right. You stated your mom, when you moved
25 down here, was a truck driver?

1 A Yes.

2 Q Was that her -- is that her current employment
3 or did she go on to do something else as you were growing
4 up?

5 A Uh, she actually went into law enforcement, was
6 a police officer for over 10 years. She just recently
7 retired from the police department.

8 Q Where did she work?

9 A She worked for the Greer Police Department.

10 Q When did she retire?

11 A Uh, she just retired last month, the 8th of
12 November.

13 Q All right. Going back to you moving down
14 south. Where did you go to high school?

15 A I graduated from Greenville Tech Charter High
16 School. That's where I graduated from.

17 Q You stated you have a son named P.A. I
18 believe, who is eight?

19 A Yes.

20 Q When did you become pregnant with P.A. ?

21 A I became pregnant with P.A. at 16.

22 Q So you were in high school at the time?

23 A I was.

24 Q Did you end up finishing high school?

25 A I did.

1 Q How would you care for P.A. ? Did you have
2 any help once you had P.A. ?

3 A Uh, I actually started working shortly after I
4 had P.A. . Went to school full time. I worked in the
5 mall. I had help from my mom.

6 Q All right. You stated you have another child
7 named JLNU?

8 A Yes.

9 Q And how old again is JLNU?

10 A JLNU is four.

11 Q I want to take us now to the defendant in this
12 case. When did you meet Daron Davis?

13 A I met Daron in February of 2009.

14 Q And how old were you when you met Daron?

15 A I was 21.

16 Q How old was Daron when you met him?

17 A I thought he was 29, but I later found out he
18 was 40 at the time.

19 Q What do you mean you thought he was 29?

20 A Uh, that's what he told me.

21 Q All right. So did he look -- 21 and 40-
22 something, did he look 29? Did he look like that could
23 be possible?

24 A He looked like he could have been 29, yes.

25 Q When you met him, did he tell you anything else

1 about him?

2 A He joked around and said he was a police
3 detective or something. I just thought he was joking
4 around. I didn't take that seriously. I just thought he
5 was a jokester at the time.

6 Q Okay. Was he, in fact, any kind of law
7 enforcement officer?

8 A No.

9 Q Uh, as you were dating Daron in February of
10 2009, did he have a job at that time?

11 A Uh, he did not. I thought he had a job in the
12 beginning, at least that's what he was telling me. I
13 still don't know what the truth was as far as, you know,
14 those early months if he was working. But he was telling
15 me that he was going to work. But I know that
16 eventually, he did not have a job.

17 Q When you guys were first dating, was he living
18 with you at REDACTED ?

19 A No.

20 Q And what was your relationship like as far as
21 would he come stay for the night or what was the
22 situation there?

23 A Yeah, he would come stay for the night. I
24 would go over to his house and stay for the night. I was
25 still working at the time, taking care of the boys. So

1 we -- you know, we were together but we still had our own
2 separate spaces.

3 Q And where was he living at the time?

4 A He was living -- at the time, he was in Taylors
5 with a roommate at the time.

6 Q He had a roommate at the time?

7 A Yes.

8 Q All right. When did you get pregnant with
9 Child ?

10 A I got pregnant with Child , I think around
11 November of 2009.

12 Q Was Child a planned pregnancy?

13 A She was not.

14 Q When you found out you were pregnant with
15 Child , what was your reaction to carrying or learning
16 that you were going to be the mother of three?

17 A I was excited about the fact that I was having
18 another child, but to have three children and already
19 know how outside people looking in at me being younger
20 and having three children, that was like a big whoa. So
21 I struggled more to, uh, really go out and provide for my
22 children. So I was excited because I love kids. But,
23 uh, yeah, I wanted to make sure that they were okay that
24 they were allotted opportunities that I didn't have.

25 Q And when you became pregnant with Child , did

1 you have a job at that point?

2 A I did.

3 Q What was your job?

4 A I was a leasing consultant at an apartment
5 complex in Greenville.

6 Q So as far as being -- I'm sorry. What age were
7 you at this point?

8 A When I became pregnant with Child , I was 21, I
9 mean, 22 at the time.

10 Q All right. So you are 22 years old and you
11 have two small children. Who was providing the income
12 for your home and such to take care of yourself and your
13 children?

14 A I was.

15 Q Uh, your house at REDACTED , did you rent it
16 or buy it?

17 A Buy it.

18 Q Who bought it?

19 A I did.

20 Q Okay. How did this defendant feel about
21 learning that he was going to be a father to be of Child ?

22 A Uh, he was --

23 MR. MAULDIN: How did this defendant feel?

24 Objection.

25 MS. SUSTAKOVITCH: Okay.

1 **THE COURT:** Sustained.

2 **BY MS. SUSTAKOVITCH:**

3 **Q** This defendant, you advised him that you were
4 pregnant with Child. At that point, were there any plans
5 for you guys to live together or anything like that?

6 **A** At that point, no. I was still fine with my
7 own space. He had his roommate situation. I really
8 didn't want to live with anyone that I wasn't married to.
9 So that was not the plan. Our plan was to co-parent and
10 to still remain in our relationship. But, you know, he
11 was okay with the pregnancy to me. He seemed, if I may
12 say, he seemed, uh, like he was excited about having a
13 child.

14 **Q** All right. When was Child born?

15 **A** Child was born August 20th of 2010.

16 **Q** And did this defendant end up moving in after
17 she was born?

18 **A** He did. He ended up moving in in October of
19 2010.

20 **Q** Your home at REDACTED, when he moved
21 in, where did he stay? Where did he live?

22 **A** When he moved into my home, he was in my room.
23 I have a very small house. There's really no where else
24 to go.

25 **Q** All right. Uh, Shalita, your son P.A., what

1 grade was he in at the time, the fall of 2010?

2 A P.A. was in first grade.

3 Q And how did P.A. get to school?

4 A P.A. took the bus to school.

5 Q I'm showing you what's marked as State's
6 Exhibit 4 and 5. Do you recognize these?

7 A I do.

8 Q When you state that P.A. took the bus to
9 school, how did that process go? Where would he pick the
10 bus up and such?

11 A Well, the bus would always pass my house and
12 then go to the corner.

13 Q Before we do that, let me just ask you --

14 A Yes.

15 Q Describe to me the process of -- how would JLNU
16 -- excuse me -- P.A. get on the bus to go to school?

17 A P.A. would stand by the front door. Then,
18 uh, if Daron was up with him, cause I was working, if he
19 was up with him, he'd stand by the door. The bus would
20 come. We'd let him run out of the house and go to the
21 bus.

22 Q All right. I'm showing you again State's
23 Exhibit 4 and 5. What again do these reflect?

24 A Uh, this is my driveway here. Pass this house
25 right here would be the bus stop.

1 Q All right. And then on this picture, what do
2 you know -- what do you see?

3 A This is the bus stop right here.

4 Q Do these pictures fairly and accurately depict
5 the front of your home and in relation to the bus stop
6 from your home?

7 A Yes.

8 MS. SUSTAKOVITCH: Your Honor, at this time,
9 the State moves to admit exhibits 4 and 5.

10 MR. MAULDIN: No objection.

11 THE COURT: Okay.

12 (WHEREUPON, State's Exhibits 4 and 5 are admitted
13 into the record.)

14 BY MS. SUSTAKOVITCH:

15 Q Shalita, while we're on pictures, let me show
16 you -- these are previously admitted, Your Honor. I'm
17 going to put them on the projector.

18 THE COURT: All right.

19 BY MS. SUSTAKOVITCH:

20 Q Shalita, I'm showing you several pictures. If
21 you would, just tell me what we're looking at.

22 A Okay.

23 Q These have been previously admitted into
24 evidence in this case. What is that, Shalita?

25 A That's a picture of my house.

1 Q The front of your house?

2 A Yes.

3 Q And State's Exhibit 4, where is your house --
4 what are we seeing here if you can describe it for the
5 jury.

6 A You are seeing the -- the bus stop will be
7 where you can see the shade from the tree.

8 Q Shalita, is this --

9 A Yes, you're right there. That will be the bus
10 stop. And then where you see the SUV is my driveway.

11 Q All right. Showing you State's Exhibit 5. Is
12 this -- this is just another angle, I suppose, but where
13 would your house be?

14 A I can barely see it, but where that SUV is
15 would be my driveway.

16 Q And then the bus stop, I believe you testified
17 is --

18 A Yeah. I'm sorry. The driveway is the -- where
19 you see the SUV and then the bus stop, I can barely see
20 it. Yeah. It would be in that area.

21 Q So it's -- what P.A. would do is sit on the
22 front porch I believe you testified to?

23 A Sit on the front porch or stay inside right at
24 the door if it were too cold outside.

25 Q And then would you watch for the bus and

1 then --

2 **A** Uh-huh. We'd watch for the bus and then
3 he'd --

4 **MR. MAULDIN:** Excuse me one moment. I object
5 to the Solicitor leading the witness.

6 **THE COURT:** Okay. Don't lead.

7 **MS. SUSTAKOVITCH:** I'll rephrase.

8 **BY MS. SUSTAKOVITCH:**

9 **Q** Uh, would the bus stop in front of your home?

10 **A** The bus would stop at the house next door to my
11 home right there. Then he would get on the bus from
12 there.

13 **Q** All right. I'll now show you State's Exhibit
14 -- I'm sorry -- 9. What are we seeing right there,
15 Shalita?

16 **A** That's Child's bouncer.

17 **Q** And these are previously admitted photographs
18 from inside your home. What is State's Exhibit 31?

19 **A** That's JLNU and P.A.'s room.

20 **Q** Uh, did JLNU and P.A. sleep in the same room
21 with you or in a different room?

22 **A** They slept in another room.

23 **Q** All right. Showing you what's marked as
24 State's Exhibit 11, photograph that's been previously
25 admitted as being taken on the 19th of January 2011.

1 What are we seeing here?

2 A That's my bedroom with Child's bassinet to the
3 right.

4 Q All right. Who slept in the bed that I'm
5 circling here. Who slept here?

6 A Myself and, uh, the defendant, Daron.

7 Q Where did you guys sleep in the bed?

8 A At that --

9 Q Go ahead.

10 A At that time, I was sleeping more towards the
11 wall. I faced the wall. He would sleep on the outside.

12 Q Okay. Shalita, this hasn't been entered into
13 evidence. It's a picture that was taken on January 19th,
14 2011. A picture from that day. What is this pill
15 bottle?

16 A It's an antibiotic.

17 Q Okay. Prescribed by who?

18 A Prescribed by, I believe, Dr. Delahunty. I had
19 an IUD put in. That was prescribed to me so that I
20 wouldn't develop an infection afterwards.

21 Q Okay. I'm showing you State's Exhibit 13, the
22 final picture. How, if you have to guesstimate, how close
23 is Child's bassinet to your bed that you shared with
24 Daron?

25 A It was probably -- maybe a foot and a half.

1 Q All right. Thank you. Shalita, I want to take
2 you back to, uh, Tuesday, January the 18th of 2011. Do
3 you recall that day?

4 A I do.

5 Q What do you recall about how that day started?

6 A January 18th, I got up around 10 a.m. I can't
7 remember exactly what happened after that. I do remember
8 us going to the store. I went to Quality Foods in Greer.
9 I do remember doing that. Had Child and JLNU with me at
10 the time. P.A. had already gone off to school. We
11 did that. Got a couple of things for my grandfather.

12 Q Can I stop you just for a second?

13 A Sure.

14 Q Was Daron with you at this time?

15 A Daron was with me, yes.

16 Q All right. So that morning, you got up around
17 10:00?

18 A Uh-huh.

19 Q And who went to Quality Foods just to clarify?

20 A Me, Daron, JLNU and P.A.

21 Q And where was P.A. at the time?

22 A P.A. was at school.

23 Q All right. On Tuesday, January the 18th, 2011,
24 what do you recall about Child's, uh, her demeanor?

25 A She was happy. She was her usual self. I can

1 remember a lady in the store playing with her while she
2 was in her seat just looking at her. She was just her
3 happy little Child .

4 Q Was there anything that morning that made you
5 think that anything was wrong with Child ?

6 A No.

7 Q You stated you got -- after Quality Foods,
8 where did you go?

9 A After Quality Foods, we went to my
10 grandfather's house at the time to take the groceries in.
11 I stayed in the car with Child. Daron went in, brought the
12 groceries in. My sister came out and was talking to me
13 about something. But she wanted to keep JLNU, so JLNU
14 ended up staying with her at my grandfather's house.

15 Q And who drove to your grandfather's house?

16 A I believe Daron drove.

17 Q Anything out of the ordinary at this point?

18 A No.

19 Q What, if anything, happened after -- and I'm
20 sorry. You stated JLNU wanted to stay with your sister?

21 A Yeah. They had something. I don't know if she
22 wanted him more or if he wanted her more. But the ending
23 result was JLNU and my sister wanted to be together, so
24 they were together.

25 Q You come home. And it's you, Daron and Child ?

1 A Correct.

2 Q And where was P.A. at this point?

3 A P.A. was still at school.

4 Q All right. When you got home, did you cook
5 lunch?

6 A I cooked breakfast actually. I think it was
7 like eggs and bacon or something like that. But with my
8 work schedule, my breakfast was later in the day. I
9 remember doing that.

10 Q Before we get any further into that day, tell
11 me about your -- you said your -- you said your work
12 schedule.

13 A Uh-huh.

14 Q Did you have a job at that point?

15 A I did.

16 Q What was your job?

17 A I worked at the Verizon Call Center as a
18 Customer Service Rep.

19 Q When did you get that job, Shalita?

20 A I got the job actually while I was still
21 pregnant with Child . I was in my last week when I got
22 the job. I started in October.

23 Q And what, if any, training procedures or things
24 like that did you have to go through with your new job?

25 A My training, uh, the first, I believe, six or

1 eight weeks, uh, was Monday through Friday, 9:00 to 6:00.

2 9 a.m. to 6 p.m.

3 Q So Child was born REDACTED DOB and you start
4 this new job. Who was caring for Child, you know, from
5 REDACTED DOB as you start this new job? Whose care is she
6 in?

7 A The defendant, Daron's.

8 Q And with Daron keeping Child, did there appear
9 to be any problem as far as him keeping Child at that
10 time?

11 A No. Uh, there didn't appear to be any problem
12 as far as him keeping her.

13 Q Did Daron have a job at this point?

14 A He did not.

15 Q Now, you said it was like a six or eight-week
16 training from 9:00 to, uh, -- I'm sorry. What was the
17 time?

18 A 9 a.m. to 6 p.m.

19 Q Did your schedule at some point change?

20 A Yes. I went to second shift schedule where I
21 worked from 3:15 in the afternoon til midnight Monday
22 through Friday.

23 Q When did your schedule change to 3:15 to
24 midnight?

25 A My schedule changed, uh, around the holidays.

1 Maybe right before Christmas or somewhere in there is
2 when my schedule changed.

3 Q Was there any issue, I mean, now you're going
4 to be gone from midnight -- when would you get home with
5 this new -- getting off at midnight, when did you
6 generally get home?

7 A I would normally get home about 12:30.

8 Q Was there any issue between you and Daron about
9 you getting home at that time?

10 A Uh, he didn't like it as far as me having the
11 second shift. But that was the only choice. It was
12 either I work or there's no money coming into the house,
13 so it had to be done.

14 Q Going back to Tuesday, January 18th, 2011. You
15 stated you came home after being at your grandfather's.
16 you cook breakfast and you testified that it was you,
17 Child and Daron?

18 A Uh-huh.

19 Q What happened at that point?

20 A Uh, at that point, I remember, uh, playing with
21 Child for a little while. Then she was hungry. So I do
22 vaguely remember the bottle, uh, giving her some of her
23 formula and stuff like that. My mom had come in at some
24 point during that time. I remember giving her her
25 bottle, putting her down, then my mom coming in. We were

1 talking to my mom, you know, whatever was going on. Just
2 the latest news for that particular morning.

3 Q Was there anything unusual about your mom
4 stopping by?

5 A No, she did that all the time.

6 Q And did she end up leaving the house before you
7 left?

8 A I can't remember who left first. I honestly
9 don't remember who left first, if it were me or her.

10 Q Did you, in fact, go to work that day?

11 A I did go to work that day.

12 Q What time did you leave the house on Tuesday,
13 January 18th, 2011?

14 A I want to say I left around 2:15. I went to
15 get my eyebrows arched that morning. That place was
16 maybe five minutes away from my job. So I went and did
17 that.

18 Q So you left at 2:15, got your eyebrows arched?

19 A Uh-huh.

20 MR. MAULDIN: Your Honor, one moment. I
21 object to the form of this examination. She says it
22 and then she repeats it. Why don't she just ask --

23 THE COURT: Okay.

24 MR. MAULDIN: I object to it.

25 THE COURT: Just ask the non-leading

1 questions.

2 MS. SUSTAKOVITCH: Sure, Your Honor.

3 BY MS. SUSTAKOVITCH:

4 Q So at -- what time did you arrive at work?

5 A I got to work maybe about 3:10.

6 Q Uh, did you have any contact with Daron after
7 you got to work that day?

8 A I talked to him on my first break.

9 Q When was your first break?

10 A My first break was around 5:15.

11 Q And did you call him or did he call you?

12 A I believe I called him.

13 Q When you called him, were you aware of what was
14 going on with Child according to him?

15 A I heard Child in the background. She was crying.
16 He said he was going to get her a bottle. She was
17 hungry.

18 Q Any concern at this point?

19 A No.

20 Q How did that phone call conclude?

21 A I think I just told him, you know, hey, I got
22 to get back on the phones. I'll talk to you guys later
23 and that I loved them. That would be the normal way of
24 me ending the conversation.

25 Q Did you have any other phone conversation with

1 Daron that night?

2 A I did not. It was a super busy night on the
3 phones. I felt like I just didn't want to be on the
4 phones.

5 Q Did you call him that night at any other point?

6 A I did not, no.

7 Q Did he call you that night at any point before
8 getting home?

9 A He called me that evening about 12 -- I want to
10 say 12:15, 12:25, something some where in there and asked
11 me if I was on my way home.

12 Q What did you tell him?

13 A I told him that I was. I was taking a co-
14 worker home. She lived in the apartments up the street.

15 Q And so to clarify, you are saying 12:20-
16 something a.m.?

17 A A.M., yes.

18 Q When you get home, what, if anything, can you
19 recall when you walked in the home?

20 A When I walked in, I remember Daron sitting on
21 the couch. If you guys remember the pictures, there was
22 a couch this way and then one that way when you walk into
23 the house. I remember him sitting on the couch. He was
24 watching NBA TV. I want to say Lakers were playing, but
25 I really can't remember. I remember him saying, oh, you

1 didn't have enough time to call me tonight. I do
2 remember that. I said back to him, well, I was busy. My
3 job is to be on the phones. So I know you guys are okay,
4 so I'm not always going to call. I didn't feel the need
5 to call. I remember him saying something about my
6 eyebrows. Oh, well, let me see them. I proceeded on to
7 the kitchen. There was some fish that he had cooked. I
8 took a bite out of that. Decided I didn't want it and
9 put the fish back in the microwave.

10 Q Shalita, was P.A. up when you got home?

11 A P.A. was not up, no.

12 Q Where, to your knowledge, was he?

13 A P.A. was in the bed asleep.

14 Q And you stated you walked into the living room,
15 correct?

16 A Yes.

17 Q When you walked in, did you have any contact
18 with Child at that point?

19 A I did not, no.

20 Q After being in the living room, did you at some
21 point go into the bedroom?

22 A I did. After I put the fish back in the
23 microwave, I went back to my room. I was talking to
24 Daron when I went back into the room. We had a couple of
25 exchanges. I can't remember exactly what was said. I do

1 remember Child , uh, seeming as though she was
2 acknowledging my voice. She was making a little baby
3 sound.

4 Q When you walked into the room, did you walk in
5 by yourself or was Daron with you?

6 A Daron was with me.

7 Q When you walked in, you stated Child made a
8 sound.

9 A Right.

10 Q Did you go up to her bassinet and pick her up?

11 A I did not, no.

12 Q Did you go up to her bassinet and then inspect
13 her to see if she was okay?

14 A No.

15 Q Did you have any reason to believe she wasn't?

16 A No.

17 Q Did you believe her to be sleeping?

18 A I did.

19 Q Let me ask you once you got into the bedroom
20 what happened next?

21 A When I got into the bedroom, I ran the shower.
22 I remember taking a shower. Then I think I put on sweat
23 pants and a top or something like that. I went over to
24 the bed. Daron was, I believe he was already laying in
25 the bed at the time. I got into the bed. I had my cell

1 phone out. I think I was looking through a catalog. I
2 had the TV on. I was looking at a little bit of TV,
3 playing Angry Birds. He's laying there.

4 I remember us talking. I looked over at him.
5 You know, he was just talking about the relationship and
6 just how it just wasn't -- wasn't where it used to be and
7 I wasn't paying any attention to him. I remember telling
8 him go to sleep. Whatever. There's nothing wrong with
9 our relationship. Just go to bed.

10 Q Uh, Child is in the bassinet, correct?

11 A Uh-huh.

12 Q You stated you and Daron are having these
13 conversations. Is it normal for you guys to talk with
14 her sleeping in the room like that?

15 A Yeah. Child was used to noise. With her
16 having P.A. and JLNU, they are both noisy. She was
17 accustomed to noise. It was nothing for her to hear a
18 few sounds during the night.

19 Q Uh, what time did you go to sleep that night?

20 A I went to sleep about 2:00 a.m.

21 Q Are you aware of what time Daron may have gone
22 to sleep that night?

23 A I do not.

24 Q Was he in the bed when you went to sleep that
25 night?

1 A Yes.

2 Q Okay. Uh, during that night, going to bed at
3 2:00 a.m., did you get out of the bed and have any
4 contact at all with your daughter?

5 A No.

6 Q The next morning, what's the next thing that
7 you recall?

8 A The next morning, I remember Daron saying to me
9 that he was going to take P.A. to the bus stop because
10 it was foggy outside.

11 Q All right. And, uh, what, if anything else, do
12 you recall? Were you still asleep in the bed?

13 A I was still in the bed, yes. I remember him
14 doing that. And then he also said something about him
15 wanting to go to the store and get a Black & Mild. I
16 remember telling him to go to my purse -- it was on the
17 kitchen table -- and to grab the money out. And the keys
18 were there.

19 Q Okay.

20 A So -- oh, go ahead.

21 Q No, no. You go ahead.

22 A I remember looking out the window. I could see
23 the car at the stop sign. I went back to sleep. I was
24 still, you know, kind of half sleep just wanting to peek
25 out on that person that wants to -- someone calls me, I

1 want to be able to say that I did see my child that day
2 or something. It's just been a weird thing about me. So
3 I have to peek and make sure I do all those little
4 things.

5 Q At this point when Daron tells you he's going
6 to take P.A. to the bus stop, where is Child, to your
7 knowledge?

8 A Child is in the bassinet.

9 Q All right. And during the time that Daron is
10 at the bus stop, did you get out of the bed?

11 A I did not.

12 Q What is your next recollection after he leaves
13 to go to the bus stop?

14 A I remember Daron coming into the bedroom and
15 turning the light on telling me that he had just taken
16 the -- taken -- used the bathroom or something like that.
17 He was going to take a shower. I remember telling him to
18 turn the light off cause I was still trying to sleep. He
19 went on, turned the light off and then I heard the shower
20 water running, so --

21 Q When he left to go to the bus stop, did you, in
22 fact, fall back asleep at that point?

23 A I did.

24 Q And this testimony, did she wake up with coming
25 in and turning on the water?

1 **MR. MAULDIN:** Objection to the form of the
2 question.

3 **THE COURT:** You're leading.

4 **BY MS. SUSTAKOVITCH:**

5 **Q** Okay. When Daron spoke to you, were you awake
6 or asleep?

7 **A** I was still like -- it was -- if someone talks
8 to you and you hear them talk to you and you're sleep,
9 you're not all the way alert. It's just kind of, okay, I
10 hear you. You know, this is that kind of thing. It
11 wasn't me being fully awake and ready for my day. I was
12 still in the bed in sleep mode.

13 **Q** Uh, what was your first contact with your
14 daughter Child that morning?

15 **A** Daron woke me up. The next time I heard
16 anything, he woke me up. I remember him saying, you
17 know, "Get up, babe. Get up. Child isn't breathing
18 right." When I got up, Child was laying on the bed
19 horizontally. I said to him, you know, you know anything
20 that happened anything like that? And he doesn't know
21 anything. He says that she was fine.

22 That's the next time that I interact with
23 Child. I remember picking her up and putting her in my
24 arms, sitting on the bed messing with her trying to get
25 her breathing to appear normal to me. I told him to go

1 get the number to the pediatrician. The pediatrician,
2 being that she had been breathing funny previously, like
3 little breaths that I didn't like and the pediatrician
4 said in the past that she was fine. I'm like maybe
5 there's something that they didn't detect. Maybe
6 something was wrong. Maybe she's got asthma or whatever.
7 I had never been in a situation with a child or any
8 person that was having trouble breathing or knowing what
9 the different sounds of trouble breathing meant.

10 So he got the number to the pediatrician's
11 office. I remember calling the pediatrician's office.
12 All the while, I'm still holding her in my arms. I
13 talked to one of the ladies at the pediatrician's office.
14 Even had the phone up to Child's mouth so she could hear
15 the breathing. She said to come in for an appointment.
16 I can't remember exactly what time she said to come. It
17 didn't matter at that point. Somebody was at the office,
18 so we were going.

19 Q Tell me about the car right to the
20 pediatrician's office. Who drove?

21 A Daron drove on our way.

22 Q What, if anything, happened in the car ride to
23 the pediatrician's?

24 A I was holding Child. I asked him again, you
25 know, you know anything that could be wrong, why is her

1 breathing so strange. And he was saying no, she's been
2 fine.

3 I remember her breathing shifting. I'm holding
4 her. At one point, it went from her having steady
5 breaths to her taking a long one. It just -- it wasn't
6 picking up the way that I should have thought that it
7 should have been picking up, if that makes any sense. It
8 wasn't normal to me. She had been breathing funny all
9 the time. But there wasn't a gap. There wasn't a pause.
10 At this time, there's a pause in her breathing. So by
11 this point, I'm getting more frantic, ready to get to the
12 pediatrician's office.

13 Uh, the pediatrician's office was just closer
14 at this time. We're already in the car. We're already
15 on their way -- on our way there. My thinking is they
16 can help her more than we can help her at this time. If
17 there's another step because her breathing is getting
18 worse, then that can -- that can be taken or initiated
19 once we get there.

20 Q What do you recall about when you pulled into
21 the pediatrician's office? What happened?

22 A I remember Daron opened the door. I still had
23 Child in my arms. I never put her in her car seat. I
24 had Child in my arms. Took her straight in. I remember
25 the doctor, uh, assessing her, trying to get her

1 breathing going. I remember the little, uh, little
2 machine they have. I don't know what that's called. I
3 remember her squeezing that trying to get oxygen into
4 Child .

5 Q Are you able to process what's going on? Do
6 you have any understanding what is wrong with your
7 daughter at this point?

8 A No, at this point, I'm thinking she looks fine,
9 what could be wrong with her. Like, there's nothing.
10 There's no reason for me to think that anything is wrong
11 as far as there being harm. I'm just trying to figure
12 out is there some kind of medical issue that's
13 underlying. What's going on? That's what I'm thinking
14 at the point.

15 Q Okay. Uh, at the pediatrician's office, what
16 happened there? Did Child stay there or was she
17 transported somewhere else?

18 A EMS was called. They arrived quickly. I
19 remember them trying to get Child going. And they put
20 her in the ambulance at that time. And we were going to
21 Greenville Memorial Hospital after that. Obviously, it
22 was something that none of us had noticed.

23 Q In the car ride from the pediatrician's office
24 to Greenville Memorial, who drove?

25 A Daron drove.

1 Q And what, if any, conversation did you have
2 with Daron in that car ride?

3 A I asked him if he knew anything, did she do
4 anything that was different. Just questions like that.
5 He said no. She's been fine. She had vomited the
6 previous night but that that was it. There was nothing
7 else that he knew of. I also asked him, you know, did he
8 think it could be something medical, did he have anything
9 medical in his family history, you know, that would cause
10 her to have these problems. That's what I'm asking him
11 at the time.

12 Q How would you classify your demeanor in the car
13 ride?

14 A Hysterical.

15 Q Did you try to call anyone else in the car as
16 you're headed to the hospital?

17 A I tried to call my mom and let her know what
18 was going on to try to get her to be there at the
19 hospital. Let her know that there's something seriously
20 wrong with Child. We don't know what's going on with
21 Child, just that she needed to get there.

22 Q You recall if you actually spoke to your mom?

23 A I don't even remember the conversation. I just
24 know from afterwards hearing everything that obviously --

25 MR. MAULDIN: Objection, Your Honor.

1 **THE COURT:** Yeah. Don't go there.

2 **MR. MAULDIN:** I absolutely --

3 **THE COURT:** Okay. Okay.

4 **BY MS. SUSTAKOVITCH:**

5 **Q** Uh, at the hospital, what, if anything, do you
6 recall?

7 **A** When we got to the main hospital?

8 **Q** Yeah.

9 **A** I remember us going in through the Emergency
10 Room.

11 **Q** Where was Child at this time?

12 **A** Child was at Greenville Memorial. I remember
13 us going in at the Emergency Room asking people if they
14 knew where she was. We ended up getting led to a room
15 where they were working on Child . At this point, Child
16 was on a ventilator. I'm standing there holding hands
17 with Daron trying to figure things out.

18 **Q** Who was holding hands? I'm sorry.

19 **A** Me and Daron were holding hands.

20 **Q** Okay. You said Child was on a ventilator.
21 What is the scene that you see at this point?

22 **A** I just see all these medical stuff. It just
23 didn't feel good. At this point, it's okay. We know
24 there's something seriously wrong with Child . But what's
25 really going on is what I'm thinking. Why are people

1 looking at me this way? I remember doctors just looking
2 strange and getting into the hospital and people asking
3 questions and I just -- I don't know what's going on.

4 Q When you say looking at you strange, is that
5 specific to you or you and Daron?

6 A Just me and Daron. But I'm worried about how
7 are you looking at me. What's going on? I'm worried
8 about what happened on the way to the hospital that I
9 don't know. What's going on with my baby?

10 Q When did you have an understanding about the
11 injuries to Child?

12 MR. MAULDIN: That's obviously a solicitation
13 of hearsay testimony.

14 MS. SUSTAKOVITCH: Your Honor, that's not the
15 objective.

16 MR. MAULDIN: No, no. That's just asking
17 when.

18 BY MS. SUSTAKOVITCH:

19 Q Did you become aware of Child's condition at the
20 hospital?

21 A I did.

22 Q Do you recall how you became aware of Child's
23 condition at the hospital?

24 A There was a doctor that called both of us in.

25 MR. MAULDIN: All right.

1 **THE COURT:** You can't testify to what the
2 doctor told you.

3 **BY MS. SUSTAKOVITCH:**

4 **Q** What hap -- Okay. Don't testify to what he
5 told you. Can you tell what was happening in that room?
6 What was he showing you?

7 **A** At the room, in the room, he was showing us a
8 CAT scan.

9 **Q** In that room, when he showed you that CAT scan,
10 did you become aware of the severity of Child's injuries?

11 **A** I did.

12 **Q** What was your reaction upon hearing what the
13 doctor was saying?

14 **A** I was in shock. Just still confused wondering
15 what happened. To me, Child was fine. I felt like as a
16 mom at that point if something was wrong with Child , I
17 should have known that something was wrong. It should
18 not have taken that for me to see what she was going
19 through. She was obviously in a lot of distress at that
20 time.

21 **Q** Who was in the room with you and -- do you
22 recall the doctor's name?

23 **A** I don't, no.

24 **Q** Who besides you and Daron and the doctor were
25 in the room?

1 **A** My mom was in the room.

2 **Q** And you said he showed you a CAT scan and
3 explained what was going on?

4 **A** Yes.

5 **Q** What, if anything, was Daron saying when he was
6 being shown this CAT scan?

7 **A** At that point, he's just kind of -- he seemed
8 shocked like I was. It didn't seem like -- it just
9 seemed like he was shocked. I didn't see anything out of
10 the ordinary at that point. I remember looking at the
11 CAT scan and seeing all the fluid. Now, I know what that
12 fluid is. But I remember seeing the fluid and seeing
13 Child's two little teeth coming in from where she was
14 going to have her first teeth. But she's standing there
15 with me. I'm not thinking anything of it at that point.

16 **Q** At this point when the doctor shows you the CAT
17 scan, how does this exchange in the room end?

18 **A** When he showed us the CAT scan, in the end, the
19 exchange is Daron leaves the room. I don't know from
20 what the judge was saying if I can say what the doctor
21 said, but what the doctor said just --

22 **THE COURT:** Hang on. Hang on.

23 **MS. SUSTAKOVITCH:** Your Honor, can we
24 approach very briefly?

25 **THE COURT:** All right.

1 (WHEREUPON, a bench conference is held off the
2 record.)

3 BY MS. SUSTAKOVITCH:

4 Q Shalita, in the room with this doctor and you
5 and the CAT scan, as a result of this meeting with him,
6 what did you do at that point?

7 A I cried. I wanted to know what was happening.
8 I heard what the doctor told me, but my daughter looked
9 fine. I wanted to know what was going on. I needed to
10 get some clarity there. At that point, I didn't have it.

11 Q What is your state of mind at this point?

12 A I was in shock. I was in shock. I was
13 confused. I was hurt. I was angry. I was so many
14 different things, I didn't know what to think at that
15 time.

16 Q Shalita, I'm showing you what's marked as
17 State's Exhibit 26 for identification purposes only.
18 Shalita, did you speak with law enforcement later that
19 day?

20 A I did.

21 Q I'm showing you what's marked as State's
22 Exhibit 26. Do you recognize that?

23 A I do.

24 Q What is that?

25 A That's my statement.

1 Q You recall who you met with in law enforcement
2 to give a statement about this case?

3 A I remember meeting with, uh, Investigator
4 Miller who is seated over there. And there was another
5 officer with him. I can't remember that officer's name.

6 Q Uh, did you give Investigator Miller your
7 account of the events leading up to Child being in the
8 hospital?

9 A I did.

10 Q And Shalita, were you asked at some point to
11 bring your son P.A. in for an interview?

12 A Yeah.

13 Q Did you do that?

14 A I did.

15 Q Shalita, in the hospital, as the days went on,
16 did you become aware of the prognosis for Child?

17 A Yeah.

18 Q And how did you begin to deal with that and
19 process that?

20 A I knew that I didn't have all the answers as to
21 how she got the way that she was; but I knew I had to
22 deal with it. I knew that it wasn't going away, that
23 this was the reality, uh, so I just, I prayed about it.
24 I tried to just get some kind of comfort. It was
25 something that I didn't see coming. I just had to deal.

1 with it.

2 At that point, I dealt with it. That was the
3 reason I decided to donate her organs. I was losing my
4 daughter. I knew that I was losing my daughter that just
5 didn't get a chance. I knew that I was able to bless
6 other people and she still lives on. So that was part of
7 me just dealing with it knowing that what they are
8 telling me, all these people with, you know, their
9 credentials and have been to school that have the
10 experience, their knowledge, they are telling me that
11 this has happened to her. I still didn't quite
12 understand how it happened or why it happened, but I knew
13 that it had happened. It was something that I just had
14 to deal with.

15 Q Shalita, when did Child pass away?

16 A January 23rd.

17 Q I want to take you back to the day of January
18 18th, 2011. Did you do anything on that day to harm your
19 daughter?

20 A No.

21 Q When you left for work at 2:15 on January the
22 18th, 2011, had you done anything to hurt Child ?

23 A No.

24 Q When you came home at 12:40 a.m. and you went
25 to sleep that night, did you get up in the middle of the

1 night and harm Child in any way?

2 A No.

3 Q Did you pick her up?

4 A No.

5 Q Did you shake her?

6 A No.

7 Q When this defendant went to the bus stop and
8 you were laying in that bed between 7:00 and 7-whatever
9 time he got back, did you get up out that bed and did you
10 hurt your daughter?

11 A No.

12 Q Did you slam her head into anything?

13 A No.

14 Q Did you do anything that caused your daughter's
15 death?

16 A No.

17 Q Please answer any questions defense counsel
18 has.

19 THE COURT: Uh, I'll tell you what, Ladies
20 and Gentlemen, let's take just a short break. Okay.
21 Don't talk about the case.

22 Everyone remain seated until the jury exits
23 please.

24 Ma'am, will you just stay right there.

25 THE WITNESS: Okay.

1 (WHEREUPON, the jury exits at approximately
2 11:46 a.m.)

3 THE COURT: All right. Ms. Dawkins, I just
4 want to give you a moment to collect your thoughts
5 and yourself and your emotions. We'll be at ease
6 for just a few minutes. You may stand down but do
7 not discuss your testimony. Okay?

8 THE WITNESS: (No response.)

9 THE COURT: Ms. Dawkins, do you hear me?

10 THE WITNESS: I hear you.

11 THE COURT: Okay. All right. Be at ease.

12 MS. SUSTAKOVITCH: Your Honor, she's still
13 under oath, correct?

14 THE COURT: She's under oath. She's not to
15 talk about her testimony with anybody.

16 (WHEREUPON, a short recess is taken.)

17 THE COURT: The defendant's statement is
18 marked as a State's Exhibit number 1. That is not
19 correct. It's a Court's Exhibit. You're going to
20 give that to the jury with handwriting?

21 MS. SUSTAKOVITCH: No, sir. To clarify, that
22 is just a Court's Exhibit.

23 THE COURT: Right.

24 MS. SUSTAKOVITCH: That is the copy Mr.
25 Mauldin and I came up with.

1 (WHEREUPON, State's Exhibit 1 is remarked as Court's
2 Exhibit 6 for identification purposes.)

3 THE COURT: Okay. All right. Ms. Dawkins,
4 are you, uh, -- are you ready to go?

5 THE WITNESS: Yes.

6 THE COURT: All right. Let's bring the jury
7 in.

8 (WHEREUPON, the jury enters at approximately
9 12:01 p.m.)

10 THE COURT: All right. Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. MAULDIN:

13 Q You are, at this time, 25 years old, you say?

14 A Uh-huh.

15 Q And your children, uh, P.A. who is eight, I
16 think, and JLNU would be four?

17 A Correct.

18 Q Now neither P.A. nor JLNU are Daron Davis'
19 children?

20 A No.

21 Q Had you ever been married?

22 A I have.

23 Q Is one or both of those children from a
24 previous marriage?

25 A No.

1 Q So you were married but did not have a child
2 with that person?

3 A That's correct.

4 Q But P.A. and JLNU are children of other men
5 other than Daron Davis?

6 A Correct.

7 Q Now, in that regard, however, during your
8 relationship with Daron, your children, P.A. and JLNU
9 both refer to him as dad?

10 A Yes.

11 Q And he spent a lot of time with those children?

12 A Yes.

13 Q In fact, you testified that when you went to
14 work for the Verizon Call Center, you had about a six-
15 week to two-month training time?

16 A Correct.

17 Q And during that time would have been 9:00 to
18 6:00 every day you were in training and Daron was caring
19 for all three children?

20 A That's correct.

21 Q Again, they refer to him as their dad?

22 A Yes.

23 Q And there was never any difficulty or problem
24 with the quality of care that Daron gave your children?

25 A No.

1 Q Prosecutor asked you quite a number of
2 questions about your background, where you lived and
3 where you worked and so forth. You testified that you
4 met Daron in February of '09.

5 A That's correct.

6 Q And I believe you said you became pregnant in
7 either November or -- would it have been December?

8 A It was around the holidays. I don't remember
9 the exact date that I became pregnant. But it was around
10 the holidays.

11 Q That's what I actually thought, Shalita, that
12 it was around the holidays when you became pregnant and
13 there was never any question that it was Daron's child.

14 A Correct.

15 Q In other words, the two of you were monogamous
16 with each other.

17 A Correct.

18 Q In a relationship. And at that the time you
19 met Daron, where were you working then?

20 A When I met Daron, I was a cocktail waitress at
21 Platinum Plus.

22 Q At the Platinum Plus bar out here on the 385
23 highway?

24 A That's correct. It's a strip club.

25 Q Okay. At the strip club?

1 A Yes.

2 Q And when you became pregnant, did you and Daron
3 have discussion about whether or not y'all would move in
4 together then?

5 A No. When I became pregnant, that was not
6 something that I was considering prior to marriage.

7 Q All right. You weren't -- all right. You
8 weren't considering moving in or having the man who was
9 the natural father of the pregnancy until after marriage.
10 Is that what you said?

11 A That's correct.

12 Q Okay. Okay. Uh, you discussed with Daron what
13 I think -- you used the term co-parenting? Co-parenting?

14 A Yes.

15 Q And co-parenting, uh, -- so you were both going
16 to participate in the parenting of Child . Is that -- am
17 I fair to say that?

18 A That's correct.

19 Q And Daron was excited about that prospect.
20 That's what you testified to.

21 A It seemed that he was excited.

22 Q It seemed that he was excited about that
23 prospect?

24 A Yes.

25 Q And then it seemed that in October of 2010, was

1 she three weeks old when Daron moved in with you over on
2 REDACTED maybe?

3 A I can't remember exactly how many weeks old she
4 was. He didn't move in until October of 2010. She was
5 born on REDACTED DOB So she would have had to have been
6 past three weeks old at that time. So probably about
7 five or six weeks I would say.

8 Q And the, uh, -- the doctor said there been five
9 doctor's visits.

10 A I can't remember exactly how many doctor's
11 visits I had.

12 Q Well, the doctor this morning said that there
13 had been five doctor's visits prior to the middle of
14 October.

15 A Okay.

16 Q And Daron was at every one of those doctor's
17 visits, wasn't he?

18 A As far as I know or as far as I remember, yes,
19 he was still there.

20 Q And in fact, the last time that Child went to
21 the doctor, he took her by himself?

22 A Uh-huh. Cause I was working.

23 Q You were working. So it would have been a late
24 afternoon appointment, I guess, that he took her to?

25 A I believe so. If he took her by himself and I

1 was working, it would have had to have been.

2 Q Late after.

3 A Late afternoon.

4 Q All right. Now, I want to ask a question or
5 two about the -- (Pause.)

6 I want to ask you a couple of questions about
7 the bedroom if I could. This thing doesn't show a very
8 good picture.

9 How about give me some lights there please,
10 ma'am. (Pause.) Okay. There you go. Leave it like
11 that right there.

12 You said that you generally slept closest to
13 the wall.

14 A Correct.

15 Q Now, uh, this right here is one of the bed
16 posts. This is a bed post. That -- on the other side of
17 that, is that the wall you were talking about?

18 A Yes.

19 Q All right. And the edge of the bed is right in
20 this area?

21 A Yes.

22 Q And the bassinet, which is --

23 And I apologize, Your Honor. I'm referring to
24 State's Exhibit number 11, Madam Court Reporter.

25 The window that you looked out when Daron left

1 in the automobile with P.A. to go down to the bus stop,
2 is the window in the right hand side of that photo?

3 A That's correct.

4 Q And I guess in order to look out that window,
5 you have to kind of move over in the bed and make an
6 effort to look out the window, wouldn't you?

7 A I peeked out of the window. You can see the
8 bus stop. The bus stops at an angle. So it's not that
9 much effort.

10 Q Not much effort to do that?

11 A No.

12 Q It wouldn't take a lot of effort to look out
13 that window?

14 A No.

15 Q In fact, that bassinet is a foot and a half
16 from this bed, right?

17 A Uh-huh.

18 Q And it wouldn't take a bit of effort to look in
19 that bassinet, wouldn't it?

20 A It would take more effort to look in the
21 bassinet and see Child laying down in bassinet than it
22 would to look out of the window. It would take more
23 effort to look in the bassinet.

24 Q It would take more effort on your part to have
25 looked in that bassinet?

1 A Uh-huh.

2 Q Okay. All right. And State's Exhibit number
3 13. It's hard to see these pictures on the screen. But
4 that bottom edge of the bed now, that's kind of a lighter
5 color. Do you see it?

6 A I do.

7 Q Okay. That's the edge of the bed and then the
8 bassinet is right there in the center of the photo?

9 A The lighter part looks to me like the mattress.

10 Q Yeah. Yeah. That's the mattress to the bed.

11 A The mattress. Then on the side or a little bit
12 below it, there's the wood. The wood is dark. So that
13 wouldn't really be the edge.

14 Q You can't see that in the photograph there, but
15 the jury will have these, the actual pictures. That's
16 the edge of the bed and that's the bassinet right beside
17 it?

18 A Uh-huh.

19 Q Give me one moment please, ma'am. (Pause.)

20 All right. You got off work at midnight?

21 A Correct.

22 Q Took a girlfriend home.

23 A A coworker.

24 Q Who lived right down the road down REDACTED

25 ?

1 A Correct.

2 Q At REDACTED ?

3 A Correct.

4 Q And when that was happening, when you were
5 making that trip to take that girl home, your phone rang?

6 A Uh-huh.

7 Q And it was Daron wanting to know if you were on
8 your way home?

9 A Correct.

10 Q Because ordinarily, you'd be home before 12:25
11 or 12:30, wouldn't you?

12 A It really depended. If you are at a call
13 center, you can't stop a call coming in at 11:59 p.m. so
14 the time may go a little bit longer than midnight. That
15 would push your time coming into the house a little
16 later.

17 Q So the call at 12:25 wanting to know if you
18 were on the way home was not unusual or a surprise to
19 you?

20 A Well, 12:25, that really hadn't given me enough
21 time to get home from Mauldin.

22 Q And you got home at about what time?

23 A About 12:45.

24 Q You had conversation with Daron about his day
25 about what had gone on with the children and so forth,

1 right?

2 **A** Not really conversation about what had gone on
3 with the children. I don't remember asking him
4 particulars about what each one had done.

5 **Q** So you didn't ask him when you came in at
6 12:40 a.m. and P.A. is in bed and Child is in bed.
7 You did not ask him how things had gone?

8 **A** When I came in, of course, P.A. was in bed.
9 He went to bed between 8:00 and 8:30, around that time.
10 It was expected for Child to be in the bed. If I come
11 into the house and everyone looks to be where they are
12 supposed to be or that's what's presented to me that
13 everyone is where they are supposed to be, then I don't
14 have a reason to question it.

15 **Q** There was just nothing to talk about, was
16 there? Because everybody was in bed like they was
17 supposed to be. That's what you just said, right?

18 **A** Uh-huh.

19 **Q** So you had no such conversation?

20 **A** We had a conversation when I came in about the
21 eyebrow thing that I said earlier, about him saying I
22 didn't have time to call him that night.

23 **Q** All right.

24 **A** We talked about that. But when you get into
25 the children, I don't recall talking about the children

1 in specifics.

2 Q Okay. And it was during that conversation or
3 during whatever y'all were talking about eyebrows or
4 basketball, whatever it was, you came through the living
5 room into the master bedroom and that's when Child
6 responded to the voices.

7 A After I went to the living room and passed --
8 went to the kitchen and had went to the microwave and all
9 that, we went to the bedroom. We were talking. And
10 Child did do what I thought was acknowledging my voice.

11 Q Okay. And you heard Child ?

12 A Yes.

13 Q All right. And she obviously heard you?

14 A Or so I thought. It was just a sound.

15 Q Okay. And that was not an unusual sound. She
16 would do that when she heard your voice.

17 A It was just a baby sound.

18 Q Right. And she would do that when she heard
19 voices?

20 A Uh-huh.

21 Q Daron then took a shower -- you got in bed?

22 A No, I took a shower.

23 Q Oh, you took a shower. You get in bed. Daron
24 is in the bed?

25 A Uh-huh.

1 Q All right. At some point, and then as far as
2 you are aware, the two of you went to sleep for the
3 night?

4 A After we had had that little conversation that
5 I was telling the prosecutor about or telling Christy
6 about.

7 Q Christy? Is this -- you talking about --

8 A That Christy.

9 Q -- this lady?

10 A Yes.

11 Q Her name is Christy?

12 A Yes.

13 Q Now, you've met with Christy a number of times
14 to talk to her about this case, haven't you?

15 A I have.

16 Q Y'all have gone over your testimony that would
17 be presented in court?

18 A She asked me questions as far as what happened.
19 Just as I stated today is the same thing I stated to her
20 before.

21 Q Did you talk about testifying in court?

22 A Yes.

23 Q All right. All right. So once you take a
24 shower and get in the bed, Daron is already in the bed.

25 A Correct.

1 Q And then you go to sleep?

2 A I was on my phone. I watched a little bit of
3 TV. I was talking to him because he was talking about
4 our relationship or whatever that he felt like it was
5 ending. I told him I wasn't worried about that, go to
6 bed, there was nothing wrong.

7 Q Okay. And so you played Angry Bird?

8 A Uh-huh.

9 Q And then you went to sleep?

10 A Correct.

11 Q Can you tell the jury about what time you think
12 you went to sleep?

13 A I think I went to sleep maybe in between -- in
14 between 1:30 and 2:00.

15 Q All right. And so home at 12:40, asleep by
16 2:00?

17 A Correct.

18 Q During that hour and twenty minutes, you have
19 told the jury about the contacts you were having
20 regarding the children and also Daron?

21 A Correct.

22 Q An hour and twenty minutes. Then you go to
23 sleep?

24 A Yes.

25 Q All right. Now, you testified that the next

1 morning, you understood Daron to say that he was taking
2 P.A. to the bus stop?

3 A Yes.

4 Q Is that the first thing you remember?

5 A That's the first thing I remember. He said it
6 was foggy outside.

7 Q All right. It was foggy outside and, you know,
8 -- let me make sure the jury has got the picture here.
9 Now, that pole right there is at the corner where the bus
10 stops and picks up P.A. ?

11 A Correct.

12 Q That little SUV right there is in your
13 driveway?

14 A Correct.

15 Q So we're talking about one, maybe two houses
16 max, from your house down to the bus stop?

17 A One house.

18 Q One house that's inside that chainlink fence?

19 A Correct.

20 Q So that chainlink fence is a lot on the corner.
21 Your house is just on the other side of the chainlink
22 fence?

23 A Correct.

24 Q So it's a relatively short distance?

25 A It is.

1 Q And Daron got out of bed, got in the car with
2 P.A. and drove down to that corner and sat there until
3 the bus came that morning because of weather, right?

4 A Yes.

5 Q He told you he was going to go to the store.
6 There was an exchange between you about where your
7 pocketbook was and that would have related to the store.
8 There was a conversation about the pocketbook because of
9 the car keys.

10 A And the money.

11 Q That's right.

12 A Yes.

13 Q So there was a conversation and you knew that
14 he would be at the bus stop until the bus got there,
15 which could be anywhere from about 7:05 to about 7:15,
16 right?

17 A Correct.

18 Q And then he was going to go to that Kwik Shop.
19 He told you that.

20 A Which the Kwik Store is maybe two minutes away.
21 It's not far at all.

22 Q About a half a mile I think the officer said.
23 That would be fair, wouldn't it?

24 A That would be fair.

25 Q And the next thing you say you remember is

1 Daron coming in and making noises, turning on the light,
2 making a statement about going in to take a shower and
3 you basically fussed at him for making noises.

4 A Correct.

5 Q Now, well, you got home at 12:30 or 12:40, I'm
6 sorry, until -- from 12:40 until the child was taken and
7 put into the EMS unit at the Pediatric Associates office,
8 until then, you were in that baby's presence 100 percent
9 of the time?

10 A Yes.

11 Q All right. And when the doctor or doctors were
12 describing and described to the jury the CAT scan, y'all
13 were looking at the CAT scan together and you were
14 holding hands, I think. You said I was in shock?

15 A Yes.

16 Q And the prosecutor -- that would be Christy --
17 said or asked you about Daron. You said he was in shock
18 like me.

19 A He seemed to be.

20 Q He seemed to be. He seemed to be in shock.

21 Daron very soon, very soon thereafter after that meeting
22 regarding the medical situation, Daron very soon
23 thereafter was asked to leave the hospital.

24 A Daron started to yell. That's when security
25 escorted him out because of his behavior at the hospital.

1 Q All right. And he was required to stay out of
2 the hospital at that point. He didn't come back to the
3 hospital?

4 A I don't know the specifics of all of that. But
5 he wasn't back at the hospital. I do know that there was
6 one night, I think, when his brother showed up that Daron
7 was actually in the car downstairs.

8 Q But he never came into the hospital building
9 that you are aware of?

10 A Not to my knowledge.

11 Q All right. And your -- and between the time of
12 11:48 a.m. the morning of the 19th, this is when you were
13 in the hospital and Daron had left the hospital, all
14 right?

15 A Okay.

16 Q You got that? 11:40, a little before lunch
17 time. Between 11:48 and 5:53 p.m. that afternoon ---

18 A Uh-huh.

19 Q --- during that approximately six hours, Daron
20 called eight times to check on Child and you did not take
21 those calls, is that right?

22 A That is correct. I'll tell you why I didn't
23 take the calls.

24 Q Well, what I asked you was was he attempting to
25 contact you about the condition of Child ?

1 A He was.

2 Q Eight times he attempted to call you and you
3 did not accept those calls?

4 A He was, but my daughter is laying there hurt
5 and if you're lying to me about what's happened because I
6 know that I didn't cause it and there's nothing magical
7 in the night that's come in and caused it, then I'm not
8 going to talk to you. If you can't give me the truth
9 about what's happened, anything, then I'm not going to
10 talk to you.

11 Q So that's why you didn't take the calls?

12 A That's correct.

13 Q But there were eight calls that were attempted?

14 A There may have been eight. I hadn't looked at
15 how many but he did call.

16 Q One moment please. (Pause.)

17 All right. Just a couple of other things. I
18 knew I'd forget stuff. I have to talk to my manager. We
19 could confirm what you said. You testified, I believe
20 you testified that your mother retired last month?

21 A Correct.

22 Q About a month ago. And she retired from the
23 Greer City Police Department?

24 A Correct.

25 Q And for the 10 years prior to that, she was an

1 employee of the Greer City Police Department?

2 A That is correct.

3 Q All right. Now, finish up, Shalita. You came
4 in your house at 12:40. Eventually ended up in the bed a
5 foot and a half from that bassinet. You were awakened
6 the next morning about the bus stop. Then you say you
7 went back to sleep. You then were awakened again when
8 Daron told you there was something wrong with Child,
9 right?

10 A It was the bus stop. Then he turned the light
11 on.

12 Q Right. He woke you up again. He woke you up
13 again. You fussing at him for waking you up again.

14 A Cause he was turning the light on.

15 Q Making noises in the shower. You're a working
16 woman. You trying to get some sleep. You're trying to
17 get some rest, weren't you?

18 A And he was an adult that knew better, not to
19 turn the light on.

20 Q He knew better than to make noise like that
21 when you were trying to get some sleep, didn't he? And
22 you never one time from 12:40 that morning until that
23 baby was taken out of the bassinet because -- or off that
24 bed because she wasn't breathing right --

25 A Not that baby.

1 Q You never so much as checked on her. You never
2 touched her. You never looked at her. You never went
3 over to that bassinet just to look to see if she was
4 asleep, did you?

5 A I didn't have a reason to worry about Child .

6 Q You had no reason. You had no reason to check
7 on that baby, not one single reason.

8 THE COURT: You finished?

9 MR. MAULDIN: Yes, sir. No further
10 questions.

11 THE COURT: All right. Any redirect?

12 MS. SUSTAKOVITCH: Your Honor, we need to
13 take up a legal matter before this witness is
14 excused.

15 THE COURT: All right. Ladies and Gentlemen,
16 we'll get right back with you but I'll excuse you to
17 your jury room at this time.

18 (WHEREUPON, the jury exits at approximately
19 12:32 p.m.)

20 THE COURT: Okay. What's the problem?

21 MS. SUSTAKOVITCH: Your Honor, during cross-
22 examination of this witness, defense counsel, when
23 Ms. Dawkins referred to me as Christy, he
24 specifically said you met with the prosecutor,
25 you've met with her multiple times, you went over

1 12:58 p.m.)

2 THE COURT: Okay. Anything before we...

3 MS. SUSTAKOVITCH: Nothing from the State.

4 THE COURT: All right. See y'all at 2:30.

5 (WHEREUPON, a lunch recess is taken.)

6 (WHEREUPON, State's Exhibits 33 and 34 are marked
7 for identification purposes.)

8 THE COURT: Okay. Let me see the lawyers up
9 here for a second real quick.

10 (WHEREUPON, a bench conference is held off the
11 record.)

12 (WHEREUPON, the jury enters at approximately
13 2:42 p.m.)

14 THE COURT: All right. Ladies and Gentlemen,
15 welcome back. Call your next witness.

16 MS. SUSTAKOVITCH: Thank you, Your Honor.
17 May it please the Court. The State calls Sergeant
18 Patrick Fortenberry.

19 THE COURT: All right.

20 THE CLERK: Sir, if you would, please place
21 your left hand on the Bible and raise your right
22 hand.

23 PATRICK FORTENBERRY
24 having first been sworn, testifies as follows:

25 THE CLERK: Thank you. Please be seated.

1 Please state your name for the record.

2 THE WITNESS: Patrick Fortenberry.

3 DIRECT EXAMINATION

4 BY MS. SUSTAKOVITCH:

5 Q Good afternoon.

6 A Good afternoon.

7 Q Sergeant Fortenberry, where are you employed?

8 A The Greer City Police Department.

9 Q And what is your position there?

10 A I'm a Sergeant in our Patrol Division
11 currently.

12 Q How long have you been with the Greer Police
13 Department?

14 A 17 years since November.

15 Q And in your 17 years of experience, what
16 different job capacities have you served in?

17 A Worked in various. I worked in the Patrol
18 Division, our community policing section, K-9 unit and
19 Criminal Investigations.

20 Q I want to take you back. Uh, were you working
21 in your capacity as a sergeant with the Greer Police
22 Department on January the 19th, 2011?

23 A I was.

24 Q And did you become involved into the
25 investigation into Child ?

1 A Yes, ma'am. I did.

2 Q How and when did you become involved?

3 A On January 19th, approximately 10:45 a.m. in
4 the morning, Lieutenant Eric Pressley, who was my
5 lieutenant in Criminal Investigations contacted me over
6 the telephone about a possible child abuse case that he
7 just now gone out on.

8 Q And when you received that phone call, what, if
9 anything, did you do then?

10 A He asked me to meet him at Greenville Memorial
11 Hospital. So I gathered up some items and met him at
12 Greenville Memorial Hospital.

13 Q When you arrived on the scene, what did you
14 observe?

15 A When I arrived on scene, I went up to the fifth
16 floor, the pediatric ICU unit, saw Lieutenant Pressley
17 talking with several doctors at the nurses' station
18 there.

19 Q Uh, that morning, did you come in contact with
20 this defendant, Daron Davis?

21 A I did.

22 Q How and when did you come in contact with Daron
23 Davis?

24 A The defendant was in the parking lot. After
25 myself and Lieutenant Pressley left the Pediatric ICU

1 unit, we went down to the parking lot there at the
2 hospital. That's where I observed the defendant talking
3 on the cell phone.

4 Q What was your interaction with this defendant
5 at that time?

6 A At that time, we asked him if he would
7 accompany us where we could talk with him.

8 Q And when you say accompany you, where were you
9 trying to go with him?

10 A We, uh, were going to the Greenville County Law
11 Enforcement Center to interview him.

12 Q Was he in custody at this time?

13 A No, ma'am. He wasn't.

14 Q Did he come voluntarily with you?

15 A Yes, ma'am. He did.

16 Q How did he actually get to the Law Enforcement
17 Center?

18 A He rode in my unmarked police vehicle on the
19 front seat.

20 Q Was he in custody at this time?

21 A No, ma'am. He was not.

22 Q I'm showing you what's marked as State's
23 Exhibit 16. Do you recognize this document?

24 A Yes, ma'am. I do.

25 Q And what is that?

1 **A** This is the Advisement of Rights form that the
2 Greer Police Department uses when we interview people in
3 Criminal Investigations.

4 **Q** And what's the purpose of an Advisement of
5 Rights form?

6 **A** The Advisement of Rights form is so that the
7 people that we talk with understand what their rights are
8 that the constitution gives them.

9 **Q** And where did this --

10 **MR. MAULDIN:** Your voice is trailing off as
11 you finish your sentences. So if you could just
12 speak directly into that mic.

13 **THE WITNESS:** Sure.

14 **THE COURT:** Mr. Mauldin, please address the
15 Court if you want to ask something of the witness.

16 **MR. MAULDIN:** I apologize.

17 **THE COURT:** Okay.

18 **BY MS. SUSTAKOVITCH:**

19 **Q** I'm sorry. Where did you speak with Mr. Davis?

20 **A** We spoke with him in an office inside the
21 Greenville County Law Enforcement Center.

22 **Q** And at this point, uh, did you, looking at that
23 Advisement of Rights, did you advise him of the rights
24 that are on that form?

25 **A** Yes, ma'am. I did.

1 **MS. SUSTAKOVITCH:** All right. Your Honor, at
2 this time, the State moves to admit the waiver of
3 rights, State's Exhibit 16 into evidence.

4 **MR. MAULDIN:** No objection.

5 **THE COURT:** Okay.

6 (WHEREUPON, State's Exhibit 16 is admitted into the
7 record.)

8 **BY MS. SUSTAKOVITCH:**

9 **Q** Sergeant Fortenberry, were you present for the
10 interview with this defendant?

11 **A** Yes, ma'am. I was.

12 **Q** And who also -- who else, if anyone, was
13 present for that interview?

14 **A** Lieutenant Eric Pressley was.

15 **Q** And what was the purpose of your interview with
16 the defendant that morning?

17 **A** Was to determine what had transpired with the
18 victim in the case, Child , and how she had become sick
19 and injured.

20 **Q** With the interview with this defendant, was it
21 recorded in any fashion?

22 **A** Yes, ma'am. Recorded on a digital recorder.

23 **Q** All right. I'm showing you what's marked as
24 State's Exhibit 33. Do you recognize this item?

25 **A** Yes, ma'am. I do.

1 Q What would that be?

2 A This is the recorded interview of Mr. Davis
3 with myself and Lieutenant Pressley.

4 MS. SUSTAKOVITCH: Beg the Court's indulgence
5 one moment.

6 THE COURT: Okay.

7 BY MS. SUSTAKOVITCH:

8 Q Uh, the interview with this defendant you just
9 stated is recorded, correct?

10 A Yes, ma'am. That's correct.

11 Q Is there any requirement that interviews be
12 recorded by law enforcement when they interview someone?

13 A No, ma'am. There's not.

14 Q And is it the -- why did this interview get
15 recorded?

16 A It's a standard practice by me when I'm in an
17 interview that I just audio record my interviews just so
18 we know what was said.

19 Q Are you aware of whether there's any standard
20 policy in other departments, other sheriff's offices to
21 always record interviews?

22 A No, ma'am. I'm not aware of any.

23 Q Okay. After you finished interviewing this
24 defendant, did you have any further contact with this
25 defendant?

1 A I did not.

2 Q And did you have any further involvement in the
3 case?

4 A No, ma'am. I did not.

5 Q Please answer any questions defense counsel
6 has.

7 **CROSS-EXAMINATION**

8 **BY MR. MAULDIN:**

9 Q I've only got a couple, Officer Fortenberry.
10 You are with the Greer Police Department?

11 A That's correct.

12 Q And your initial communication or contact
13 regarding this matter at all was at 10:45?

14 A Around 10:45, yes, sir.

15 Q And as a result of that contact, you then went
16 to the hospital?

17 A That's correct.

18 Q You went -- when you got there, you then went
19 to the pediatric unit?

20 A Yes, sir. That's correct.

21 Q Can you give the jury an estimation of about
22 what time of the morning you would think -- and I know --
23 if you don't know, you don't know. But do you know about
24 when it was when you actually got to the hospital and
25 went to the unit?

1 A It would be approximately 11:15 to 11:30.

2 Q All right. Then after communicating there, you
3 went back outside the hospital to the parking lot?

4 A That's correct.

5 Q And that's where Daron was?

6 A That's correct.

7 Q Now, that -- about -- can you give us an
8 estimate of when you think that was?

9 A Probably between 11:45 and 12:00.

10 Q Okay. Because the Exhibit 16 actually has a
11 time on it. If you'll look down on the lower lefthand
12 corner ---

13 A Yes, sir.

14 Q --- of Exhibit 16, it says time of interview
15 and that the first numbers are 12:15?

16 A That's correct.

17 Q Is that -- is that -- is that what you mean by
18 12:15 in the day time?

19 A That is correct. Yes, sir.

20 Q So prior to 12:15 then is when you met Daron in
21 the parking lot?

22 A Correct.

23 Q But after 11:15?

24 A Correct.

25 Q Okay. Okay. That's good. Thank you.

1 **MS. SUSTAKOVITCH:** Nothing further, Your
2 Honor. May this witness be excused?

3 **THE COURT:** Yes. All right.

4 **MS. SUSTAKOVITCH:** Your Honor, the State
5 calls Lieutenant Eric Pressley.

6 **THE COURT:** All right.

7 **THE CLERK:** Sir, please place your left hand
8 on the Bible and raise your right hand.

9 **ERIC PRESSLEY**
10 having first been sworn, testifies as follows:

11 **THE CLERK:** Thank you. Please be seated.
12 Please state your name for the record.

13 **THE WITNESS:** Eric Pressley.

14 **DIRECT EXAMINATION**

15 **BY MS. SUSTAKOVITCH:**

16 **Q** Good afternoon.

17 **A** Good afternoon.

18 **Q** Lieutenant Pressley, where are you employed?

19 **A** I'm employed with the Greer Police Department.

20 **Q** And what is your position?

21 **A** Currently, I'm a Lieutenant and I'm assigned to
22 Criminal Investigations.

23 **Q** How long have you been with the Greer Police
24 Department?

25 **A** Uh, it was 18 years in August of this year. So

1 just over 18 years now.

2 Q Can you tell the jury in your 18 years of
3 service what are the different capacities you served in?

4 A Certainly. I been a patrol officer. I been a
5 patrol supervisor. I served in community policing. I
6 also served in our Traffic Division. I went back to the
7 Patrol Division and now currently in Criminal
8 Investigations.

9 Q How long have you been in Criminal
10 Investigations?

11 A I believe it was since the summer, June or July
12 of 2008.

13 Q Lieutenant Pressley, were you working in your
14 capacity as a lieutenant with the Greer Police on January
15 19th, Wednesday, January 19th, 2011?

16 A I was.

17 Q And did you become involved in the death
18 investigation of Child ?

19 A Yes, ma'am.

20 Q How did you become involved?

21 A Uh, I was in my office. I was approached by my
22 supervisor, Captain Vancil who advised me that there was
23 an emergency with Tonya Anderson and that one of her
24 grandchildren was on the way to the hospital and asked
25 for me to check with Tonya or check on Tonya about that.

1 Q And Tonya Anderson, who is that?

2 A Tonya Anderson, at the time, was the Victim
3 Advocate for our police department.

4 Q How long was Tonya a victim advocate for the
5 Greer Police Department?

6 A Uh, I don't know the exact time. She was
7 employed with us for several years. Five to six years, I
8 would imagine at that point.

9 Q You're not certain the number of years but she
10 had been with you for a while?

11 A Yes, ma'am.

12 Q So you get this word of this emergency.

13 A Uh-huh.

14 Q Tonya Anderson, do you have any idea of her
15 connection Child would have been?

16 A It was her grandmother. She was her
17 grandmother.

18 Q Tonya was the grandmother?

19 A Yes, ma'am.

20 Q All right. Did you come in contact with Tonya
21 Anderson on the morning of January 19th?

22 A I did.

23 Q And how did you come in contact with Tonya
24 Anderson?

25 A She was outside in the parking lot on the

1 property there at the police department.

2 Q What was her demeanor when you came in contact
3 with her?

4 A She was standing in the parking lot.

5 MR. MAULDIN: Your Honor, excuse me. Your
6 Honor, I don't know whether there's going to be
7 hearsay references, but I do object to any
8 statements, any statements made.

9 THE COURT: Well, nothing's come up that's
10 objectionable. So when it comes up, make your
11 contemporaneous objection.

12 BY MS. SUSTAKOVITCH:

13 Q Lieutenant Pressley, when you observed Tonya
14 Anderson, would you please state her demeanor when you
15 saw her in the parking lot?

16 A She was, uh, obviously upset. She was crying,
17 visibly upset.

18 Q What, if anything, did she say to you at that
19 point?

20 MR. MAULDIN: Objection.

21 MS. SUSTAKOVITCH: Your Honor, it's an
22 excited utterance. He said she was crying, visibly
23 upset. That's not hearsay.

24 THE COURT: All right. Y'all come up here.

25 (WHEREUPON, a bench conference is held off the

1 record.)

2 BY MS. SUSTAKOVITCH:

3 Q Lieutenant Pressley, uh, when you came across
4 Tonya Anderson, you said she was crying, visibly upset?

5 A Yes.

6 Q What, if anything, did she say to you at that
7 point?

8 MR. MAULDIN: Objection, Your Honor.

9 THE COURT: Okay. Overruled. Go ahead.

10 THE WITNESS: She told me that she had gotten
11 a call from her daughter Shalita.

12 BY MS. SUSTAKOVITCH:

13 Q All right. Without going into the substance of
14 that phone call, what did she -- what happened at that
15 point?

16 A I offered, uh, to take her to Greenville
17 Memorial Hospital to offer her a ride. I didn't think
18 that she was able to drive herself.

19 Q Uh, because -- you didn't believe she could
20 drive because of what?

21 A She was crying. She was so upset that I didn't
22 -- she was certainly in no condition to drive a vehicle.

23 Q All right. So at this point, you are driving
24 Tonya?

25 A Yes.

1 Q As you are driving to the hospital, what, if
2 anything, do you observe in the car?

3 A She's still crying, visibly upset, can't seem
4 to get herself together at all.

5 Q At this point, when you driving as coworkers to
6 the hospital ---

7 A Yes, ma'am.

8 Q --- did you have any idea that this would end
9 up being a criminal matter?

10 A I did not.

11 Q At this point, what is your role in this whole
12 situation?

13 A I'm simply giving a coworker a ride to the
14 hospital to deal with an emergency.

15 Q Uh, what time did you arrive at the hospital?

16 A Uh, it was about 9:30.

17 Q On arrival, what did you observe at the
18 hospital?

19 A We went back to the -- I believe it was the
20 pediatric area of the Emergency Room. I believe it was
21 Emergency Room 1 we were shown. And I saw Child on a
22 gurney in that Emergency Room. She was wearing only her
23 diaper. Doctors were obviously working with her. There
24 were medical personnel in and out. I also saw Shalita
25 and the defendant in that room.

1 Q When you saw Child on that table, were you able
2 to observe to your eyes any visible injuries to her?

3 A I could not.

4 Q When you say you saw this defendant in that
5 room, what, if anything, did you notice about his
6 demeanor?

7 A He was simply staring straight ahead in the
8 direction of Child but just staring. There were no
9 outward signs of emotion that I could see.

10 Q What, if anything, did you notice about
11 Shalita, the mother?

12 A She was very -- she was very upset. She was
13 crying.

14 Q What happened at this point? How long were you
15 in that room observing the doctors working on Child and
16 the defendant and Shalita Dawkins?

17 A I don't recall an exact time. Perhaps 15, 20
18 minutes to a half an hour, I would say, tops we were down
19 there.

20 Q All right. Did you end up leaving that room at
21 some point?

22 A We did.

23 Q When you say "we", who?

24 A I accompanied Tonya upstairs.

25 Q All right. When you say upstairs, where is

1 that?

2 **A** We went to the fifth floor at that time. We
3 were taken to a waiting room that was on the fifth floor.
4 I believe they were going to do a CT scan at that time.

5 **Q** A CT scan on Child ?

6 **A** Yes.

7 **Q** Are you aware of what the fifth floor of the
8 hospital is?

9 **A** Uh, eventually, yes. It's the Pediatric
10 Intensive Care Unit. There is where we -- that's where
11 we ultimately wound up. We were in one waiting room and
12 then moved to another there directly at the Pediatric
13 Intensive Care Unit.

14 **Q** On the fifth floor of the Pediatric ICU, did
15 you come in contact with this defendant again?

16 **A** I did.

17 **Q** Did you hear the statements this defendant made
18 to medical personnel related to what had happened with
19 this child?

20 **A** I did.

21 **Q** What, if anything, did he say?

22 **A** I heard him saying that, uh, he had taken the
23 six-year old P.A. to the bus stop that morning and
24 that when he came back, he picked Child up and laid her
25 on his chest as he laid back down in the bed. I heard

1 him say then that he moved Child to the bed in between he
2 and Shalita. He said that he then noticed that the
3 breathing didn't appear normal to him and that he woke
4 Shalita up and asked her what she thought of the
5 breathing.

6 Q All right. Do you recall who he was making
7 these statements to?

8 A It was medical personnel associated with the
9 hospital. Someone that was in there asking those
10 questions about how they came to be at the hospital that
11 morning.

12 Q All right. After you observed this, did you
13 ever come in contact with a doctor by the name of Dr.
14 Eric Berning?

15 A I did.

16 Q And how did you come in contact with Dr.
17 Berning?

18 A I went outside. He was at the nurses' station.
19 I went outside and I did identify myself. I asked if
20 there were any issues with the CT scan.

21 Q What, if anything, did Dr. Berning tell you
22 related to the CT scan?

23 MR. MAULDIN: Objection, Your Honor.
24 Hearsay.

25 MS. SUSTAKOVITCH: Your Honor, it is not

1 hearsay under State versus Thompson what this
2 doctor --

3 **THE COURT:** Okay. I don't do speaking
4 objections. Come up here.

5 **(WHEREUPON, a bench conference is taken off the**
6 **record.)**

7 **THE COURT:** Uh, Madam Forelady, Ladies and
8 Gentlemen of the jury, I'm going to ask y'all to
9 step to the jury room for just a few minutes. We'll
10 get right back with you.

11 **(WHEREUPON, the jury exits at approximately**
12 **3:01 p.m.)**

13 **THE COURT:** All right.

14 **MS. SUSTAKOVITCH:** Your Honor, the next, uh,
15 testimony that we anticipate this witness to testify
16 to is he inquired into Child's medical condition and
17 if there was anything concerning on the CT. Dr.
18 Berning told him, one, that there was bleeding on
19 the brain and a skull fracture and it that was
20 inflicted trauma to him. And his quote was somebody
21 beat the shit out of that baby. What we're offering
22 that for is to explain why law enforcement -- this
23 was not a criminal matter. Then at that moment, it
24 became a criminal investigation. So under State
25 versus Thompson, we're going to offer those

1 with someone else. But to allow him to say what
2 another witness said which is inflammatory, if you
3 bring the guy in, if you want to bring the doctor in
4 and let him testify to it, that's a whole 'nother
5 matter. But, uh, --

6 MS. SUSTAKOVITCH: Thank you, Your Honor.

7 THE COURT: Okay. All right. What?

8 MR. MAULDIN: Well, I'm just wondering what
9 the witness now is going to say.

10 MS. SUSTAKOVITCH: I'm going to ask him did
11 he speak with Dr. Berning, did Dr. Berning discuss
12 with you Child's CT scan. Based on your conversation
13 with Dr. Berning, what, if anything, did you do at
14 that point?

15 THE COURT: Nothing wrong with that.

16 MR. MAULDIN: Yeah.

17 THE COURT: Okay.

18 (WHEREUPON, the jury enters at approximately
19 3:08 p.m.)

20 THE COURT: Okay.

21 MS. SUSTAKOVITCH: Thank you, Your Honor.

22 BY MS. SUSTAKOVITCH:

23 Q Lieutenant Pressley, did you come into contact
24 with a doctor by the name of Eric Berning?

25 A I did.

1 Q Where did you come into contact with Dr.
2 Berning?

3 A He was at the nurses' station right outside
4 from waiting room where I had been.

5 Q And what was -- did you have a conversation
6 with Dr. Berning?

7 A I did.

8 Q What was the purpose of your conversation with
9 Dr. Berning?

10 A To determine if there were any issues with the
11 CT scan.

12 Q Based on your conversation with Dr. Berning,
13 uh, was an initiation -- excuse me -- an investigation
14 initiated at that point?

15 A Yes, ma'am.

16 Q And did you come in contact with this defendant
17 on that day apart from what you've already testified to
18 when they were working on Child . Did you come in contact
19 with him again after the CT scan?

20 A Yes, ma'am.

21 Q Tell the jury how you came into contact with
22 him.

23 A Uh, it was in the parking lot, the hospital
24 parking lot at that time along with Sergeant Fortenberry.

25 Q And what did you observe about this defendant?

1 What, if anything, was he doing?

2 A I believe he was outside talking on the
3 telephone.

4 Q What was the exchange between you and this
5 defendant?

6 A Uh, we asked him if he would come with us to
7 the Law Enforcement Center, the Greenville County Law
8 Enforcement Center to talk to us.

9 Q All right, Did you tell this defendant that he
10 had to come to the Law Enforcement Center?

11 A No, ma'am.

12 Q Did he come voluntarily with you?

13 A Yes, ma'am.

14 Q Showing you what's marked as State's Exhibit
15 16. Actually, it's been entered into evidence as State's
16 Exhibit 16. First, when you got to the Law Enforcement
17 Center, where did you take this defendant?

18 A I'm sorry?

19 Q Where did you take this defendant when you got
20 to the Law Enforcement Center?

21 A Uh, we were shown to an office-type room.

22 Q And point of clarification, the Greenville
23 County Law Enforcement Center is not the Greer Police,
24 correct?

25 A No, ma'am.

1 Q Why did you go to the Greenville Law
2 Enforcement Center?

3 A It was closer as opposed to riding all the way
4 back to Greer.

5 Q Is there anything unusual about being able to
6 use their interview rooms?

7 A No, ma'am.

8 Q Have you done that in the past?

9 A Personally, I have not. We have, as a
10 detective division. I have knowledge of that.

11 Q Greer Police have?

12 A Yes, ma'am.

13 Q All right. Uh, when you got into the interview
14 room, let me show you what's marked as State's Exhibit 33
15 and 34. What's State's Exhibit 33?

16 A That's State v. Daron Davis interview.

17 Q And were you present for the interview with
18 Daron Davis?

19 A Yes, ma'am.

20 Q Was it recorded on electronic form?

21 A Yes, ma'am.

22 Q Is this a copy of the interview with Daron
23 Davis?

24 A Yes, ma'am.

25 **MS. SUSTAKOVITCH:** Your Honor, at this time,

1 the State moves to admit State's 33 into evidence.

2 MR. MAULDIN: No objection.

3 (WHEREUPON, State's Exhibit 33 is admitted into the
4 record.)

5 BY MS. SUSTAKOVITCH:

6 Q Lieutenant Pressley, I'm showing you what's
7 marked as State's Exhibit 34.

8 A Uh-huh.

9 Q What do you recognize that to be?

10 A This would be a transcription of the interview
11 that Sergeant Fortenberry and I did with the defendant.

12 Q Did you do that transcription?

13 A No, ma'am.

14 Q All right. Have you read through it? Have you
15 compared it to see if it's a fair representation of
16 what's in the interview?

17 A Yes, ma'am.

18 MS. SUSTAKOVITCH: Your Honor, at this time,
19 the State moves State's Exhibit 34 into evidence.

20 MR. MAULDIN: No objection.

21 THE COURT: All right.

22 (WHEREUPON, State's Exhibit 34 is admitted into the
23 record.)

24 BY MS. SUSTAKOVITCH:

25 Q Very quickly, uh, Lieutenant Pressley, did this

1 defendant appear willing to talk to you when you talked
2 to him?

3 A He did.

4 MS. SUSTAKOVITCH: And, Your Honor, at this
5 time, the State would move to publish State's
6 Exhibit 33.

7 THE COURT: Okay. Is everybody all right? I
8 understand that this is sort of a lengthy, uh, tape.
9 Is everybody okay? If y'all need to take a break
10 during this, please let us know. All right.

11 MR. MAULDIN: May we approach, Your Honor,
12 one quick second?

13 (WHEREUPON, a bench conference is held off the
14 record.)

15 MS. SUSTAKOVITCH: Your Honor, do we have
16 permission to pass out copies of State's Exhibit 34?

17 THE COURT: I don't think there's any
18 objection to that.

19 MR. MAULDIN: No, sir.

20 THE COURT: Okay.

21 (WHEREUPON, copies of State's Exhibit 34 are passed
22 out to the jury.)

23 BY MS. SUSTAKOVITCH:

24 Q Briefly while we are getting this set up,
25 Lieutenant Pressley, what's the interview room like that

1 you're seated in with Sergeant Fortenberry and the
2 defendant?

3 A It was a office-type room. There was a desk in
4 there. We each had a chair.

5 Q Looking at State's Exhibit 16, can you note
6 what time this interview began?

7 A Uh, 12:15.

8 Q 12:15 p.m.?

9 A Yes, ma'am.

10 Q On which date?

11 A On January 19th, 2011.

12 Q So this was the date that Child was brought to
13 the hospital, correct?

14 A Yes, ma'am.

15 Q When did this conclude? This interview?

16 A At 14:53, which is 2:53 in the afternoon.

17 Q 2:53?

18 A Yes, ma'am.

19 Q All right.

20 (WHEREUPON, State's Exhibit 33 is played for the
21 jury.)

22 THE COURT: Turn the sound off.

23 All right. How is everybody doing? All right.

24 You have any other examination of this witness?

25 MS. SUSTAKOVITCH: Very briefly, Your Honor.

1 BY MS. SUSTAKOVITCH:

2 Q Uh, Lieutenant Pressley, was it your intention
3 after this interview to conduct an interview with Shalita
4 Dawkins back at Greer Police Department?

5 A Yes.

6 Q After you completed this interview, I believe
7 it was stated 2:53 p.m. ---

8 A Yes.

9 Q --- what, if anything, did you do at that
10 point?

11 A We went back to the hospital.

12 Q When you got back to the hospital, who was
13 present?

14 A Detective Bash was present.

15 Q What was Detective Bash there to do?

16 A To interview Shalita.

17 Q Did Greer Police end up interviewing the mother
18 in this case?

19 A No.

20 Q Okay. Did Greer Police end up keeping this
21 investigation, uh, for conclusion ---

22 A No.

23 Q --- when you got back to the hospital?

24 A No.

25 Q Why not?

1 A Uh, in order to try to avoid any conflict, we
2 moved the case to Greenville County.

3 Q When you say you moved it to Greenville County,
4 ---

5 A Yes.

6 Q --- do you mean transferred it for them to
7 further investigate?

8 A Yes, ma'am.

9 Q Is there anything unusual about an agency
10 transferring a case to another agency when there may be
11 an issue in a case where you've called it a conflict?

12 A No.

13 Q And specifically, the -- the -- is Tonya
14 Anderson the grandmother that worked with you, correct?

15 A Yes.

16 Q Was that the issue that she was Shalita's
17 mother?

18 A Yes.

19 Q And you did not want to interview Shalita; is
20 that correct?

21 A Correct.

22 Q Did the fact that Tonya Anderson worked in your
23 department in any way impact the way that you approached
24 this interview and this investigation?

25 A No.

1 Q Thank you. Please answer any questions that
2 defense counsel has.

3 A Yes, ma'am.

4 THE COURT: Cross?

5 MR. MAULDIN: One moment, Your Honor, please.

6 (Pause.)

7 CROSS-EXAMINATION

8 BY MR. MAULDIN:

9 Q All right. I just got a couple. This, uh,
10 Exhibit 16, Mr., uh, Pressley, is the Advisement of
11 Rights form that was filled out and signed, uh, by you
12 and Mr. Fortenberry witnessing my client, Daron's
13 signature.

14 A Yes, sir.

15 Q And that form is what y'all are describing on
16 the actual interview when one or the other of you is
17 talking about the right to remain silent, the right to
18 have a lawyer, right to not talk if you don't want to and
19 all that.

20 A Yes, sir.

21 Q This paper then ended up being signed as a
22 result of that conversation?

23 A Yes.

24 Q All right. And during the, uh, -- when you got
25 with Daron over at the parking lot of the hospital ---

1 A Uh-huh.

2 Q --- and approached him about going to a
3 location to be interviewed --

4 A Yes, sir.

5 Q You and Mr. Fortenberry were doing this?

6 A Yes.

7 Q And he was cooperative with you?

8 A Yes.

9 Q Never attempted to call a lawyer or avoid being
10 interviewed by you or anything like that?

11 A No, sir.

12 Q And he -- you have testified that he understood
13 what y'all were talking about?

14 A Yes, sir.

15 Q And he could have stopped that interview that
16 we've sat and listened to. He could have stopped it from
17 the very first word, couldn't he?

18 A Yes, sir.

19 Q By just saying I don't want to talk, right?

20 A Yes, sir.

21 Q Or I'll talk but I want to talk to a lawyer
22 first. He could have done any of that.

23 A Yes, sir.

24 Q But he said no. In fact, did he ride down to
25 the Law Enforcement Center in your car or in Mr.

1 Fortenberry's car?

2 A It was Sergeant Fortenberry's car.

3 Q All right. So he gets in Officer Fortenberry's
4 car and goes down to the Law Enforcement Center down the
5 hill here.

6 A Uh-huh.

7 Q Y'all had a room set up. Let me say, Officer
8 Pressley, having listened to the tape, there were some
9 exciting moments, I guess, in terms of the language that
10 was going back and forth. Did you or Officer Fortenberry
11 attempt to force him or attempt to require him at any
12 time to cooperate with you or anything like that?

13 A No, sir.

14 Q In other words, it might have been a little bit
15 vocal but he was cooperating with you the whole time?

16 A Yes, sir.

17 Q And the time listed on the advisement, it says
18 12:15, which would be the beginning time and 14:53, which
19 is 2:53. So from 12:15 at lunch time, 12:15 to 2:53 was
20 when that was occurring.

21 A Yes, sir.

22 Q There was never any break. You weren't taking
23 any breaks or anything. It was just straight through.

24 A I believe so. Yes, sir.

25 Q All right. Thank you.

1 BY MS. POALETTI:

2 Q Dr. Berning, would you tell the jury what kind
3 of doctor you are please.

4 A Pediatric intensive care.

5 Q What's your educational background?

6 A After high school, I did four years of
7 undergraduate in Chicago and four years of medical school
8 at the University of Illinois followed by three years of
9 pediatric residency at Keesler Air Force Base in
10 Mississippi and three years of pediatric critical care
11 fellowship at Greenville Babies and Children's Hospital
12 in Cleveland.

13 Q Are you board certified?

14 A I am.

15 Q What specifically are your board
16 certifications?

17 A In pediatric critical care medicine.

18 Q How long have you been practicing?

19 A Since fellowship, 11 and a half years.

20 Q That entire time as a pediatric critical care
21 physician?

22 A Yes.

23 Q Where do you practice now?

24 A At Greenville Memorial Hospital.

25 Q Have you testified in court before?

1 **A** Yes.

2 **Q** Where have you testified?

3 **A** At Laurens county.

4 **Q** And was that in Family Court?

5 **A** Criminal court.

6 **Q** Criminal. Okay.

7 **MS. POALETTI:** Your Honor, at this time, the
8 State moves to qualify Dr. Berning as an expert in
9 pediatric criminal intensive care.

10 **MR. MAULDIN:** No objection.

11 **THE COURT:** No objection. Okay.

12 **BY MS. POALETTI:**

13 **Q** I want to talk to you about Child . Was
14 she a patient of yours?

15 **A** She was.

16 **Q** Would you explain to the jury how she came into
17 your care?

18 **A** She came into the Emergency Room. They had
19 done the initial care with her as she was unable to
20 breathe. Had to have a breathing tube placed. She had
21 to come up to the Intensive Care Unit. From the
22 Emergency Room, she came to us.

23 **Q** Before she left the Emergency Room, did she
24 have any diagnostic exams?

25 **A** She had a CAT scan.

1 Q All right. Would you tell the jury briefly, or
2 not so briefly, what a CT scan is, a CAT scan.

3 A It's essentially an x-ray of the head that
4 takes, it takes multiple pictures. Then it takes it and
5 cuts it into slices. When you look at a CAT scan, you
6 are looking at different levels all the way through
7 whatever it is -- in this case, her head -- that you are
8 looking at. So it gives you sort of a picture of not
9 just the outside, but the inside.

10 Q And does it -- would it be the entire head
11 area?

12 A Yes. It takes slices all the way through. So
13 you get every one of those pictures.

14 Q Okay. Of a patient's brain?

15 A Correct.

16 Q I want to spend some time talking about that
17 procedure and your experience with those pictures that
18 are generated. As a part of your duties and your care of
19 patients in the PICU, do you order CT scans?

20 A Almost every day.

21 Q Do you rely on them in your treatment of some
22 of your patients in the PICU?

23 A Yes.

24 Q Are they helpful to you in treating your
25 patients of head injuries?

1 A Yes.

2 Q Do you rely on the results of CT scans to
3 arrive at a prognosis for a patient?

4 A Pretty much, yes.

5 Q Do you rely on CT scans when you advising
6 parents of children in the PICU about the outcome of
7 their children's care?

8 A Yes.

9 Q Can you tell the jury what steps are taken to
10 insure that the CT's that you see for your patients are
11 actually the patient's brain that you are treating?
12 Obviously, you can't see it from the outside. Can you
13 explain to the jury how that machine works?

14 A When we are looking at it, we look at on a
15 computer screen. We have to sign into the computer
16 screen with our number so that it's only visible to us.
17 Then I can look -- it will come up on our screen by
18 medical record number, which is individual to the
19 patient. Also their name, whatever -- whichever test it
20 is that you are looking for and the time that it was
21 taken.

22 Q Are you able to alter any part of the CT scan?

23 A No.

24 Q You testified that Child had a CT scan between
25 the time she was admitted to the Pediatric Emergency Room

1 and once you got to the PICU, is that right?

2 A Correct.

3 Q You were admitting her to the PICU, did you
4 have access to the findings of her CT scan?

5 A Yes.

6 Q How did you get those?

7 A Two ways. One is because it's all done on
8 computer, it essentially pops up to our computer. I can
9 look at that once I know that she's coming. Also, I call
10 the radiologist to give me his initial results of that.

11 Q Is that protocol in a case like this for the
12 radiologist to telephone the results up to the PICU?

13 A When the results are significantly abnormal,
14 yes.

15 Q And is that the way you would characterize the
16 CT that Child had?

17 A Yes.

18 Q What time was the CT of Child if you remember?

19

20 A It was in the morning. But I just --

21 Q We'll get back to that.

22 A Okay.

23 Q But it was between the time that she was
24 admitted and she got to you in the PICU; is that
25 correct?

1 A Yes.

2 Q At some point, you were able to actually pull
3 up on the computer and look at Child's brain ---

4 A Correct.

5 Q --- at that point. When you pulled up the
6 pictures of Child's brain, were you able to see the
7 injuries that the radiologist described to you on the
8 phone?

9 A Yes.

10 Q All right. We're going to go back and talk
11 about the findings momentarily. We're going to talk
12 about Child as she arrived to you in the PICU.

13 A Okay.

14 Q Did she have any injuries that you could see on
15 the outside of her body?

16 A No.

17 Q All right. I'm going to show you what's been
18 marked as State's Exhibit number 28 and 30 and ask you if
19 you might recognize that.

20 A Yes.

21 Q Is that the way Child appeared to you when you
22 first saw her in the PICU?

23 A Yes.

24 Q Can you tell the jury what you did when you
25 first got her in the PICU?

1 **A** We do essentially stabilization. Make sure
2 that she can breathe. They had done that in the
3 Emergency Room by placing the breathing tube in. Make
4 sure that her heart was working, that she's pumping blood
5 around. A cursory exam to make sure that she's stable
6 for the moment and then a more in-depth exam and whatever
7 procedures we need to do. In this case, I did a
8 neurologic exam and then worked on her placing a central
9 venous line for medicines and blood products and other
10 things that I assumed that she would need based on her
11 condition already.

12 **Q** What were you able to tell from that initial
13 exam on Child ?

14 **A** Uh, at this point, I do a neurologic exam and a
15 fairly intense but quick neurologic exam. When I do a
16 neurologic exam, it's important to remember that sort of
17 as we look at the brain the things on the outside,
18 towards the outside are the things that make us
19 individuals. Make us walk, talk, give us personality.

20 The further you get inside and lower in the
21 brain, those are the things that we don't have to think
22 about, remembering to breathe, remembering if something
23 touches your eye to blink. If something is hot, pull
24 away. So the first things we do are did she wake up, did
25 she open her eyes, did she look around. She didn't. Did

1 she respond to noise? No. Does she respond to pain?
2 She did not.

3 Q What did you -- you said did she respond to
4 pain. What did you put into her body?

5 A So what we initially do is a pinch up under the
6 pectoral muscle, a pinch to the inside of the thigh and a
7 pressure, just sort of a thumb right here on the upper
8 part of the eye. Those -- the bone above the eye. Those
9 things essentially don't cause damage but certainly
10 elicit pain and can elicit a specific response that we're
11 looking for. She had no response to any of those.

12 We then shine a light in her eyes. Her pupils
13 were completely dilated. Her -- I moved the head side to
14 side. Normally, you fix your gaze. As you turn your
15 head, your eyes will stay the same. With hers, the eyes
16 just move with her head. Take a piece of cotton and
17 touch her eyeball to look for a blink. She did not blink
18 to that. Used the suction tubing from the breathing
19 circuit. It goes down. It should elicit a strong cough
20 reflex. A cough and a gag. She had none of that.

21 Q Based on that neurologic exam, what did you
22 conclude about her brain?

23 A I could find no neurological function in her at
24 all. I couldn't find any evidence that her brain was
25 working at all.

1 Q As a result of your initial impression of the
2 state of her brain, did you find anything about the rest
3 of her body and her respiratory system?

4 A Yes. Frequently when someone has that much
5 injury, the rest of the body follows. So blood pressure
6 problems, heart problems, breathing problems all tend to
7 follow in short order from those.

8 Q And was that the purpose of putting in the
9 central lines so that you could administer medications?

10 A Exactly.

11 Q To keep those systems going?

12 A Yes.

13 Q I'm going to show you what's been marked as
14 State's Exhibit number 18 first and ask you if you
15 recognize what that is.

16 A That's a CD print off. That includes the
17 pictures that would come up on my computer. In this
18 case, it is of Child and it is her head CT.

19 Q And does it have her medical reference number?

20 A It does. And it has the date of the exam.

21 Q And what's on the top?

22 A Greenville Hospital System University Medical
23 Center.

24 Q All right. And then I'm going to show you --
25 one second. (Pause.)

1 I'm sorry, Dr. Berning. These are -- let me
2 see if I can get them in order here. State's Exhibits
3 19, 20, 21, 22, 23 and 24 and ask if you are able to
4 recognize those. They are completely out of order. So
5 don't worry about the number reference there.

6 A These are all, uh, pictures from her CAT scan.
7 Individual pictures.

8 Q And, uh, you've had a chance to review those
9 since the morning that she was admitted; is that
10 correct?

11 A Yes.

12 Q And are they fair and accurate representations
13 of the CT you saw that morning --

14 A Yes.

15 Q They haven't been changed in any way. Is it
16 even possible to do that?

17 A Not as far as I know.

18 MS. POALETTI: Your Honor, at this time, the
19 State moves exhibits 18 through 24 into evidence.

20 THE COURT: Any objection?

21 MR. MAULDIN: No objection.

22 THE COURT: Okay.

23 (WHEREUPON, State's Exhibits 18 through 24 are
24 admitted into the record.)

25 MS. POALETTI: Your Honor, I apologize. This

1 takes a little bit of time to load when I first put
2 it in. It's going to take just a moment.

3 **BY MS. POALETTI:**

4 **Q** Dr. Berning, in the meantime, I'm going to ask
5 you to step down here to the computer.

6 **A** (Witness complies.)

7 **Q** All right. Tell the jury what they are looking
8 at.

9 **A** Okay. So this is again a CAT scan. Pictures
10 through the brain. This would be the base of the brain.
11 As you're looking at a CAT scan, imagine you're looking
12 from the feet upwards. The patient is lying on her back.
13 This would be -- this is her back. This is the front.
14 This is her nose and her eyes. This is her left side.
15 This is her right side. You see the L over here and the
16 R over here. As we go through, each individual picture
17 is one further of the brain.

18 **Q** Hold on one second. I'm going to get you a
19 microphone so I can make sure Teresa can hear you over
20 there.

21 **A** Okay. So as I scroll through this -- it's
22 taking a second -- I can move higher into the brain and
23 back further down towards the base of her skull.

24 **Q** All right. Let's go back to that photograph
25 right there. Tell the jury what they are looking at in

1 the photograph.

2 **A** Okay. So again, this is through the base of
3 the skull and up through the eyes. You can see her nose
4 is here. These are her eyes. The white here is all
5 bone. The radiologist put this arrow here. That white
6 right here, that circle, that is in the back of the eye
7 and that is blood.

8 **Q** What is significant about that?

9 **A** That is an incredibly large amount of blood for
10 an eye. I can say that, uh, it -- that's a profound
11 retinal hemorrhage. I've see hundreds of kids with
12 retinal hemorrhages from abuse. I've never seen one with
13 that much blood that you could see it on a CAT scan.

14 **Q** All right. I'm going to take you back
15 momentarily to your physical exam of Child . When you saw
16 that retinal hemorrhage on the CT, had you seen evidence
17 of that in your physical exam of her?

18 **A** Yes. She had, uh, looking in the back of the
19 eye, normally, it is kind of a pale, peachy color. You
20 can see blood vessels on the retina. The arteries that
21 come in and the veins that come out. You can see the
22 optic nerve. It's sort of the one spot in the brain
23 where you can get a direct look. It's really -- the back
24 of the eye really is just an extension of brain. In her
25 case, all I could see was blood on both eyes. It was

1 completely red as far out as I could see.

2 Q And showing you State's Exhibit 23, is that the
3 still shot that the jury is looking at right now?

4 A Yes.

5 Q All right. If you will, continue going through
6 the CT to the next injury that you were able to observe
7 in Child's brain or that's depicted in the CT.

8 A Essentially, this picture here is
9 representative -- I'm not sure if it's the exact slide
10 that you have. But it's a picture -- this point coming
11 right through the brain. What you see here, if you
12 notice, it's very -- it's hard to explain this without
13 having experience seeing multiple CAT scans. It's very
14 dark. It's fairly uniform in appearance.

15 Q Let me take you back to 18. If we'll go to
16 Image 18.

17 A Okay.

18 Q This is State's Exhibit 21.

19 A Yes.

20 Q The corresponding image.

21 A What that shows -- normally, I should be able
22 to see -- uh, you have ventricles. There's fluid
23 produced in the brain. It's in the center of the brain.
24 There's two strips that sort of sit like this in the
25 brain. They produce fluid that's going to flow down to a

1 third spot.. Then down to a fourth spot. And then down
2 the spinal cord, comes back up around and allows it to be
3 reabsorbed. It's just one of the processes. It sort of
4 -- it kind of like a few different weights of water with
5 rivers flowing between them in the brain. In her case, I
6 can't see them all. The brain is so swollen that they
7 are completely closed off. The fluid has been pushed out
8 of the brain in the ventricles.

9 Also this, the brain tissue itself, based on the
10 scan is very abnormal. I should be able to tell at least
11 some differentiation of gray and white matter. There are
12 two different types of tissue in the brain. Some of the
13 structures of the brain. The brain is normally, uh, it's
14 kind of bumpy with a lot of curves over it. And those
15 are gone with this. This is a CAT scan for a very, very
16 swollen brain and a brain that has gone a good period of
17 time without oxygen.

18 Q What happens to the brain tissue when it goes
19 for a significant time without oxygen in the blood?

20 A It will -- just like any other tissue, it will
21 break down. The cells will die and over time, it will
22 swell.

23 Q Does it become necrotic as well?

24 A It does.

25 Q And is that what you're looking at in that?

1 **A** At this point, I would say that this is all
2 tissue that is dead. It's just not going to come back.

3 **Q** We're going to go back to that in just a moment
4 as well. All right. Let's keep going here to the next.
5 And as you're strolling through here, these are what you
6 describe as the pictures or the slices of the brain; is
7 that correct?

8 **A** Yes. On this picture right here, you can see
9 there's just a little bit of water, this black spot.
10 There should be large amounts. The radiologist pointed
11 out here with this is that from the center to the center
12 in the back, the brain should be symmetric. There's a
13 line dividing the two halves of the brain. In her case,
14 that's being completely pushed over. It follows this
15 path and this path right along here.

16 **Q** What do y'all call that?

17 **A** That's a shift. In this case, it's shifting
18 over to the left. So the brain on the right is pushing.
19 It's more swollen than the brain on the left. It's
20 pushing things over.

21 **Q** Dr. Berning, I asked you a question earlier
22 about what time these pictures were taken of Child's
23 brain. Are you able to tell the jury what time?

24 **A** Okay. 9:46 a.m.

25 **Q** Okay. So what's the, uh, -- at 9:46. And then

1 10:04 on the right would be where it was saved? Is that
2 when it's completed?

3 A Yes.

4 Q All right. I'm sorry. Keep scrolling up.
5 Again, let the jury know which direction we're going.

6 A We're moving up towards the top of the head.
7 As I come up, you see some white here. On a CAT scan,
8 recent bleed turns white.

9 Q When you say recent?

10 A Within, uh, -- within a couple of days. We can
11 see that this blood, it's on the fist part of her head.
12 That's essentially the thickest spot right up top.

13 Q And are you able to tell that measurement there
14 that the neurologist is --

15 A 5.7 millimeters.

16 Q And tell the jury what that is.

17 A That is what we call a subdural hematoma. The
18 brain is covered -- you have a brain. Coverings are
19 dura. And then skull. Subdural hematoma is between the
20 brain and that covering. When you have a bleed in that
21 space, it tends to sort of surround the brain and start
22 pushing in on the brain. With that bleed, that is
23 clearly the cause of that shift that we saw earlier.
24 This is taking up space and pushing the brain over to the
25 other side.

1 Q In conjunction with the fact that the brain is
2 swollen all over contribute to that as well?

3 A Yes. Absolutely.

4 Q And that slide specifically is State's Exhibit
5 number 24; is that correct?

6 A Yes.

7 Q And I believe that -- All right. Explain to
8 the jury what they are looking at.

9 A All right. It takes the same pictures. But it
10 essentially develops them a little bit differently so
11 that we can see the structures of the bone more than the
12 structures of the brain. The bone rather than the soft
13 tissues.

14 Q Uh, 28.

15 A Okay.

16 Q Tell the jury what they are looking at.

17 A This is a picture through looking -- the white
18 is bone now. Again, it's developed in such a way that
19 you can't really see the brain. And what we're looking
20 at here, the skull has what we call sutures. The head is
21 designed so that when you're born, it can compress as it
22 comes through the birth canal. You have lines across the
23 soft spot, front and back all to allow the head to
24 compress. We can see on this side and back here, these
25 little gaps, those are sutures. Those are normal suture

1 lines. This is not. This is a fracture. It's not the
2 same on the other side. As you kind of go through
3 different levels, you can trace that back. You can see
4 it again right here. This is a fracture through the
5 skull.

6 Q And that's the still shot of that picture, the
7 fracture, State's Exhibit 22.

8 A Yes.

9 Q Let me make sure. All right. Yes, sir, Dr.
10 Berning. I want to leave this photograph up and show you
11 State's Exhibit number 19 and 20. Ask the jury if you
12 will tell -- uh, ask if you'll tell the jury what a
13 skeletal survey is.

14 A Uh, once we are concerned that there's been
15 non-accidental trauma, uh, the intentional injury to a
16 child, we'll go through and we'll take an x-ray of
17 essentially all of their bones. We'll do multiple
18 different x-rays and different views to look for either
19 new broken bones that we didn't recognize on the exam or
20 healing fractures, evidence that child's been abused or
21 injured, broken bones on the past.

22 Q And did you have a skeletal survey done of
23 Child ?

24 A We did.

25 Q All right. Would you tell the jury what the

1 pictures are that you are looking at in 21 and 22 there?

2 A These are the skull x-rays. One come on from
3 the front and one from the side.

4 Q Just to be clear. You're talking about two
5 views?

6 A Two different views.

7 Q I'm going to put these up here. I might let
8 you step down. All right. Can you point out on these
9 photographs -- they are x-rays, is that right?

10 A These are x-rays.

11 Q Uh, where Child's skull fracture is.

12 A Looking at her from the front, this is her
13 left. This is her right. This right here. You can see
14 it here. There's actually even a space in between where
15 the fracture started to spread out. From the side, you
16 can actually see it all the way along here. It
17 essentially goes from about here all the way to the back
18 of the brain.

19 Q Is it the entire side of her skull from suture
20 line to suture line?

21 A Yes.

22 Q Uh, there's a measurement on both of those
23 actually of .32 centimeters. What is that?

24 A That measured how much it started to spread.

25 Q And what is significant about that?

1 A Uh, when you first have a fracture, it doesn't
2 spread out right away. When we see opening up between
3 the two parts of the fracture, it's a sign that swelling
4 is causing it to spread. So the brain has been swelling
5 causing -- basically trying to create more room in the
6 head.

7 Q And that's the reason why the fractures --

8 A Are spaced out. Swelling in the head.

9 Q .32. How wide is that? I can't do that
10 conversion in my head.

11 A Almost about an eighth of an inch. A little
12 bit more.

13 Q All right. Thank you. You can take the stand.
14 I want to talk to you one second more about the retinal
15 hemorrhages that you observed both from your physical
16 exam of Child and on the CT. Did you ask for a consult
17 from another physician regarding the retinal hemorrhages?

18 A Yes, I asked Dr. Johnson. He's an
19 ophthalmologist. He's especially good at dealing with
20 retinal hemorrhages in children.

21 Q Tell the jury what he does in addition to what
22 you do regarding the retinal hemorrhages.

23 A I have a direct ophthalmoscope. When I hold it
24 up to my eye and I look in, I can see a fair amount. He
25 uses a very different system. It's called indirect. He

1 has a light and essentially a different type of scope to
2 look at the back of the eye. He can look all around the
3 eye. He can see all the way out to the sides and check
4 the layers. There's multiple layers in the retina. He
5 can see if there's hemorrhages in just one layer or
6 multiple layers.

7 Q Did Dr. Johnson come over and look in Child's
8 eyes?

9 A He did.

10 Q Are the injuries that you saw on Child's CT and
11 that you described to the jury, were they consistent with
12 the complete lack of brain function that you observed in
13 Child ?

14 A Yes.

15 Q There's nothing about the findings in the CT
16 that surprised you based on your exam of her?

17 A No, not at all.

18 Q Uh, I want to ask you specifically about the
19 fact that Child had both the skull fracture and then the
20 retinal hemorrhages, subdural hematoma and all that
21 swelling. What does that tell you?

22 A When we combine those -- all those together,
23 there's only one thing that does this, and that's abuse.
24 There's just nothing else in our differential for a child
25 who comes in without any known injury, has a fracture and

1 a new fracture cause it's not healing, has swelling of
2 the brain, swelling takes a while to occur. With that
3 much swelling, I would expect it to take at least eight
4 to 12 hours to see that much swelling in the brain.

5 Retinal hemorrhages, the skull fracture, again
6 all the subdural hematoma, that tells me this baby had
7 two mechanisms of injury, a shaking injury to cause the
8 subdural hematoma and a retinal hemorrhage and then some
9 sort of strike, blunt force to cause the skull fracture
10 on the other side.

11 Q And based on your training and experience and
12 expertise in treating children with this constellation of
13 injuries, would you tell the jury how you are able to
14 arrive at that opinion that there were two mechanisms of
15 injury to Child .

16 A Shaking by itself wouldn't cause a skull
17 fracture. It may cause rib fractures some times, but it
18 doesn't cause skull fractures. And a skull fracture
19 would come from a hit. A hit won't cause the retinal
20 hemorrhages, especially this pronounced. I can say I've
21 taken care of hundreds, at least, probably thousands of
22 car accidents, falls from high. I've never seen a child
23 with retinal hemorrhages from that type of injury.

24 Q I want to take you back to the PICU in the mid
25 to late morning of January 19th of 2011. You've had a

1 chance to do a full physical exam of Child and you've
2 reviewed the CT. You know what her brain looks like.
3 Would you tell the jury what you considered her medical
4 status to be?

5 A Uh, she was critically ill. Excuse me. We'll
6 call it critically ill at this point. I am convinced
7 she's going to die. There's nothing that we can do at
8 this point. Once the brain's undergone that much injury
9 for that period of time, uh, the brain just isn't
10 salvageable.

11 Q Uh, and did you have any report of any type of
12 -- any explanation for how her brain got like that?

13 A No. None.

14 Q At this point, had you formed an opinion to a
15 reasonable degree of medical certainty whether her
16 injuries were accidental or inflicted?

17 A Yes.

18 Q And I think you just told us what your opinion
19 was.

20 A Absolutely inflicted.

21 Q All right. Let me take you to even later in
22 the morning. And I'm making this sound like it is
23 somewhat a semi-extended period of time. Did things
24 happen pretty quickly?

25 A Yes.

1 Q When you were in the PICU treating Child , was
2 her mother and the defendant in the PICU?

3 A Not while I was doing my -- since I had my --
4 putting in --

5 Q They weren't in her room?

6 A No. I generally don't have -- parents don't
7 want to see that happen to their baby.

8 Q It's a pretty aggressive exam?

9 A It's an aggressive exam and putting in --
10 there's large needles and blood and other things.

11 Q So they weren't in the room when you did that?

12 A They were not.

13 Q Did you eventually -- excuse me -- sit down
14 with them and explain to them the shape that their
15 daughter was in?

16 A I did.

17 Q All right. I want to talk to you specifically
18 about that point in time. Where did you go with the
19 mother and the defendant in this case?

20 A We have what we call our work room. It's a
21 small office in the back of the PICU that has a computer
22 screen so that I can pull up the pictures and show it to
23 the family. I close the door and talk with them in
24 private while showing them the pictures.

25 Q All right. I want you to tell the jury what

1 you told the mother and this defendant in the workroom in
2 the PICU.

3 A I went through, as I did with you, each injury,
4 how the CAT scan looks, that there was blood, that there
5 was a fracture, that there was severe swelling, that I
6 found retinal hemorrhages, that I found no evidence
7 whatsoever that she had any brain function left. I told
8 them that I was extremely certain that Child was going to
9 die.

10 Q Were you unclear about that fact in any way,
11 shape or form?

12 A No, not at all.

13 Q Did you tell them what you thought had happened
14 to her?

15 A Yes. I said I don't know how it happened, but
16 this was abuse. Someone had done this to Child.

17 Q How did the mother react?

18 A She just started crying as I think any mother
19 would. Just this couldn't have happened. There's no
20 way.

21 Q What about the defendant?

22 A He didn't really say anything. He was just --
23 the whole time, I would describe him as flat.

24 Q What did he do?

25 A Uh, well, at that point, uh, the grandmother

1 was also in the room. She stood up and started yelling
2 at him and said what did you do to her. He didn't really
3 say anything.

4 Q I want to talk to you about what Child's
5 injuries tell you about when they were inflicted. The
6 four injuries that she had, the skull fracture, the
7 retinal hemorrhages, the subdural hematoma and the
8 swelling of her brain, is there one more than the other
9 that gives you information about when this might have
10 happened to her.

11 A The swelling. The skull fracture, I can say
12 there's no healing. So it's been at least within days.
13 The subdural hematoma is bright white so I can tell you
14 that's within days. The retinal hemorrhages, I can't
15 really time. The swelling takes a while. If you sprain
16 an ankle, if you do anything else, you don't get the full
17 swelling right away. In this case, she had profound
18 swelling of her brain. I will say this was ours. Hard
19 to say exactly how many. My best guess would be probably
20 8-to-12-hour range that the swelling's been going on.

21 Q Does the fracture that's expanded to about an
22 eighth of an inch wide underscore your opinion on that?

23 A Yes.

24 Q Dr. Berning, is it possible for a baby who has
25 sustained these bad, bad injuries to survive for 8 to 12

1 hours?

2 **A** Yes, it happens frequently actually.

3 **Q** Is that because the brain takes a while to
4 swell?

5 **MR. MAULDIN:** Object to leading the witness.

6 **THE COURT:** Yeah. Just ask who, what, when,
7 where and why. Don't lead.

8 **BY MS. POALETTI:**

9 **Q** Tell the jury why Child quit breathing.

10 **A** After her injuries, she would probably be
11 unconscious. It doesn't take much to be, uh, a five,
12 six-month-old baby laying in a crib. They breathe. If
13 they're sleeping, they just kind of look like they are
14 sleeping. She would certainly look like she was
15 sleeping. As the brain swells more and more, it pushes
16 down on the lower, inner parts of the brain that I was
17 talking about before which control your breathing.
18 Eventually, you'll put so much pressure on that part of
19 the brain that that part of the brain stops functioning.
20 So the part of the brain telling you to breathe stops
21 working and you stop breathing.

22 **Q** Is it possible that for a baby like you just
23 mentioned with these types of injuries to appear to the
24 untrained eye make it look like she was sleeping?

25 **A** Absolutely.

1 Q Would she had been able to make sounds
2 possibly?

3 A Yes.

4 Q Voluntary or involuntary movement for some
5 period of time?

6 A Yes.

7 Q Even appear to respond to a voice?

8 A Yes.

9 Q Let's talk about playing or interacting or
10 eating.

11 A There's no way she's looking around, smiling,
12 laughing, doing higher brain functions, which are playing
13 with something, even eating would be very difficult.

14 Q Now, I want to talk to you about when Child
15 died. Would you explain to the jury what the purpose of
16 the brain death exam is.

17 A You can die one of two ways. One is your heart
18 stops and we can't get the heartbeat back. The second is
19 that all brain function has died. So when -- we're
20 looking for all brain functioning, including the lower
21 parts of the brain. When that has ceased to function and
22 we've done a couple of exams over a period of time,
23 generally a 24-hour period, uh, we know that that
24 function never comes back. The entire brain has died.
25 That function isn't coming back. That is death also even

1 though the heartbeat is still going. That's just a
2 different type of death.

3 Q Is part of that brain death exam turning off
4 the ventilator to see if she'd breathe on her on.

5 A It is. That's generally the last -- we do a
6 series of tests. That's usually the last one. What
7 we're doing is we're looking for -- usually the last part
8 of the brain to die is that part of the brain that tells
9 you to breathe. So we are trying to stimulate the brain
10 to breathe. So we stop the ventilator, give oxygen so
11 the oxygen doesn't drop. But it allows the carbon
12 dioxide levels to rise and rise. That becomes a very
13 potent stimulus for a brain to breathe. After a period
14 of time if it doesn't -- if that carbon dioxide levels
15 rise and there is still no breathing, that is evidence
16 that that part of the brain just doesn't work anymore.

17 Q And that's the last thing that --

18 A We'll do it twice. You know, brain death exam
19 is the last test I generally do for the first exam and
20 the last test for the second exam.

21 Q I want to talk to you now about the amount of
22 force that was required to cause these injuries in Child .
23 Is there any way that whomever inflicted these injuries
24 or saw them being inflicted couldn't know that Child was
25 badly hurt?

1 **A** That is not possible. This was extreme injury.

2 This had to be extreme force.

3 **Q** Did the injuries that she sustained cause her
4 death?

5 **A** Yes.

6 **Q** Did you talk with somebody in law enforcement
7 at some point about this case?

8 **A** I did.

9 **Q** Do you even know who it was?

10 **A** I don't.

11 **Q** Do you remember how you articulated Child's
12 injuries to that detective?

13 **MR. MAULDIN:** Your Honor, I object to that.
14 I'll be glad to be heard from if you wish.

15 **THE COURT:** All right. Y'all come up here.

16 **(WHEREUPON, a bench conference is held off the**
17 **record.)**

18 **THE COURT:** All right. Madam Forelady,
19 Ladies and Gentlemen of the jury, looks like it's
20 time -- a good time for a morning break. Please
21 don't discuss the case. We'll get back with you very
22 shortly.

23 **(WHEREUPON, the jury exits at approximately**
24 **10:51 a.m.)**

25 **THE COURT:** Something you want to tell me,

1 Q Dr. Berning, I want to direct your attention to
2 State's Exhibit 21 that's there in front of you. Based
3 on the CT of Child's brain, is it your opinion that the
4 injuries that she suffered that caused that swelling and
5 the other injuries that you've explained to the jury, is
6 it your opinion that that occurred less than three hours
7 or more than three hours before those pictures were taken
8 at 10:00 a.m.?

9 A More than three hours.

10 Q Would you answer any questions that Mr. Mauldin
11 has.

12 **CROSS-EXAMINATION**

13 **BY MR. MAULDIN:**

14 Q Dr. Berning, good morning.

15 A Good morning.

16 Q My name is John Mauldin and I represent Daron
17 Davis in this matter. Going to ask you a few questions.
18 I certainly don't profess myself to be an expert in these
19 stuff. So I'm going to have to get a little
20 clarification on some of the things you've mentioned this
21 morning.

22 First thing I would like to ask you, uh, Dr.
23 Berning, you said that at some point after the CAT scan,
24 CAT scans, x-rays or so forth were taken and that's what
25 we have images of now in evidence, all of these images

1 were created the morning of September -- of January 19th
2 of '11, is that right?

3 A The skeletal survey, I'm not sure.

4 Q I'll hand it to you. You can -- I think we
5 need to know that. It's got a date on it. You testified
6 to it.

7 A That was that afternoon.

8 Q All right. So all of the images that are now
9 in the record were created on January 19th.

10 A Yes.

11 Q And at some point after you reviewed these
12 images, that's when you say you had a meeting with
13 parents?

14 A Yes.

15 Q And the people that were present -- you said
16 this happened in a work room?

17 A Yes.

18 Q And the people that were present, that I
19 recall, were you, the mother, the father, Daron, and the
20 grandmother, Tonya Anderson?

21 A Yes.

22 Q Now, was anybody else present?

23 A Not that I recall.

24 Q Just think about it. If -- you don't recall
25 anybody else being in the room?

1 A No.

2 Q All right. And you gave these folks your
3 opinion that there was an abuse situation.

4 A Yes.

5 Q These were not accidentally incurred injuries
6 and that it was your opinion that there was -- this child
7 had been abused?

8 A Yes.

9 Q And you described the responses, how the
10 parents reacted. Now, I want to ask you if you had ever
11 met Daron Davis. Stand up, Daron, please. All right.
12 Thank you. Had you ever met my client, Daron Davis,
13 before that day?

14 A No.

15 Q All right. So you never had any dealings with
16 him.

17 A No.

18 Q He doesn't go to your church?

19 A No.

20 Q He doesn't run into you at the mall? He's not
21 in your civic club?

22 A No.

23 Q Okay. And so you didn't really know him?

24 A Correct.

25 Q And you would have no way of knowing how he

1 might respond to a shocking thing?

2 A Correct.

3 Q Okay. Now, that, uh, the skeletal survey,
4 that's -- am I saying that right?

5 A Yes.

6 Q All right. The skeletal survey testimony
7 applies to State's Exhibit 19 and 20. Am I right about
8 that?

9 A Yes.

10 Q And one of the things that the prosecutor
11 referred to in -- as an introduction to a skeletal
12 survey, skeletal surveys -- one of the uses of a skeletal
13 survey is to determine prior injuries, for example, a
14 healing fracture?

15 A Yes.

16 Q Isn't that what I understood?

17 A Yes.

18 Q So if you're going to do a skeletal survey of a
19 child who is the subject of a potential abusive behavior,
20 you do a skeletal survey of this child. I mean, it's
21 full body.

22 A You do multiple x-rays.

23 Q Right. You take a picture of everything.

24 A Yes.

25 Q To see if there were any other fractures or

1 bone injuries that then could, uh, be, uh, determined
2 that maybe this was over a period of time, right? That
3 this was abusive conduct over a period of time?

4 A Right.

5 Q All right. Did that skeletal survey being
6 conducted for Child -- was the skeletal survey conducted?

7 A Yes.

8 Q And are those the two pictures that are
9 relevant in this case?

10 A Yes.

11 Q And the two pictures that are relevant -- and
12 this, I believe, is from the front.

13 A Yes.

14 Q Exhibit 20 is from the front, which shows the
15 left side of the skull. And it shows the location of the
16 fracture.

17 A Yes.

18 Q All right. And this one is the left side --
19 literally a photo of the skeleton of the left side of her
20 head. It demonstrates a fracture on that left
21 hemisphere.

22 A It can take it from either side, but yes. It
23 goes all the way through so you can see the fracture on
24 either side.

25 Q I'm just asking you what that one is, Exhibit

1 number 19. Is that a picture of the left side of her
2 skull?

3 A Yes.

4 Q All right. And it shows the fracture.

5 A Yes.

6 Q But no other skeletal evidences of any type of
7 abuse of this child.

8 A Correct.

9 Q Now, I made a note when your thing on the
10 computer here was on the screen. The prosecutor asked
11 you what time. Up in the -- had the image. And up along
12 the border of the image on the disk is 9:46. I think it
13 was 17. That would have actually been the seconds.

14 A Correct.

15 Q All right. So it was 9:46.17 on that screen.
16 I got to looking at these images. I want to show you
17 Exhibit number 23 and ask you if I'm misunderstanding
18 what is shown on this exhibit. I'll try to show it just
19 like this. Then I'll show it to the jurors. This is the
20 date of the image?

21 A Yes.

22 Q And this would be the time of the image?

23 A Yes.

24 Q All right. And that would be the same on each
25 one of these images. In other words, this is State's

1 Exhibit 22. This is the date the image was taken and

2 this is the time the image was taken.

3 A Yes.

4 Q All right. On State's Exhibit number 22, the
5 time is 10:04.30, right?

6 A Yes.

7 Q The time on the one I previously showed you,
8 number 23, is 10:04.17. And the 17 and 30 being the
9 seconds that are going by as the pictures are being
10 taken.

11 A Yes.

12 Q All right. So it really wasn't 9:46. It was
13 10:04. I know that's 20 minutes, right? A 20-minute
14 difference. 20 minutes. So what we actually have is
15 10:04, not 9:46.

16 A Yes.

17 Q Okay. Now, the questions that the prosecutor
18 asked you about on the -- I think the term used in the
19 question, I don't think you said this. I think the
20 prosecutor said this was two mechanisms of injury.
21 That's what I heard.

22 A Yes.

23 Q I think what we can say is you determined that
24 there were two injuries.

25 A No, four injuries.

1 Q Okay. All right. Then let's talk about four
2 injuries. What you're doing, you're taking the lab
3 evidence, the scans and so forth and making a
4 determination of whether there were multiple injuries.

5 A Yes.

6 Q The one that was obviously absolutely crystal
7 clear is a fracture of the skull. I mean, that jumps out
8 at you.

9 A Yes.

10 Q All right. But your evaluation, you determined
11 there was at least in your opinion evidence of another or
12 other injuries.

13 A Yes.

14 Q Now, let me ask about that. I'm going to give
15 you a couple of hypotheticals ---

16 A Okay.

17 Q --- and see if this accurate. You just tell me
18 if what I'm saying is accurate or if you will agree with
19 it.

20 A Okay.

21 Q The first hypothetical I'll give you is a
22 traumatic automobile accident or car wreck. Let's assume
23 in this car wreck -- I'm just making this up. This has
24 -- I'm not claiming that Keris was in a car wreck. I'm
25 just saying this is a hypothetical situation. A child is

1 in an automobile unrestrained, that is, they are not in
2 the proper seat strap or so forth. The automobile has a
3 violent wreck. The child flies forward or sideways,
4 whatever, and that child's head hits a dashboard,
5 windshield, post in the car, frame of the car. And a
6 massive fracture occurs. All right. Is it possible --
7 is it possible that the same nature of injuries from that
8 hypothetical, that is, a skull fracture, bleeding injury
9 to the other side of the skull now, other side of the
10 brain, the skull fracture on the left, injury to the
11 right side of the brain causing massive swelling and
12 bleeding, retinal hemorrhaging from this, uh, shock or
13 acute impact, is it possible for those symptoms -- I
14 don't know whether -- you're the doctor. I don't know
15 whether -- those conditions to be in existence for that
16 hypothetical child that was on the train or car wreck?

17 A I would say it is extremely unlikely for the
18 retinal hemorrhages. I've never seen retinal hemorrhages
19 in a car accident like that.

20 Q Okay.

21 A Skull fracture that brings swelling, the
22 bleeding on the other side of the head, possible. The
23 retinal hemorrhages, I've never seen that in car
24 accidents.

25 Q That's the one of those that you would not be

1 sure of?

2 A Yes.

3 Q Or would not -- would say you haven't seen?

4 A Yes.

5 Q All right. Now, I'll give you one other

6 hypothetical, then I'll be done with you. Let's assume,

7 and again I just make this up. Let's assume that a

8 person has a one day less than five-month old baby.

9 We've got the age. Right? We've got the age built in.

10 A one day less than five-month old baby.

11 This baby accidentally falls from the person.

12 They have them on the shoulder or something and the baby

13 were to fall. Let's say that this hypothetically, this

14 baby is on a balcony with a parking lot down below, a

15 hard surface down below. The baby falls to that surface,

16 lands on his or her head. This is a hypothetical. The

17 x-rays of that child's head are essentially a mirror

18 image of that skeletal x-ray where the fracture is. Same

19 size fracture. Same everything.

20 The child is -- the CAT scans show injury to

21 the other side of the skull, inside on the brain, causing

22 bleeding. The brain would then immediately start to

23 swell. You were talking about brain swelling. Let me

24 stop in my hypothetical just one moment and ask you about

25 brain swelling. When an injury happens like that, the

1 brain doesn't just wait a while and then start swelling,
2 does it? If it's a traumatic and violent strike,
3 wouldn't it start swelling at some pace?

4 A It does. But it doesn't look like that scan.
5 The scans look different. Frequently, there's swelling
6 that I can't see on a CAT scan.

7 Q Right. Right. So does the pace of swelling of
8 the brain relate to the severity of the injury. Does how
9 fast the brain swells, does that have any connection with
10 the nature of the injury that caused the swelling in the
11 first place?

12 A Sometimes yes, sometimes no.

13 Q Well, that's real --

14 A I'm not trying to be evasive. Some patients
15 with severe swelling, it takes five, six, seven, eight
16 days to reach full swelling. And then some days, we get
17 maximal -- when we measure pressure in the head, basing
18 this on pressure, we may get maximum pressure in a day or
19 so or a day or two. Usually it takes three to five days
20 to get to the most amount of swelling.

21 Q All right. But I think my question is does the
22 -- let me make sure I've got the clarity in my question.
23 Does the pace of the swelling -- I use the word pace for
24 the timeline of the swelling. Does the pace of the
25 swelling of the brain connect or directly relate to the

1 severity of whatever it was that caused the swelling?
2 Does that make sense to you? You understand my question?

3 A I understand your question.

4 Q Okay. All right.

5 A Again, I would say not always.

6 Q All right. And then I interrupted myself. I
7 was asking you about the hypothetical balcony where the
8 child were to fall on the pavement and have a similar
9 injury, similarly aged child.

10 A Uh-huh.

11 Q So you've got the same very thin skull, you
12 know, with a five-month or less than five-month-old baby.
13 The skull is still developing. Okay. And the fracture
14 occurs. And the other side of the brain which clearly
15 could, clearly have injuries from that fall, I think you
16 said that in the car wreck.

17 A Yes.

18 Q All right. Now, do you have an opinion about
19 that with regard to what you were describing as a retinal
20 hemorrhage issue?

21 A I've taken care of less patients with falls. I
22 would still say I've never seen retinal hemorrhages in a
23 fall.

24 Q Okay. All right. We'll just have to wait to
25 see what somebody else says about that. Thank you. I

1 believe that's all I've got.

2 A All right.

3 Q Okay. That's all.

4 THE COURT: All right. Any redirect?

5 REDIRECT EXAMINATION

6 BY MS. POALETTI:

7 Q Dr. Berning, did anybody report that Child had
8 been in a motor vehicle accident?

9 A No, and we specifically asked if there were any
10 accidents or falls.

11 Q Anybody report that she had fallen off her
12 balcony?

13 A No.

14 Q That's all I have.

15 THE COURT: All right. Thank you, sir. You
16 may step down. Thank you very much. We release him
17 from subpoena?

18 MS. POALETTI: Yes, sir.

19 THE COURT: Any objection?

20 MR. MAULDIN: No objection.

21 THE COURT: All right.

22 MS. SUSTAKOVITCH: Your Honor, the State
23 calls Investigator Chris Miller.

24 THE COURT: All right.

25 THE CLERK: Sir, please place your left hand

1 on the Bible and raise your right hand.

2 **CHRIS MILLER**

3 having first been sworn, testifies as follows:

4 **THE CLERK:** Thank you. Please be seated.

5 Please state your name for the record.

6 **THE WITNESS:** Christopher Todd Miller.

7 **DIRECT EXAMINATION**

8 **BY MS. SUSTAKOVITCH:**

9 Q Good morning, Investigator Miller.

10 A Good morning.

11 Q Uh, where are you employed, sir?

12 A Greenville County Sheriff's Office.

13 Q And what is your position there?

14 A I'm an investigator in the Homicide unit.

15 Q How long have you been an investigator in the
16 Homicide unit?

17 A For six years.

18 Q How long have you been in law enforcement in
19 general?

20 A In March, it will be 18 years.

21 Q Throughout your 18 years, what are the
22 different capacities that you've served in?

23 A I've served uniform patrol. I have worked in
24 the Criminal Warrant Division. I have worked in the
25 traffic division, a juvenile investigator, armed robbery

1 investigator and homicide investigator.

2 Q I believe you stated six years of that,
3 correct?

4 A Yes.

5 Q Uh, did Greenville County, did you become
6 involved in the investigation into the death of Child
7 ?

8 A Yes.

9 Q And did Greenville County become the lead
10 investigating agency into her death?

11 A Yes.

12 Q When did Greenville County first become
13 involved into this investigation?

14 A January 19th, 2011.

15 Q And about what time did Greenville County
16 become involved.

17 MR. MAULDIN: One moment.

18 THE COURT: What?

19 MR. MAULDIN: Your Honor, Your Honor, I think
20 he accidentally said February 19th.

21 THE COURT: No, sir. He said January 19th.

22 MR. MAULDIN: All right. Thank you, Your
23 Honor.

24 THE COURT: All right. Go ahead.

25 BY MS. SUSTAKOVITCH:

1 Q Investigator Miller, when did Greenville
2 Sheriff's Office first become involved into the
3 investigation into Child's death?

4 A January 19th, 2011.

5 Q Approximately what time did the Greenville
6 County Sheriff's Office become involved?

7 A Around 4 p.m.

8 Q And why were you assigned to investigate this
9 case?

10 A I was the on-call investigator that week.

11 Q Where did you first respond in connection with
12 this case?

13 A I responded to the Greenville Memorial Hospital
14 Pediatrics ICU ward.

15 Q I apologize. I may have just asked. What was
16 your capacity as far as were you the lead investigator at
17 that point?

18 A Yes.

19 Q On arrival at the hospital, what, if anything,
20 did you observe?

21 A When I first arrived at the hospital, I spoke
22 with Officers Pressley and Fortenberry.

23 Q And they are with which agency?

24 A The Greer Police Department.

25 Q What was the purpose of speaking with officer

1 -- Sergeant Fortenberry and Lieutenant Pressley?

2 A I was advised that they had began their
3 investigation and that we were to take it over. We
4 wanted to get briefed on what they had found up until
5 that point.

6 Q Had you been given a prognosis as far as Child's
7 -- on Child and what the outlook was for her?

8 A Yes. I discovered that she had a skull
9 fracture and that the outlook was very grim.

10 Q At that point, and you testified, I believe, it
11 was around four o'clock; is that correct?

12 A Yes.

13 Q Were you advised whether or not this defendant
14 had been interviewed by the Greer Police Department at
15 that point?

16 A Yes, I was.

17 Q Once you took over this case at four o'clock,
18 did you attempt to get a statement from the mother in
19 this case, Shalita Dawkins?

20 A Yes, I did.

21 Q Did she, in fact, give you an interview?

22 A She did.

23 Q Was she cooperative in giving you an interview?

24 A She was.

25 Q I'd like to mark this for identification

1 purposes. (Pause.)

2 All right. I'm showing you what's marked as
3 Court's Exhibit number 7, what is that document?

4 A That is Greenville County Sheriff's Office
5 standard victim witness statement form. This is the
6 statement that Ms. Shalita Dawkins gave us.

7 Q Was she required to give you a statement at
8 that time?

9 A No, she was not.

10 Q In situations where you have a child that's
11 injured, is it common to try to speak with both parents
12 regarding the activities of the child leading up to
13 whatever has occurred?

14 A Yes.

15 Q The possible injuries.

16 A That's protocol.

17 Q Where did you take this statement from Shalita
18 Dawkins?

19 A At the hospital. There's a family waiting room
20 right inside the Pediatrics ICU ward.

21 Q And is there a date on that statement?

22 A Yes, it's January 19th, 2011.

23 Q So right at the hospital around 4:00, how soon
24 after did you locate Shalita Dawkins to get this
25 statement from her?

1 A It was probably within a half hour.

2 Q Explain to the jury how you go about
3 interviewing a witness. What is the process that you go
4 through for that?

5 A First, the interview is conducted with a verbal
6 interview.. We get some background information on the
7 person giving the statement. Then we ask them what
8 happened and have them give us more detailed information.
9 And then once the verbal statement is given, we then
10 document it by typing it. Once that statement is typed,
11 we give the statement to the person giving the statement
12 and have them read it and approve it. Once it's
13 approved, we have them sign it.

14 Q At the time you're speaking with Shalita
15 Dawkins, was she a potential suspect as far as you were
16 concerned in this case?

17 A Yes.

18 Q How long would you estimate your interview with
19 Shalita Dawkins took with the process you just described
20 where you give the background and you talk to them?

21 A Anywhere from an hour and a half to two hours.

22 Q Can you describe what Ms. Dawkins' demeanor was
23 during this process when she's talking to you?

24 A She was very upset. She appeared to me to be
25 pretty stricken. She was still cooperative.

1 Q Were you able to get a statement from Ms.
2 Dawkins related to the events as she knew them leading up
3 to Child's arrival at the hospital?

4 A Yes.

5 Q I believe you testified that you were made
6 aware that Greer Police had interviewed this defendant;
7 is that correct?

8 A That's correct.

9 Q Let me ask you. As far as taking interviews
10 with different people, is there any requirement that an
11 interview actually be recorded?

12 A No, that just varies from agency to agency.

13 Q So with Greenville County, what is your policy
14 as reporting or not reporting Shalita Dawkins' statement
15 in this case?

16 A Our policy is that we take typed statements.
17 We have no policy that requires us to tape anyone or
18 video anyone.

19 Q If you had had this investigation from the
20 beginning and you had interviewed this defendant, would
21 you have done a typed statement as you have in this case
22 or would you have reported it as Greer did?

23 A I would have done a typed statement for both.

24 Q According to the defendant's statement, which
25 I'm sure you are aware of his statement; is that

1 correct?

2 A Yes.

3 Q Okay. Was anyone else present in the home
4 during the night of January 18th, 2011 while Shalita was
5 at work?

6 A Yes, the six-year-old sibling of Child .

7 Q And was he interviewed related to this case?

8 A Yes, the mother gave consent to have him
9 interviewed.

10 Q And when was that interview?

11 A That was January the 21st, 2011.

12 MS. SUSTAKOVITCH: Your Honor, at this time,
13 the State moves to admit a stipulation, State's
14 Exhibit 25, and request permission to publish it.

15 MR. MAULDIN: No objection.

16 THE COURT: Okay.

17 (WHEREUPON, State's Exhibit 25 is admitted into the
18 record.)

19 MS. SUSTAKOVITCH: State's Exhibit 25, we,
20 the undersigned, stipulate to the following facts:
21 the state and defense stipulate that the victim's
22 brother, P.A. , was questioned as to his
23 knowledge on this matter. He could provide no
24 firsthand knowledge of how his sister Child
25 sustained the injuries at issue in this case.

1 BY MS. SUSTAKOVITCH:

2 Q Investigator, you stated that the mom consented
3 to have P.A. interviewed; is that correct?

4 A That's correct.

5 Q And, uh, let me take you to the defendant's
6 statement. Were you aware that he had stated the morning
7 of January 19th, 2011 that he had gone to a convenience
8 store?

9 A Yes. I was.

10 Q What's the name of the convenience store that
11 he stated he went to?

12 A It's the Kwik Stop in the city of Greer.

13 Q Did you come into possession from an
14 investigator with Greer the video from that convenience
15 store at the Kwik Stop?

16 A Yes.

17 Q And who did you receive that video from?

18 A Detective Arteburn.

19 Q Did you, from taking it from Detective
20 Arteburn, did you look at the video and make an attempt
21 to see if, in fact, you could locate this defendant on
22 the video?

23 A Yes, I did.

24 Q And can you describe whether you were able to
25 locate this defendant on the video?

1 A The video quality was so poor, I could not
2 determine anything from the video.

3 Q And so to be clear, your testimony is not that
4 he was not --

5 MR. MAULDIN: Your Honor, object to the --

6 THE COURT: Don't lead. Don't lead.

7 BY MS. SUSTAKOVITCH:

8 Q Investigator, do you have any idea if he's on
9 that video or not?

10 A I do not.

11 Q Okay. Did you, uh, as the lead investigator
12 for Greenville County Sheriff's Office, have any contact
13 with this defendant?

14 A I did.

15 Q And on what date did you have contact with him?

16 A That was on January the 20th.

17 Q And what, if anything, did you advise him?

18 A That I was the lead investigator and that the
19 case had been given over to the Greenville County
20 Sheriff's Office and that I would like to talk to him.

21 Q Okay. Did you -- I want to take you back to
22 the hospital. Are you aware of when Child was taken off
23 life support in this case?

24 A Yes.

25 Q And when was that?

1 A That was on January the 23rd. I got a call
2 from the coroner, Scott Ramsey, that Child was going to
3 be taken off life support. And that was done at 7:30 p.m.

4 Q Uh, did you go to the hospital when you
5 received that call?

6 A Yes. I responded immediately, as soon as I got
7 the call.

8 Q And what, if anything, did you observe at the
9 hospital when you got there? Did you come into contact
10 with Shalita Dawkins?

11 A I did. I located her in the room with Child .
12 She was standing there over the bed with her. I know she
13 would be very sad. Like I said before, grief-stricken.
14 That's the only way I know how to explain it.

15 Q After Child did pass away, did you have any --
16 did you attend the autopsy in this case?

17 A I did. That was conducted on Tuesday, January
18 the 21st, 2011 by Dr. Fulcher. I was present there. The
19 Forensic Unit Adam Davis was there and Coroner Scott
20 Ramsey was there.

21 Q Okay. I just want to clarify the date of the
22 autopsy. What do you recall that being again?

23 A It was Tuesday, January 25th.

24 Q Okay. Please answer any questions defense
25 counsel has.

CROSS-EXAMINATION

BY MR. MAULDIN:

Q Officer, I don't have but a few. Uh, the, uh, involvement of your agency, that is, the Greenville County Sheriff's Office was, uh, -- and I'll just put it this way -- at the request of the Greer Police Department.

A Yes, sir.

Q The location of the residence in this case is in Greenville County.

A Correct.

Q So you have an overlapping jurisdiction basically. Is that fair to say?

A Yes.

Q And this case would have normally been handled throughout by the Greer Police Department because REDACTED is also in the city limits of Greer.

A Yes.

Q But it was decided about 4:15, I think, and you said about 4:00 p.m. you wouldn't dispute 4:15?

A No, sir.

Q Okay. About 4:15 on the afternoon of the 19th, the -- a decision was made for Greenville Sheriffs Office to participate?

A Yes, sir.

1 Q And as the officer on call, that then became
2 your responsibility. You were the lead dog?

3 A Correct.

4 Q All right. Now, you went to the hospital and
5 you did have a, uh, conference. Again, I don't want to
6 ask you what anybody, what some third party might have
7 said. But you had a meeting or briefing with Officer
8 Pressley and Officer Fortenberry?

9 A Correct.

10 Q And that conference would have had to have
11 occurred after four o'clock?

12 A Yes, sir.

13 Q All right. And is -- am I -- the prosecutor
14 asked you about the statement of the two people?

15 A Yes, sir.

16 Q You would have been informed that my client,
17 Daron Davis, had met with these officers?

18 A Yes, I was.

19 Q You were told that?

20 A Yes, sir.

21 Q And you were told that a two-and-a-half-hour
22 audiotape had been made?

23 A Yes.

24 Q And it was at that time that you also learned
25 that no statement had been taken or attempted to be taken

1 from the mother?

2 A Yes.

3 Q So you then -- I'll use the term prioritized
4 getting a statement from her?

5 A Yes, sir.

6 Q All right. Okay. If you will just pardon me
7 one moment while I look for -- Okay. Here we go. All
8 right. So the prosecutor used the term "suspect". And
9 she said a moment ago, did you consider Shalita Dawkins,
10 at that time, a suspect in this matter. Your answer was
11 yes.

12 A Yes, sir.

13 Q Now, when you met with Shalita -- I'm going to
14 show you what's been marked as State's Exhibit number 16.
15 I, first of all, want you to look at it and see if you
16 can tell me what it is and can identify it first.

17 A This is a Greer Police Department Advisement of
18 Rights form.

19 Q All right. So this is the form that the Greer
20 Police Department used prior to taking a statement from
21 who they believed to be a suspect in any case, right?

22 A Yes, sir.

23 Q In other words, this is a preprinted form.
24 You've got hundreds of them. This one has Greer Police
25 Department at the top of it?

1 A Correct.

2 Q And it has Daron Davis' signature on it?

3 A Yes, it does.

4 Q And you've been present during the testimony.

5 We heard testimony yesterday about the officers getting
6 this signed before they proceeded with a statement from
7 the suspect.

8 A Correct.

9 Q And they also did it orally on the tape. You
10 heard that?

11 A Yes, sir.

12 Q You were here when we played that tape?

13 A Yes, sir.

14 Q All right. So I guess then, uh, Mr. Miller,
15 let me ask you then, did Shalita Dawkins -- did she --
16 y'all have those forms at Greenville Sheriff's Office,
17 don't you? They just don't say Greer Police.

18 A It's similar, yes.

19 Q Same stuff. It talks about the right to remain
20 silent, the right to have a lawyer present. You don't
21 have to talk?

22 A Correct.

23 Q And then before the police then speak to a
24 suspect, the suspect would need to say I understand all
25 that, I'm waiving all that, let's talk about it, right?

- 1 A Yes, sir.
- 2 Q And that's what this thing really does.
- 3 A Yes, sir.
- 4 Q You guys at the Sheriff's Office have one of
5 these that has Greenville Sheriff's Department on it?
- 6 A Yes.
- 7 Q All right. Did Shalita Dawkins sign one of
8 those? Does your file have in it a Shalita Dawkins'
9 waiver where she waived all her rights?
- 10 A No, she did not.
- 11 Q All right. Now, you say that you met with her,
12 I think you said the whole meeting was about an hour and
13 a half?
- 14 A Hour and a half to two hours.
- 15 Q All right. And the way you did yours was that
16 you met with her and you went through the information
17 orally in a conversation?
- 18 A Yes, sir.
- 19 Q And I guess you would have taken notes?
- 20 A Yes, sir.
- 21 Q You then would get this thing typed, correct?
- 22 A Correct.
- 23 Q I'm going to show you the Court's Exhibit now.
24 This is a Court's Exhibit. Court's Exhibit number 7.
25 That is the thing that the prosecutor showed you a minute

1 ago that you say was the resulting statement from Ms.
2 Dawkins?

3 A Yes.

4 Q And it's typed?

5 A Yes, sir.

6 Q Now, I'm -- I'm just curious. But this
7 conversation, you say, took place in a waiting room at
8 the hospital?

9 A Yes.

10 Q Did you have a typewriter? I mean, how did you
11 get that thing typed like that?

12 A There was a desktop computer in there.

13 Q Okay.

14 A Then I had a thumb drive which had our
15 different forms on it.

16 Q Okay. So you've got a thumb drive you took
17 with you that has a blank witness form?

18 A Correct.

19 Q And it's a -- it says it's a witness statement,
20 a witness statement form.

21 A Correct.

22 Q And you stick that in your computer. Then you
23 can actually convert your notes to type?

24 A Yes.

25 Q And all of that was what was happening in this

1 hour and a half?

2 A Yes, sir.

3 Q The prosecutor -- one moment, Your Honor.

4 (Pause.)

5 I'm just going to ask you this. It's not in
6 evidence. But you did have the occasion to, uh, -- did
7 you actually go to the Kwik Shop yourself to pick up that
8 tape thing that they had?

9 A No, sir.

10 Q All right. But was that done by the Greer
11 Police Department?

12 A Yes, it was.

13 Q So the Greer Police Department went and got the
14 tape. And by the time that you got it, it would have
15 been -- do you remember was it within a day or two?

16 A Yes, it was within a day or two.

17 Q Okay. So at some point, within a day or two,
18 the video surveillance material was turned over to you as
19 part of your investigation?

20 A Yes.

21 Q And you said you've had an opportunity to look
22 at it?

23 A Yes, sir.

24 Q And because of the equipment or the method of
25 video, you simply were incapable of speaking one way or

1 the other about people being at that store?

2 A That's correct.

3 Q All right. One minute please, sir. (Pause.)

4 Two more questions. I have to make sure from
5 my manager over here. You attended the autopsy. You
6 were present in the autopsy room. Would you describe
7 that as standard procedure for a law enforcement agency
8 to be present with a person, a deceased person has an
9 autopsy performed on them?

10 A Yes.

11 Q So that's normal?

12 A That's normal protocol for us.

13 Q All right. And then the other thing, the last
14 question now, we talked about the, uh, the other, Shalita
15 Dawkins. She was never charged with anything in this
16 case by the Greer Police Department, was she?

17 A No, sir.

18 Q Nothing further.

19 THE COURT: Any redirect?

20 MS. SUSTAKOVITCH: No, sir, Your Honor.

21 THE COURT: All right, sir. You can step
22 down.

23 MS. POALETTI: Your Honor, the State calls
24 Dr. Anthony Johnson.

25 THE CLERK: Dr. Johnson, please come forward.

1 Sir, please pause at the end of the bench. Place
2 your left hand on the Bible and raise your right
3 hand.

4 **ANTHONY JOHNSON**

5 having first been sworn, testifies as follows:

6 **THE CLERK:** Thank you. Please be seated.
7 Please state your name for the record.

8 **THE WITNESS:** Dr. Anthony Johnson.

9 **DIRECT EXAMINATION**

10 **BY MS. POALETTI:**

11 **Q** Dr. Johnson, will you tell the jury what kind
12 of doctor you are.

13 **A** I'm a pediatric ophthalmologist.

14 **Q** How long have you been an ophthalmologist?

15 **A** I been in practice for 26 years.

16 **Q** All right. Will you tell the jury starting
17 with your undergraduate education where you went to
18 school and what you studied?

19 **A** I will. I went to Texas Tech University for my
20 undergraduate education with a chemistry nature followed
21 by University of Texas Medical School in San Antonio.
22 After that, I did a general surgery internship followed
23 by an ophthalmology residency at Tulane in New Orleans.
24 Spent a year following that in Atlanta doing a pediatric
25 ophthalmologist fellowship.

1 Q All right. And when did you start your
2 practice in Greenville?

3 A In June 1986.

4 Q Was there a period of time when you were the
5 only pediatric ophthalmologist in Greenville?

6 A Yes. I was the only pediatric ophthalmologist
7 for 19 years.

8 Q Are you member of any professional
9 associations?

10 A I am a member of a number of state and, uh,
11 national organizations including the American Academy of
12 ophthalmolbgy, the American Medical Association, South
13 Carolina Medical Association, Greenville County Medical
14 Society, the American Association of Pediatric
15 Ophthalmology, the American College of Surgeons. I think
16 that's all.

17 Q Are you board certified?

18 A I am. I was --

19 Q Have you --

20 A I was board certified in 1987 and recertified
21 in 2006.

22 Q All right. Have you testified in the courts of
23 South Carolina before?

24 A I have.

25 Q Which ones?

1 **A** I've testified in district courts in Laurens,
2 Anderson, Pickens, Greenville and Spartanburg and in
3 family court in Greenville and Laurens.

4 **Q** Have you been qualified as an expert in those
5 courts?

6 **A** I have been qualified as an expert in pediatric
7 ophthalmology.

8 **MS. POALETTI:** All right. Your Honor, at
9 this time, the State moves that Dr. Johnson be
10 qualified as an expert in pediatric ophthalmology.

11 **THE COURT:** Any voir dire?

12 **MR. MAULDIN:** None.

13 **THE COURT:** Any objection?

14 **MR. MAULDIN:** No.

15 **THE COURT:** All right.

16 **BY MS. POALETTI:**

17 **Q** Did you have a chance to exam the eyes of Child
18 on January 19th, 2011?

19 **A** I did.

20 **Q** Can you tell the jury how the process works in
21 a consent in the PICU?

22 **A** There's a team of doctors involved that if a
23 child is admitted and has some unexplained injuries. The
24 team typically involves the pediatric intensivist and
25 often pediatric neurosurgeon, pediatric radiologist, I'm

1 often the pediatric ophthalmologist, and the forensic
2 pediatrician. In this particular case, I had a call a
3 little bit after 1:00 p.m. on January 19th from the
4 Pediatric ICU asking me if I can come and examine this
5 child's eyes.

6 Q All right. Uh, before you went to see her, did
7 you call in any specific orders to the hospital related
8 to your exam that you were going to do later?

9 A Yes, I called and asked them to dilate her eyes
10 so I could get a good look at the retina all the way up
11 to the peripheral retina. That's a standard protocol for
12 a consultation like this.

13 Q And so when you arrived at the hospital and was
14 actually able to stand over her and look into her eyes,
15 her eyes had already been dilated; is that correct?

16 A Yes.

17 Q Would you tell the jury what you saw when you
18 looked into Child's eyes?

19 A Yes. External examination, there was just her
20 face and her eyelids were completely normal indicating
21 there was no evidence of any external injury to her
22 eyelids or the surface of her eyes. The cornea was
23 clear. That's the clear part of her eye. The contact
24 lense would sit upon. The lense inside of her eye was
25 clear in both eyes. Looking at the retina to the dilated

1 pupil, extensive hemorrhaging in both eyes. When you are
2 looking at something that normally has no hemorrhage,
3 often it's easy to determine how much hemorrhage there
4 is. There often can even be even isolated small
5 hemorrhage depending on what the problem may be in.

6 In this examination, the hemorrhages were
7 throughout the retina in both eyes. In other words, you
8 couldn't identify a single hemorrhage here or there. You
9 couldn't count the hemorrhages. They were all running
10 together. The medical term for that is confluent. The
11 hemorrhages were confluent. Much like if you took paint
12 on a piece of paper with a paint brush and you took the
13 paint brush and touched the paper with the paint brush a
14 number of times. You couldn't tell where the individual
15 paint brush touches. It all just ran together.

16 You can tell by looking at some of the
17 individual hemorrhages. You can tell any of the shape
18 that remains in such an extensive hemorrhage. You can
19 tell based on the shape of the hemorrhage, the layer of
20 the retina. Even though the retina is microscopically
21 thin, it's like the film in a camera. Even though it's
22 microscopically thin, there are a number of cellular
23 layers that make up the retina. And the way that they
24 are oriented together causes a hemorrhage to be shaped in
25 a certain way.

1 You can tell if the hemorrhage is on the
2 surface of the retina. You can tell if it's within the
3 substance of the retina and you can tell if it's
4 underneath the retina. You can also tell with the
5 dilated pupil how far out in the peripheral part of the
6 retina the hemorrhages go. Initially, and even with an
7 undilated pupil, you can see right straight to the back
8 of the eye where the optic nerve is and where our 20/20
9 vision is.

10 But what's just as important is to be able to
11 look far out and away from the back part of the eye but
12 out in the peripheral part of the retina to see how
13 extensive the hemorrhages are. In her case, the
14 hemorrhages extended to the far peripheral retina and in
15 all layers of the retina. As I already described, you
16 couldn't really differentiate individual hemorrhages
17 because they all ran together.

18 Q Dr. Johnson, would the diagram of an eye help
19 you explain the extent and the location of these injuries
20 better?

21 A I think it would.

22 Q I'm going to project one up here. All right.
23 Will you -- first of all, go back and describe and point
24 out to the jury where you're talking about, these multi-
25 layers of hemorrhaging in the retina.

1 **A** Just for orientation, this is the front of the
2 eye right here. This is the cornea where a contact lense
3 would fit.. The side of the eyeball has been removed in
4 this artist rendition of what the retina look like. As
5 we look from the front of the eye straight through the
6 lense all the way to the retina, and this is straight
7 back. This is where the business part of our vision is,
8 which is labeled the macula or that little depression is
9 right there.

10 The peripheral part of the retina is way out
11 here. As you can imagine, you have to look in from this
12 angle. The larger the pupil is, the more that you can
13 see the peripheral part of the retina. I described, uh,
14 the hemorrhages were throughout the retina, every place
15 you could see extending out to the peripheral retina.
16 You couldn't see individual blood vessels like this. In
17 fact, these are the sources of the bleeding that cause
18 all of this blood to be scattered throughout the back of
19 the eye.

20 **Q** So that's what the back of a normal healthy eye
21 looks like.

22 **A** This is the back of a normal healthy eye. And
23 you also notice these different layers that the artist
24 has identified. The retina is this layer right here.
25 I'm outlining the rest of the retina as it comes around.

1 This next layer, uh, labeled choroid is sandwiched
2 between the retina and the square of this bluish right
3 portion is the structural part of our eye. It gives it
4 some integrity. But this layer right here is the
5 choroid. It's a very vascular layer.

6 And, uh, in this particular case, the only
7 additional finding I did not describe was the hemorrhage
8 that was underneath the retina pushing the retina up in a
9 tent-like fashion that I described as funnel-shaped. And
10 it was due to this layer right here explosively
11 hemorrhaging. And the hemorrhage has no place to go. It
12 can't go through this structural part of the eye. It can
13 only push the contents underneath the retina forward. In
14 fact, in one of the images on the CT scan, you could even
15 see this portion of the hemorrhage as well.

16 Q I'm going to show you that picture in just one
17 second to make sure we're talking about that same picture
18 in the CT scan. What about the finding of ischemic
19 retina?

20 A She also had ischemic retina out in the
21 peripheral part of the retina. Ischemic retina is just a
22 fancy medical term that describes the loss of blood
23 supply. Even though all of this tissue is, uh, is, uh,
24 form a cellular point of view, it's very complex. It's
25 also very delicate and very fragile. It's very dependent

1 upon a blood supply. It's -- as it -- as this develops
2 in a developing infant prior to birth, this is an
3 extensive of the brain. So it's very fragile tissue just
4 like brain tissue. If anything is disruptive enough to
5 this blood supply that's coming through the optic nerve
6 and then branches out in the smaller and smaller and
7 smaller little vessels to get all the way out to the
8 peripheral retina, if any of these vessels are
9 compromised from this disruption of the retina, then the
10 tissue beyond where the disruption occurs swells and has
11 a grayish appearance. You can tell that it's already
12 dead tissue. So this is -- this is a finding that only
13 happens with very extensive and disruptive injury like
14 this.

15 Q All right. Ms. Cook, will you turn the lights
16 back on?

17 Dr. Johnson, what are injuries like this to the
18 eyes of a five-month-old tell you about what has happened
19 to her?

20 A As we all know, if we look into this much at
21 all, you can find a list of things that cause retinal
22 hemorrhages. But when you look at the overall
23 constellation of findings with this child and no
24 explanation for what's happened to this child, really the
25 only thing that can cause this extensive hemorrhaging is

1 repetitive forceful back and forth motion of the head and
2 torsional motion side to side repetitively and repeatedly
3 causing the jelly material that takes up that whole
4 cavity in the normal eye that's attached to the retina,
5 which has mass, it's got weight to it. As that vitreous
6 jelly -- which is a protein jelly -- as it forcibly and
7 repetitively is moved back and forth, it tugs on the
8 retina.

9 Q Does it do that in certain places in the eye?

10 A It does it more specifically at its insertion
11 point where it is attached. It's very adherently
12 attached to the retina around the optic nerve, so right
13 back here, around the macula, along each one of the blood
14 vessels and out the far distant peripheral part of the
15 retina. So the vitreous, its jelly material is attached
16 in the peripheral part around the optic nerve, around the
17 macula. And with this forward and backward repetitive
18 acceleration, deceleration motion, this attachment,
19 especially right around the macula continues repetitively
20 tugging on this sandwich or tissue until it ultimately
21 breaks blood vessels and it causes this enormous
22 bleeding.

23 The reason that it's important to look in the
24 peripheral retina is because there's usually very little
25 activity out of the peripheral part of the retina.

1 Because of its dense attachment, when this jelly material
2 is forcibly tugging on the peripheral retina, even though
3 there are fewer blood vessels out here that ultimately
4 causes bleeding in the peripheral retina as well.

5 Q Dr. Johnson, Child had a four-inch skull
6 fracture. I'm showing you State's Exhibits number 19 and
7 20 from her skeletal survey showing that skull fracture.
8 Would you expect the type of retinal hemorrhages you saw
9 in Keris from a significant skull fracture like that?

10 A No, I would not expect retinal hemorrhages from
11 a skull fracture like that.

12 Q All right. So is it your opinion that the
13 mechanism of injury that caused the skull fracture
14 different from the mechanism that made her eye bleed?

15 MR. MAULDIN: Your Honor, I do object to the
16 form of the question.

17 THE COURT: Try not to lead.

18 MS. POALETTI: Your Honor, I asked him if his
19 opinion was that the same mechanism that --

20 THE COURT: What is his opinion as to the
21 cause of the injuries is the nonleading question.

22 MS. POALETTI: All right, Your Honor.

23 BY MS. POALETTI:

24 Q Let me ask about this. How do you arrive at
25 the opinion that the impact that caused that skull

1 fracture would not cause her eyes to bleed like they did?

2 **A** There are a number of consecutive series of
3 patients that have been studied that have been admitted
4 to the hospital over the years, not Greenville Memorial
5 Hospital, the most famous of these studies was from Sick
6 Children's Hospital in Toronto, specifically asking a
7 question will you expect to see retinal hemorrhages from
8 severe brain trauma. And of course, this consecutive
9 series of over 100 patients vary in age. And it was all
10 in the pediatric service as seen by a pediatric
11 neurosurgeon with multiple different reasons, car
12 crashes, falls from high distances and so on. And in
13 this series and in other series as well, there are about
14 three percent of patients who develop any retinal
15 hemorrhages from a severe brain injury.

16 In those cases, the history tells you what
17 happened to the patient. They also have other external
18 signs of whatever the injury might have been. In
19 addition, the hemorrhage in these cases is much different
20 than what we would see or what we have seen with this
21 child. These hemorrhages often are just isolated one,
22 two, three hemorrhages just in the back part of the eye
23 and not of the distribution and the magnitude of what we
24 just described.

25 **Q** Dr. Johnson, as you can see in those exhibits

1 in front of you, Child's brain was so swollen at 10:04
2 a.m. that the fracture that --

3 **MR. MAULDIN:** Your Honor, I object to the
4 form of the question.

5 **THE COURT:** Yeah. Y'all come up here for a
6 second. Come up.

7 **(WHEREUPON, a bench conference is held off the**
8 **record.)**

9 **BY MS. POALETTI:**

10 **Q** Would an increase in intracranial pressure
11 cause retinal hemorrhages like Child had?

12 **A** No, they would not.

13 **Q** Would resuscitation efforts ---

14 **A** No, they would not.

15 **Q** --- if a child quit breathing, cause retinal
16 hemorrhaging like we saw in Child?

17 **A** No, they would not.

18 **Q** She had been on life support for at least some
19 time before you looked in her eyes. Did that cause the
20 retinal hemorrhages that you saw ---

21 **A** No.

22 **Q** --- on Child?

23 **A** No, that would not cause retinal hemorrhages.

24 **Q** I want to ask you about the degree of force
25 required to cause this kind of damage and bleeding to

1 this child's eyes. Can you describe that to the jury?

2 **A** Yes. This would require enormous force. The
3 reason that we know that is because we know that enormous
4 force is generated from certain accidental causes. We
5 don't see retinal hemorrhages such as this. We also know
6 from, uh, others who have, uh, confessed to this type of
7 an injury that they've inflicted. They've demonstrated
8 the action that they've actually imparted to a child.
9 The findings, of course, were obvious in those cases.
10 The enormous amount of force that they described is what
11 we know must have happened to cause this type
12 hemorrhaging.

13 **Q** In conjunction with the other injuries that
14 Child had based on your training and experience and
15 expertise, were you able to give this jury an opinion to
16 a reasonable degree of medical certainty as to whether
17 these injuries to her eye were inflicted or accidental?

18 **A** Yes. These injuries to the eyes are clearly
19 inflicted injuries.

20 **Q** And to be clear, not caused by whatever caused
21 that skull fracture?

22 **A** Yes. I don't think there's any question that
23 the skull fracture is caused by some type of impact. But
24 I think that's totally different than what's caused the
25 retinal hemorrhages.

1 Q Answer any questions Mr. Mauldin might have for
2 you.

3 MR. MAULDIN: One moment, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. MAULDIN:

6 Q Uh, you, uh, said on direct that your, uh,
7 involvement in the evaluation of this particular
8 situation, this particular patient was some time -- I
9 think I wrote down 1 p.m. was when you received some
10 notice and without repeating what anybody else told you.
11 Is that a correct time frame for when you would have then
12 begun to do something?

13 A Yes, sir.

14 Q All right. And you have testified today about
15 what your findings were when you actually were at the
16 hospital looking into the dilated pupils of this patient?

17 A Yes, sir.

18 Q And that examination by you would have been
19 after, I guess, after you would have had an opportunity
20 to review some material that had been produced, CAT scan
21 material, skeletal survey and so forth?

22 A Uh, typically, when I get a call, whoever the
23 doctor is that calls will relay whatever information they
24 are aware of. If I have time, often, I will try to look
25 at the CT scan if it is available.

1 Q Did you have time in this case?

2 A In this case, I don't think the skeletal survey
3 was done. I didn't know about the skeletal survey. But
4 as far as the CT scan, I don't recall specifically. But
5 I think I probably did. Unless I just don't have time or
6 unless their server is not making the images available, I
7 have looked at that.

8 Q All right. So then going back. At some time
9 around 1 p.m., you received some sort of request or
10 notice.

11 A My office did. It was timed at 1:09.

12 Q 1:09?

13 A 1:09.

14 Q All right. And then you would have asked that
15 the patient's eyes be dilated?

16 A That was about 2:30.

17 Q And then how long does it -- I been to the eye
18 doctor before. Do you know how -- let's do it this way.
19 From the time you've asked that the child's eyes be
20 dilated until you actually looked in those eyes, can you
21 give me a time frame for that?

22 A That was about two hours.

23 Q So that was 4:30?

24 A Yes, sir.

25 Q So it was 4:30 p.m. Just to confirm now, Dr.

1 Johnson, uh, you're not just testifying. That is what
2 you really do believe was when you looked in this child's
3 eyes?

4 A Yes, sir.

5 Q All right. And, uh, when you looked in the
6 child's eyes and discovered the degree of retinal
7 hemorrhaging, she, at that time, was on the life support
8 system?

9 A Yes, sir.

10 Q And you --

11 A Totally unresponsive.

12 Q Right. And I'll just use the term -- I don't
13 know that it's been said in this case. I'll just use the
14 term brain dead.

15 A That would be a term that the intensivist or
16 the neurosurgeon would use. That was a specific
17 examination that was not done for about three more days.

18 Q All right.

19 A But her brain wasn't functioning much at all.

20 Q All right. And you made this examination in
21 her eyes some time after 4:30 or around or thereabouts,
22 4:30?

23 A Between 4:30 and 4:53.

24 Q 4:53, that's pretty specific.

25 A That's because that's when I handwrote a note.

1 Q Okay. All right. So at 4:53, you recorded
2 your notes. Now, the other question I had for you was,
3 as you are looking at that condition, are you then able
4 to, from that finding, from the limited situation that
5 you are looking at right there to determine how long ago
6 the retina was injured or the retinal bleeding would have
7 been caused by some back and forth move? Could you have
8 made that determination?

9 A You can't be specific about it, but you can
10 have kind of a range of time. An example would be what I
11 looked at that time was certain that it wasn't there a
12 month ago. It's certain it wasn't there two weeks ago.
13 Could it have been there a week ago? Could it have been
14 there four days ago? Could it have been there just a few
15 hours ago? Yes, all of those are possibilities.

16 Q All right. All right. Thank you.

17 MS. SUSTAKOVITCH: Your Honor, may we
18 briefly --

19 MS. POALETTI: Oh, wait.

20 MS. SUSTAKOVITCH: I apologize. Sorry.

21 MS. POALETTI: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. POALETTI:

24 Q Uh, Dr. Johnson, I'm showing you State's
25 Exhibit number 23. It's been admitted into evidence in

1 this case. Do you recognize that?

2 A Yes, I do.

3 Q What is that?

4 A That's one of the images from the CT scan that
5 specifically slices through the eyes. You can see where
6 this extensive hemorrhage is. It's more noticeable in
7 the left eye than the right. You typically don't see
8 that --

9 MR. MAULDIN: Your Honor, I object. This is
10 clearly beyond the scope of either direct or cross-
11 examination. I object to it.

12 MS. POALETTI: Your Honor, he asked him
13 about --

14 THE COURT: I overrule the objection. Go
15 ahead.

16 BY MS. POALETTI:

17 Q What time was that picture of her eye taken?

18 A The scan was about 9:40 a.m.

19 Q And then on the other side --

20 A Actually, it's labeled 10:04 on this one. I
21 guess that was when it was printed.

22 Q 10:04?

23 A Right. So this was six or so hours prior to my
24 doing a direct examination of her eyes.

25 Q Tell the jury what's significant about seeing

1 that on a CT scan.

2 **A** Any time you see the blood that's elevated into
3 the vitreous, recalling that I demonstrated and called in
4 the actual description that this was a funnel shaped
5 hemorrhage. That's where the bleeding from that choroid
6 vascular layer. It is explosively bleeding. It has no
7 place to go except to push the retina up into this
8 vitreous space. The significance of that is that
9 requires an incredible amount of force to cause that kind
10 of hemorrhage.

11 **Q** What about the fact that it's visible on the
12 CT?

13 **A** The fact that it's visible on CT scan is highly
14 unlikely to be able to see that unless the hemorrhage is
15 this extensive.

16 **Q** And that's at 10:04 a.m.?

17 **A** Yes.

18 **Q** All right.

19 **THE COURT:** All right. Any?

20 **MR. MAULDIN:** Nothing, Your Honor.

21 **THE COURT:** All right. Thank you.

22 May we release this witness?

23 **MS. POALETTI:** Yes, sir, Your Honor.

24 **THE COURT:** Thank you, sir. You can step
25 down.

1 **THE COURT:** You ready?

2 **MS. SUSTAKOVITCH:** Yes, sir, Your Honor.

3 **MR. MAULDIN:** Your Honor, you wanted a -- any
4 request for instruction?

5 **THE COURT:** You're going to put something up?

6 **MS. SUSTAKOVITCH:** We have one final witness,
7 Your Honor.

8 **MR. MAULDIN:** Oh, okay.

9 (WHEREUPON, the jury enters at approximately
10 2:39 p.m.)

11 **MS. SUSTAKOVITCH:** Thank you, Your Honor.
12 May it please the Court. The State calls Dr. Chris
13 Troup.

14 **THE CLERK:** Sir, would you please come
15 forward. If you would, please pause at the end of
16 the bench. Place your left hand on the Bible and
17 raise your right hand.

18 **CHRIS TROUP**
19 having first been sworn, testifies as follows:

20 **THE CLERK:** Please state your name for the
21 record.

22 **THE WITNESS:** Earl Christopher Troup, T-R-O-
23 U-P.

24 **THE CLERK:** Thank you.

25 **DIRECT EXAMINATION**

1 BY MS. SUSTAKOVITCH:

2 Q Dr. Troup, uh, what's your occupation, sir?

3 A I'm a Pediatric Neurosurgeon.

4 Q And where do you work?

5 A At the Children's Hospital at Greenville
6 Memorial Hospital.

7 Q Can you describe to the jury your educational
8 background?

9 A Starting?

10 Q Starting from college.

11 A College. I got a BS in Microbiology from the
12 University of Georgia. I went to medical school at
13 Worcester -- University of Medicine in Macon, Georgia. I
14 did a surgical internship at Carraway Methodist Medical
15 Center in Birmingham, Alabama. My neurosurgery training
16 was at the University of Massachusetts School of Medicine
17 in Worcester, Massachusetts. While there, I spent a year
18 at Boston Children's Hospital and the Brigham and Women's
19 Hospital as part of a neurosurgery program. And I did my
20 pediatric neurosurgery fellowship at St. Jude in Memphis,
21 Tennessee.

22 Q And sir, are you board certified?

23 A In general and pediatric neurosurgery, yes,
24 ma'am.

25 Q What are some of the duties of a pediatric

1 neurosurgeon?

2 **A** We take care of the surgical problems of the
3 brain, skull, skull base, spine, spinal cord, both
4 acquired and congenital problems.

5 **Q** And how long have you been a pediatric
6 neurosurgeon?

7 **A** 16 years.

8 **Q** How many children would you estimate in the
9 last 16 years have you seen in your field as a pediatric
10 neurosurgeon?

11 **A** Oh, heavens. 30 a day. I don't know.

12 **Q** Would it be in the hundreds or thousands or
13 what estimate?

14 **A** Oh, wow. Uh, thousands. Tens of thousands. I
15 don't know. I never been asked that question.

16 **Q** You stated 16 years?

17 **A** Yes, ma'am.

18 **Q** Have you had an occasion as a pediatric
19 neurosurgeon to treat children that present to you for
20 various medical emergencies?

21 **A** Yes, ma'am.

22 **Q** Uh, some that have been -- have you treated
23 some that have been there for accidental situations?

24 **A** Yes, ma'am.

25 **Q** Some that have been there in abuse situations?

1 **A** Yes, ma'am.

2 **Q** As a pediatric neurosurgeon, is it part of your
3 common practice to look and read CT exams?

4 **A** Yes, ma'am.

5 **Q** What is a CT exam?

6 **A** Uh, CT stands for computerized tomography.
7 It's a way that you take x-rays and the computer compiles
8 them in such a way you can see soft tissue better than
9 you can -- brain, those kind of things, better than you
10 can just x-ray would look at bones.

11 **Q** And in your, uh, -- in your practice as
12 pediatric neurosurgeon, have you had occasion to read
13 numerous CT examinations on the children, I think you
14 said thousands, that you've seen over the years?

15 **A** Yes, ma'am.

16 **Q** Have you been tested -- have you been qualified
17 rather as an expert in the courts of the state?

18 **A** Yes, ma'am.

19 **MS. SUSTAKOVITCH:** And Your Honor, at this
20 time, the State moves to admit Dr. Troup as an
21 expert in pediatric neurosurgery.

22 **MR. MAULDIN:** No objection.

23 **THE COURT:** Okay.

24 **BY MS. SUSTAKOVITCH:**

25 **Q** Dr. Troup, were you working as a pediatric

1 neurosurgeon on January 19th of 2011?

2 A Yes, ma'am.

3 Q Did you come into contact with Child ?

4 A Yes, ma'am.

5 Q On what date were you consulted related to
6 Child ?

7 A The day she came in. I don't have my records
8 in front of me to say exactly.

9 Q Would having a copy of your record refresh your
10 recollection as to that date?

11 A Yes, ma'am. That would be great.

12 Q Dr. Troup, have a look at this please to
13 refresh your recollection.

14 A Yes, ma'am.

15 Q All right. And on what date did -- I'll take
16 that back. On what date did you see Child ?

17 A It says 1/22.

18 Q All right. I'm going to show you what's marked
19 -- what's been entered as State's Exhibits 23, 22, 24 and
20 21. Did you have occasion to look at Child's CT exams
21 during the course of treatment?

22 A Yes, ma'am.

23 Q Let me back up first. When you were treating
24 or seeing Child on the 22nd, what was the purpose of your
25 consultation?

1 A I have to look back. I think it was to perform
2 one of the brain death examinations.

3 Q What is a brain death examination?

4 A It's an examination that tests the parts of
5 our, uh, brain, specifically our brain stem, to show if
6 it has any function. The brain stem is what makes your
7 heart beat, what makes you breath, what makes you do all
8 the things that keeps you alive that you don't have to
9 think about doing. And so you are testing -- those are
10 things you can test for at the bedside. If you don't
11 have those basic functions, there's no way you can be
12 alive. Then you are pronounced brain dead.

13 Q What were the result of Child's brain death
14 exam?

15 A She had no brain stem function and was
16 diagnosed brain dead.

17 Q Dr. Troup, I'm going to hand you State's
18 Exhibit 23. Can you tell what time the actual CT's were
19 done in Child's case?

20 A It says 1/19/2011 at 10:04 and 17 seconds.

21 Q All right. And this would correspond with when
22 the actual picture's taken through the scanner, I guess?

23 A Yes, ma'am. If you look at the others, like
24 that's 10:04 and 30 seconds. If you keep looking at the
25 top corner, there's a time stamp.

1 Q All right.

2 A That's a realtime time stamp that's as the exam
3 progresses.

4 Q All right.

5 A That's nothing that we put on there. The
6 computer time stamps it as it goes.

7 Q As a pediatric neurosurgeon, when you look at
8 State's Exhibit 23, what is that showing on the CT scan?

9 A Uh, there are two different types of windows
10 you can look at on the CT brain windows and then the
11 other is bone windows. So this is a brain window that
12 looks at soft tissue. It's very low in the base of the
13 skull. You can see the nose -- the top of the nose. The
14 eyeballs, the skull. In the eyeball where the arrow is,
15 there is a big bright spot. That shows a retinal
16 hemorrhage.

17 Q Dr. Troup, can you offer any opinion as to the
18 timeline on when that retinal hemorrhage may have
19 occurred?

20 A It's acute blood. That means that it is not
21 days old. Usually within hours.

22 Q Okay. Can you give any specific timeline as to
23 when that occurred though?

24 A Not based on that, no, ma'am.

25 Q I'm going to show you now what's been admitted

1 State's Exhibit 22. Can you, uh, look at this CT picture
2 and tell me what we're observing there?

3 A Yes, ma'am. As I was talking about, these are
4 the bone windows where you really don't see the brain at
5 all. It shows the outline of the bone better. In a
6 baby, a baby has growth plates in their skull. You see
7 some gaps in the bone back there. Those are normal
8 growth plates. That's a normal growth plate. That's a
9 normal growth plate. This is a separated growth plate
10 and that's a skull fracture right there.

11 Q Do you have an opinion or can you offer an
12 opinion about when that skull fracture may have occurred
13 prior to 10:04 on January 19th, 2011?

14 A Uh, based on this image and then the computer
15 will make a composite image called a 3D reformat where
16 you can see the entire extent of the fracture. The
17 fracture is separated. So usually, it takes a while for
18 the brain to swell enough to push the fracture apart. So
19 that's a separated fracture. So this looks like a
20 fracture that would have occurred at some time, uh, hours
21 earlier because of the separation of the fracture.

22 Q Okay. Let me show you finally what's been
23 entered as State's Exhibit 24.

24 MR. MAULDIN: 24?

25 THE WITNESS: It says 22, I think, sir.

1 BY MS. SUSTAKOVITCH:

2 Q Dr. Troup, can you tell us what we're seeing in
3 that photo?

4 A Uh, yes, ma'am. A CAT scan, as you are taking
5 it, the best way to visualize is like you took somebody
6 to BiLo and put them in a hand slicer and went boom,
7 boom, boom, boom, boom and made a spiral ham out of it
8 for lack of a better way to describe it. You take one
9 slice out and one slice out. The one with the retinal
10 hemorrhages with a slice down through this -- this is
11 right at the top of the head. It's a slice more up at
12 the up like this. And the bone is white. There should
13 be gray brain in here. The brain is jet black with
14 really no normal tissue that you can see.

15 Then, this lighter white between the skull and
16 the brain is a realm of blood. Then there's a realm of
17 blood in between the two halves of the brain. That's
18 blood between the brain and the lining around the brain.
19 The fancy medical term for it is a subdural hematoma,
20 which means the lining on the brain is the dura. And
21 this blood underneath that but outside of the brain
22 itself.

23 Q Now looking at this again, this CT was taken at
24 10:04?

25 A Yes, ma'am.

1 Q Looking at that photograph, does it tell you or
2 indicate anything to you to give you an idea of when
3 these injuries may have occurred to Child ?

4 A Uh, this was not the best slice to show of the
5 two different things. One, just like the blood that was
6 on the -- in the retinal hemorrhages, it's acute blood.
7 This is not days old blood. It's something that's
8 happened within the few hours to less than a few days.
9 Then, the brain itself is what you can see better on
10 other slices. You see no normal architecture of the
11 brain. It's all bland, swollen dying brain. That takes
12 hours to develop to that degree.

13 Q All right. I'm showing you what's marked as
14 State's Exhibit 21. We're going to project that image as
15 well, Dr. Troup.

16 A Yes, ma'am.

17 Q You can actually -- there it is. Can you --
18 with this exhibit, what are we seeing here? State's
19 Exhibit 21, what are we seeing in this picture?

20 A Actually, this was -- when I said you can see
21 it better on other images, this is what I was talking
22 about. This is a slice. It's kind of down in the middle
23 portion of the brain through the thickest part of the --
24 the widest part of the head. This is the soft tissue or
25 brain windows that I was talking about where you can see

1 the tissues inside. You can see the outline of the
2 bowling over there where you just see just bowl with all
3 dark inside. This is the soft tissue window like that
4 that's up there. You see a little bit of the blood
5 that's around the brain, that little white spot right
6 there.

7 This is the upper part of the brain, the lower
8 part of the brain, the cerebellum is peeking through a
9 little right there. There's a membrane between the top
10 part of the brain and the bottom part of the brain.
11 That's more blood kind of layered out on that lining
12 between the two. Then, you should normally be able to
13 see different types of tissue within the brain substance
14 itself.

15 If you ever heard some medical show where they
16 talked about gray matter and white matter of the brain.
17 The gray matter should be about that color and a ribbon
18 of that all around the outside of the brain. Then you
19 have some that's a little bit different color than that
20 called the white matter that's in here. Then you have
21 gray matter that's all deep inside. There should be very
22 distinct differences between those tissues.

23 What we see here is just monotonous black.
24 There's other than fluid, normal fluid spaces in the
25 brain which should be there but are completely

1 compressed, there should be nothing jet black inside the
2 brain like that.

3 Q Dr. Troup, to put this in non-medical terms,
4 what is this picture, if anything, showing?

5 A That's what I was getting at. With all that
6 black tissue, what it's telling you is that it's horribly
7 swollen and mostly dead brain. You can't really tell
8 life and death from the pictures. But this is swollen to
9 the point of dying brain throughout what's going inside
10 the head there.

11 Q Dr. Troup, looking at this photograph in Child's
12 brain taken at 10:04, would you have a medical opinion
13 about whether the injuries to this child could have
14 occurred say between 7:00 and 7:30? Would you believe
15 that looking at this picture?

16 A I think that would be almost impossible for
17 that much destruction of the brain to have happened in
18 that short a period of time. I think it was much longer
19 than just a three-hour window.

20 Q Dr. Troup, in your medical opinion, you have
21 now discussed the CT's in this case. Would you believe
22 that in your medical opinion it is possible for a child
23 to have lived with those injuries for say 10, 12 hours
24 and still be alive before they quit breathing?

25 A To be -- to have that degree of injury 12 hours

1 ago, no. It takes a while for the swelling to evolve.
2 So a child may live for hours after that kind of injury.
3 They would not be normal, but they might survive for
4 hours after an injury that would cause this type of
5 destruction.

6 Q All right. So I think -- and to clarify your
7 testimony. Looking at this, you do not -- let me pause
8 for a second, Doctor. Do you have an opinion, and I
9 perhaps -- do you have an opinion that after a child
10 suffers these kinds of injuries, would the child be
11 eating normally?

12 A No.

13 Q Would the child be acting normally?

14 A No.

15 Q Would the child be responding normally?

16 A Not normally, no.

17 Q Okay. And let me make sure I understand your
18 testimony. Uh, the constellation of injuries in Child's
19 case, how would you describe them?

20 A Uh, with the constellation of a skull fracture,
21 retinal hemorrhages, and subdural hematoma and this
22 widespread of destruction to the brain, you do not see
23 that with an isolated impact or an accidental injury.
24 We've had children ejected from cars, fall off second and
25 third story balconies and you see a lot of injury, but

1 this particular constellation or pattern of injuries are
2 seen in intentional, non-accidental injuries.

3 Q Okay. And, uh, in your medical opinion, if a
4 child suffered these injuries, say, the evening of the
5 18th, 10:00, 11:00, 12:00 o'clock, is it possible that
6 she would survive until the next morning before she quit
7 breathing?

8 A She may survive, but she would be profoundly
9 impaired by the next morning. She would not have been
10 normal. She clearly would have -- if you are saying a
11 full 12 to 24 hours earlier, then this would have been --
12 the child would have been very, very ill by that point.

13 Q And say this injury occurred hypothetically at
14 10:00, 11:00 or 12:00 o'clock on the 18th, would you
15 expect that child to be drinking a bottle at 6:00 a--
16 6:30 a.m. on the 19th?

17 A No.

18 Q Would you expect that child to be acting normal
19 at that point?

20 A No.

21 Q What ended up causing Child to die in this
22 case? What caused her breathing to stop?

23 A Uh, such massive brain swelling that it stopped
24 blood flow from going into her brain stem and the parts
25 of her brain that kept her alive. And she stroked or

1 infarced her brain stem.

2 Q Doctor, do you have any opinion, uh, you
3 mentioned several injuries to Child . Do you believe that
4 a skull fracture in this case could have lead to all the
5 injuries that you seen in this case?

6 A I'm not sure I --

7 Q Do you believe a blow to the head could have
8 lead to the retinal hemorrhaging, the subdural hematoma,
9 and the swollen brain that you see that it all came from
10 one?

11 A From one impact, no. It couldn't have for one
12 fundamental reason. The skull fracture could be a single
13 blow and probably was a single blow for a skull fracture.
14 But the best way to think about the brain is it's not
15 just a structure. If you ever made a jello mold that had
16 like grapes or fruit inside, it has different density.
17 So as you shake the mold, the jello shakes at one rate
18 and the grapes on the inside move at a different rate.
19 The blood vessels inside the brain, the blood vessels
20 around the brain, the blood vessels in the back of the
21 eye are that same thing. They are different densities.

22 So a single blow does not tear that many
23 vessels at one time. These injuries are caused by
24 repetitive violent acts where those tissues are sliding
25 back and forth on each other. It is not an, oops, I made

1 her fall kind of thing. This is a violent tearing force
2 inside the head is the jostling back and forth inside the
3 head and the back of the eye at different densities,
4 different speeds because of different densities. There
5 is no way a single fall from a height, a single drop
6 something on their head, a single impact can cause all of
7 these injuries. That is why it is not compatible with an
8 accidental mechanism.

9 Q Please answer any questions defense counsel has
10 for you.

11 A Okay.

12 MR. MAULDIN: One moment, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MAULDIN:

15 Q Dr. Troup?

16 A Yes, sir.

17 Q John Mauldin is my name.

18 A Yes, sir. Nice to meet you, Mr. Mauldin.

19 Q Uh, I've only got one or two questions for you.

20 A Yes, sir.

21 Q And the question comes from essentially the
22 last couple of questions that Madam Prosecutor asked you.
23 That is the single blow was essentially the focus of one
24 question. I'm going to carry it over into a single time
25 frame.

1 **A** Okay.

2 **Q** So you are very, uh, satisfied looking at
3 physical evidence that whatever it was that injured
4 Child's skull was not likely to have then been the cause
5 for the retinal hemorrhaging, for example.

6 **A** I'm not saying they are mutually exclusive.
7 I'm not saying there was a point in time where there was
8 a skull fracture and then at some other remote time there
9 was another injury. I'm saying that, yes, most likely,
10 in the violent event that caused the skull fracture,
11 these other things did occur, but it was not a single
12 isolated blow to the head.

13 **Q** Right. Not an isolated blow but very well
14 could have occurred in the same time frame, same time
15 frame.

16 **A** Yeah. I don't disagree with that.

17 **Q** Okay. That's what I need. Thank you.

18 **MS. SUSTAKOVITCH:** Nothing further, Your
19 Honor.

20 **THE COURT:** All right. Thank you, sir. You
21 may step down. He's released from subpoena.

22 Thank you, sir.

23 **MS. SUSTAKOVITCH:** Thank you, Your Honor.

24 **THE COURT:** Okay. Call your next witness.

25 **MS. SUSTAKOVITCH:** Your Honor, the State

1 rests.

2 THE COURT: All right. Madam Forelady,
3 Ladies and Gentlemen of the jury, this is one of
4 those times that I need to take up some legal
5 matters out of your presence. I'll get back with
6 you very shortly. Don't discuss the case.

7 (WHEREUPON, the jury exits at approximately
8 3:03 p.m.)

9 THE COURT: Anything?

10 MS. SUSTAKOVITCH: Nothing from the State,
11 Your Honor.

12 MR. MAULDIN: Yes, Your Honor.

13 Your Honor, I see -- (Pause.) I move for a
14 directed verdict, Your Honor. I'm going to give you
15 a case site that at least is the type of analysis
16 that I think the Court can certainly look at. The
17 case in State versus Hernandez decided by the South
18 Carolina Supreme Court on May 26th of 2009, State
19 versus Hernandez. I've got South Carolina and
20 Southeast Second.

21 THE COURT: What you got Southeast?

22 MR. MAULDIN: Southeast?

23 THE COURT: Yeah.

24 MR. MAULDIN: Uh, 677 S.E. 2d 603. That
25 might -- I think that's correct. I hope I'm reading

1 that right. See if that's Hernandez. I'll pass --

2 **THE COURT:** No, you are going to need it.

3 **MR. MAULDIN:** Here is essentially the
4 analysis, Your Honor, if you will. The State --

5 **THE COURT:** Give me one second. (Pause.)

6 **MR. MAULDIN:** Not Hernandez, Your Honor?

7 **THE COURT:** Yes, it is.

8 **MR. MAULDIN:** All right. The analysis that
9 I'm going to attempt to apply, the State's case here
10 is solely and exclusively based on circumstantial
11 evidence. There's been not one word that would
12 constitute direct evidence against the accused in
13 this case. Therefore, I believe that the -- in
14 Hernandez, Your Honor, the, uh, motion for directed
15 verdict was denied and subsequently reversed by the
16 South Carolina Supreme Court. I'm holding on it.
17 Yes.

18 And, uh, so what we're saying is, Your Honor,
19 when you have a case that's exclusive to
20 circumstantial evidence, then, uh, the type of
21 analysis that the Court has used there would apply.
22 In this particular case, every word of testimony in
23 this case, in this record, is a matter of
24 circumstantial evidence analysis. Therefore, we ask
25 that the Court take into account the nature of the

1 evidence and the proper analysis and grant the
2 directed verdict.

3 MS. SUSTAKOVITCH: Your Honor, do you --

4 THE COURT: Give me a second to read this.

5 MS. SUSTAKOVITCH: Okay.

6 (WHEREUPON, there is a pause.)

7 THE COURT: All right. He says there's not
8 substantial circumstantial evidence which would
9 warrant sending it to the jury.

10 MS. SUSTAKOVITCH: Your Honor, there is very
11 direct evidence in this case from the defendant's
12 own words that he was the primary caretaker of this
13 child from 2:30 on January 18th, 2011 up until the
14 point that he went to the bus stop. For 30 minutes.
15 This child was clearly injured during that time is
16 what the medical evidence in this case has proven.
17 We also have had medical evidence that has been
18 brought forth that says they don't believe the
19 injuries happened during the time that this
20 defendant says he was not present. There's more
21 than enough evidence to send this to the jury,
22 direct and circumstantial combined.

23 (WHEREUPON, there is a pause.)

24 THE COURT: Okay. Anything you want to tell
25 me, Mr. Mauldin?

1 **MR. MAULDIN:** The fact that they somehow got
2 direct evidence, his direct evidence was or his
3 statement was that he was in the presence or with
4 the child about two o'clock that afternoon until
5 about 12:40. That's in his information he gave to
6 the police. That is not what the Court means when
7 it talks about direct versus circumstantial
8 evidence.

9 There were literally hours when both of these
10 people were together with that child after 12:40.
11 Now, that then becomes an analysis of circumstantial
12 evidence. You have no eyewitness. You have no
13 confession. You have no fingerprint, blood or any
14 kind of -- no instrument with fingerprints on it, a
15 hammer or anything like that. Nothing. If this
16 child was in the presence of her parents for a
17 number of hours and the child died and the evidence
18 suggest either of these two parents is clearly
19 circumstantial. Either way, whether they were
20 trying Daron or whether they were trying the mother,
21 either way, it would have been circumstantial. And
22 there's no way they could explain that other than by
23 basing it on circumstantial evidence.

24 I'm not saying that a conviction can not rest
25 on circumstantial evidence. The Court knows better

1 than that. But when you analyze a directed verdict
2 motion, Hernandez is giving you a pretty clear idea
3 of what our Supreme Court thinks about that. Maybe
4 -- I ain't the biggest book lawyer in the world, but
5 that's what it looks like to me.

6 **MS. SUSTAKOVITCH:** You need to hear any
7 further, Your Honor.

8 **THE COURT:** Yeah. What do you want --

9 **MS. SUSTAKOVITCH:** I was just going to state
10 what Mr. Mauldin is arguing sounds like his closing
11 argument. The question in Hernandez is is there
12 substantial circumstantial evidence. We can debate
13 what constitutes direct and circumstantial. In a
14 homicide by child abuse case, a huge issue is who
15 had access to the child. What the State has
16 established in this case through the defendant and
17 the mother of the defendant [sic] is that this
18 defendant had sole care and custody of that child
19 from 2:30 until she got home at 11:45.

20 We've also established through this defendant's
21 statement and the mother, the mother didn't touch
22 the baby. When she came into the home, there was no
23 opportunity for her to abuse the child. We also
24 established through this defendant's testimony, his
25 statement and the mother, she was asleep that

1 morning and did not get out of bed. We put up
2 medical evidence in the form of expert testimony
3 that states that Dr. Troup doesn't believe this
4 injury occurred between 7:00 and 7:30 which is this
5 defendant's time that he left the home. There's
6 very, very substantial circumstantial evidence in
7 this case that would send this to a jury.

8 (WHEREUPON, there is a pause.)

9 THE COURT: All right. I'm going to --
10 viewed in the light most favorable to the State, I'm
11 going to deny your motion for directed verdict.
12 Okay.

13 MR. MAULDIN: All right, sir. Your Honor,
14 then I need to do the following if I could.
15 Obviously, I'm going to need to meet with my client.

16 THE COURT: Has he made a decision?

17 MR. MAULDIN: Yeah, I've got to meet with my
18 client and go over what you talked to him about --

19 THE COURT: Okay. All right. We'll take 15
20 minutes.

21 MR. MAULDIN: We'll need time to do that. We
22 also, Your Honor, would need to, uh, -- well, I'm
23 going to have to report to the court that before we
24 can then report where we're headed.

25 THE COURT: Okay. Let's do it.

1 **MR. MAULDIN:** All right. Please. Thank you.

2 **THE COURT:** Now with respect to --

3 **MR. MAULDIN:** Take exception, Your Honor.

4 **THE COURT:** All right. And with respect to
5 mere presence, I'm not going to charge that either.
6 He's either -- there is no allegation other than
7 innuendo in the questioning by the Greer police that
8 the -- your client and the mother acted together.
9 There's no evidence anywhere. So either he did it
10 separately or someone else did it separately.

11 **MR. MAULDIN:** Can I put something on the
12 record about --

13 **THE COURT:** Yeah. Sure.

14 **MR. MAULDIN:** The testimony from the medical
15 people, uh, ranges quite a bit in terms of time.
16 There was a quite a bit of time testimony.

17 **THE COURT:** Yeah.

18 **MR. MAULDIN:** But if you look at the
19 testimony that the mother returned to the residence
20 at 12:40 a.m. and the CAT scan was taken at 10:04
21 a.m., then you are talking about a period in excess
22 of nine, anywhere to nine and a half hours, that
23 both parties were in the house for the clear most of
24 that time.

25 If something happened to the child after 12:40

1 it was committed by either of these two parents
2 while the other parent was present which is
3 consistent with this evidence, that could be the
4 case, then that's why we need a mere presence
5 instruction. If one of the parents was either
6 asleep when something occurred by the other parent
7 or in the bathroom or in the other room or if the
8 parent responsible for inflicting the injuries took
9 the baby from the bassinet and took the baby into
10 the living room and that's where the injuries were
11 inflicted, there are any number of combinations that
12 are available for this jury to consider and mere
13 presence would clearly apply there. Both of them
14 were in the house the whole time.

15 **MS. SUSTAKOVITCH:** Your Honor, the State has
16 handed to Mr. Mauldin, up to the court as well,
17 State versus Stokes, 528 S.C. 2d 430, which is a
18 child abuse case, Your Honor. The defendant was on
19 trial for assault and battery with intent to kill a
20 two-year-old.

21 The court -- excuse me -- starting on page 7,
22 in discussion of its holding on the mere presence
23 charge, which was rejected in that court and that
24 decision was upheld. It was objected by the trial
25 court and the conviction was reversed on other

1 grounds. The court says generally a mere presence
2 charge is appropriate under two circumstances. If
3 there's a doubt as to whether the defendant is
4 guilty as an accomplice to a crime or in a drug
5 case, it would have to be -- in this case, it's not
6 a drug case. The state is alleging some sort of
7 accomplice liability.

8 Top of page number 7, Your Honor, the State did
9 not attempt to convict Stokes on any theory of
10 accomplice liability. Under the State's view of the
11 evidence, Stokes is the sole person present and
12 committed the assault himself. He maintained that
13 he was not present and there's no view --
14 consequently, there was no view of the evidence
15 which would support a charge on mere presence and
16 the trial judge correctly rejected the request.

17 **THE COURT:** Yeah. I -- uh, yeah. Your
18 client specifically rejected, he rejected that the
19 mother -- he wasn't there when the mother did it.
20 There's no evidence -- I'm not going to charge it.
21 Okay. Y'all ready?

22 **MS. SUSTAKOVITCH:** Yes, sir, Your Honor.

23 **THE COURT:** You ready?

24 **MR. MAULDIN:** Yeah, Your Honor.

25 **THE COURT:** Okay. All right. (Pause.)

1 Uh, I am not going to charge anything about
2 accomplice liability with respect to the homicide by
3 child abuse.

4 **MS. POALETTI:** Yes, sir, Your Honor.

5 **THE COURT:** That is part of the law but
6 that's not -- that's not applicable.

7 **THE BAILIFF:** Ready, Judge?

8 **THE COURT:** Yep.

9 (WHEREUPON, Court's Exhibit 8 is marked for
10 identification purposes.)

11 (WHEREUPON, the jury enters at approximately
12 10:01 a.m.)

13 **THE COURT:** All right. Madam Forelady,
14 Ladies and Gentlemen of the jury, welcome back. I
15 hope y'all had a pleasant evening. As I told you
16 yesterday, we have completed the first two parts of
17 the trial. Y'all paid close attention, followed
18 your oath up to this point. I want you to continue
19 to do that as we move into the third part of the
20 trial which are the arguments, the closing arguments
21 where these attorneys will advocate their positions
22 to you. So at this time, I turn it over to the
23 attorneys. All right.

24 **MS. SUSTAKOVITCH:** Thank you, Your Honor.
25 May it please the Court.

1 **THE COURT:** Yes, ma'am.

2 **MS. SUSTAKOVITCH:** Mr. Mauldin.

3 Who and what is this case about? It's about a
4 little girl whose life was taken from her. It's a
5 search for justice, a logical, commonsense search
6 for justice for the person who is responsible. This
7 is a court of justice and it's a search for the
8 truth.

9 I told you at the beginning that your task was
10 to look at all the evidence using a clear head with
11 an open mind and follow it through this case. My
12 job is to present that evidence to you. I told you
13 that your biggest tool was your common sense.

14 The defense has a job. He is to zealously
15 defend his client within the bounds of the law. To
16 that end, oftentimes what happens, the defense tries
17 to take the focus off the evidence. To take your
18 eye off the ball. The truth is right here in front
19 of you. Don't look there. Look over here. Look at
20 the shiny object over here. Don't believe what's
21 right in front of you. Get yourself all confused
22 about even the simplest and most straightforward of
23 evidence. It's to cloud the facts and distort
24 reality.

25 I told you at the beginning of this trial that

1 the burden of proof falls squarely on the state.
2 And we welcome it. Every defendant is entitled to a
3 fair trial. And at the end, if the State has met
4 its burden of proving beyond a reasonable doubt that
5 the defendant has committed a particular crime, a
6 victim is entitled to justice.

7 This defendant -- first, what is reasonable
8 doubt? We're going to go through a few things.
9 It's a word and people throw it around. Proof
10 beyond a reasonable doubt. It's not an unreasonable
11 doubt. It's not proof beyond anything possible.
12 It's not proof beyond any and all doubt. It's
13 beyond a reasonable doubt. It's proof -- one way to
14 put it is its proof that once you've heard all the
15 evidence in this case and you go back to deliberate
16 and you've reached your verdict, that when you cast
17 it, you don't hesitate. That was your verdict based
18 on the evidence and a logical search to that end.

19 The elements of homicide by child abuse, Judge
20 Miller is going to instruct you. But very briefly,
21 the State has to prove that Daron Davis caused the
22 death of his five month old daughter, Child , by
23 either child abuse or neglect and the death was
24 under circumstances that manifested an extreme
25 indifference to human life. Now, whoever slammed

1 Child's head on whatever it was and cracked her skull
2 and led to subdural hemorrhage and retina
3 hemorrhages, that action is extreme indifference to
4 human life.

5 I touched on it briefly at the beginning of
6 this case. Evidence comes in all forms. It can be
7 physical evidence. In a murder, you might have a
8 gun. You might have bullets. You could potentially
9 have circumstantial evidence, and that's where you
10 draw an inference from a set of facts. Last night,
11 walking out of here late, you see water on the
12 ground. A car had raindrops on it. I didn't see it
13 rain, but I know it rained. Circumstantial evidence
14 lead you to a logical result.

15 You have direct evidence coming from the
16 witness stand. You have expert testimony. All of
17 this you take together. All of this evidence is
18 given the same weight. Nothing's better. All given
19 the same weight. At the end of the day, you have to
20 have all that evidence that proves to you beyond a
21 reasonable doubt that a defendant has committed a
22 crime, the crime.

23 I want to say very briefly the way this works
24 is I go first. I will sit down. Defense counsel
25 will talk with you. I won't get to respond. What I

1 want you to do is keep your eye on the ball. Don't
2 focus on rabbit trails. Don't look for a little
3 tiny something that's going to get blown up into
4 something it's not. I just put it out there because
5 in every case, that is something that's bound to
6 happen.

7 This case is hard. I thank you for your
8 service. I'd like to take you back to the evidence
9 in this case. I can't sugar coat it. Based on the
10 evidence in this case, there is no mystery person
11 that showed up at REDACTED and destroyed Child's
12 brain. Nobody appeared in that house. There are
13 but two people in this case who could have caused
14 those injuries, that is, Shalita Dawkins, the mother
15 of this child, or this defendant.

16 First, the medical -- I want to go through the
17 first element of this very briefly. We'll get to
18 who actually caused this. As far as the first
19 element, whoever, as I said briefly, caused the
20 injuries to Child's head exhibited an extreme
21 indifference to human life.

22 Dr. Fulcher said the injuries to her head would
23 be similar to something you would see in a motor
24 vehicle accident. Hard to imagine, Ladies and
25 Gentlemen, when you see this face, nobody, nobody

1 could possibly understand what lay underneath was a
2 destroyed brain when this child looks like this.
3 You would never think. But she did. She had a
4 large subdural -- the right half of her brain is
5 covered in blood. She had severe retinal
6 hemorrhages.

7 Dr. Fulcher, I asked him what could have caused
8 this. Everybody wants to know. You probably want
9 to know. I can not tell you. Dr. Fulcher said that
10 her head would have had to have been struck on
11 something that was soft enough to cause the degree
12 of damage in this case. We didn't have -- you
13 didn't see abrasions or cuts or, you know, was it
14 beside the sofa. I don't know. The wall? I don't
15 know. It's one of those things I told you from the
16 beginning we don't have the ability to tell you
17 because there were only two people who would know
18 what happened to this child on this earth, Child ,
19 and the evidence shows, this defendant.

20 You heard -- as to the extreme indifference to
21 human life, there's a series of events. It wasn't
22 just the blood. The defense tried to suggest with
23 Dr. Fulcher, if you recall, a theory, it seemed at
24 least to me, that maybe she had a blow to her head
25 and then it caused the subdural and the retinal

1 hemorrhages just happened. Everything blew up. The
2 brain just -- it all happened because it wasn't
3 injured.

4 Dr. Fulcher said, no. He didn't think that.
5 He thought it was two mechanisms. He thought it was
6 a blow and then shaking cause you don't get these
7 retinal hemorrhages from the blow. I think leaving
8 her with a Michael Jackson reference, if I can
9 recall about a baby dangling over a balcony and if
10 it had gotten a skull fracture. The fact of the
11 evidence was that this child went through a serious,
12 a shaking and a blow. What happened first? I don't
13 know.

14 Dr. Berning said that it was blunt force trauma
15 to the head. He said that it would be -- there's no
16 way that a person would be this severely hurt and
17 the person that did it not recognize it. It's --
18 that was his testimony. It's not an accidental
19 fall. It's not as if somebody's walking and bumps
20 into a wall in the middle of the night. That's not
21 it. It's a violent, intentional act.

22 Dr. Johnson, he was the pediatric
23 ophthalmologist. He said it was a, quote, enormous
24 amount of force. He said the hemorrhages were
25 caused by back and forth, side-to-side motion that

1 is consistent with shaking a child. Two mechanisms
2 of injury. He would not expect the retinal
3 hemorrhages that were diffused confluent, big words
4 for what he explained a piece of paper and paint
5 where you would see drops. But in her eyes, it was
6 all smeared together. The blood was just all
7 rubbing together. That goes to the nature of the
8 forensics in this case.

9 It is clear -- and then Dr. Troup, at the very
10 end, testified this was a horribly swollen brain.
11 That was his quote. Horribly swollen. That's
12 important because of time. To be horribly swollen,
13 it takes time. This was not accidental based on the
14 evidence. The skull fracture did not cause these
15 other injuries.

16 So it is clear that whoever inflicted the
17 injuries on Child did show an extreme indifference
18 to human life based on the evidence. I would put
19 that over here. Your next question is is it this
20 defendant or is it the child's mother, Shalita
21 Dawkins? I wish I could make it easy. But that's
22 it. The evidence in this case leads to one truth.
23 And it's this defendant.

24 Let's go back. January 18th, 2011. We hear
25 testimony Child is fine. She's fine. They go to

1 Quality Foods. They buy groceries. Mom comes home.
2 According even to the defendant's statement, Child
3 is fine. Mom goes to work at 2:15 and that's a
4 critical marker that I told you in my opening.
5 Critical marker. That is the point at which the
6 mom's personal knowledge, not what's she's being
7 told by this defendant, but what she actually knows.

8 You have this defendant and his statement to
9 police. He's talking about, well, she's looking
10 around. She's watching the ceiling fan. She's
11 watching everything going on. They asked him if
12 anything slowed her down in the last three days.
13 Nope. Nope. Better by 5:00. The mother, you heard
14 -- excuse me -- Shalita testified she could hear
15 Child crying at 5:00.

16 Also you consider the testimony of Dr. Berning
17 and Dr. Troup. They testified that after Child
18 would have received these violent injuries, she
19 would not have been fine. She would possibly appear
20 to be sleepy, knocked unconscious, but she would not
21 be fine. So the moniker of this whole thing is we
22 can take off the table that she was injured prior to
23 the mom leaving. The evidence does not support that
24 at all.

25 So then we go through -- we go through our

1 common sense analysis of what we heard. Consider
2 what this defendant and Shalita Dawkins said. The
3 mom's at work. All is well. Defendant said Child
4 is fine. She took her bottle. She went to bed.
5 Keep in mind mom does not know what happened at
6 11:00 p.m., 11:30, that last bottle feeding. Did it
7 go well? Did it not? Is he really tired? He's
8 been with the kids. Mom's off working and he's got
9 all this responsibility on him.

10 Mom has no idea what happened. What we know
11 is, the mom, according to both of them came home at
12 12:45. What is -- according to both of -- this --
13 this defendant says he walked in the room with
14 Shalita. She was never in that child's presence
15 without him. 12:45, they get in the bed.

16 You know, defense counsel, and I recall it as
17 Shalita Dawkins was testifying -- he got close and
18 was like how difficult would it have been to check
19 on that baby? Check on that baby. And you sit
20 there and you think to yourself, and Ms. Dawkins
21 testified, I didn't think anything was wrong.

22 When you come home -- you consider this. Say a
23 husband is off working. He comes home. He expects
24 his children are asleep. It's unreasonable for him
25 to think that his wife has destroyed their brain and

1 that he needs to go in there and look over them and
2 make sure they are okay. No. And vice versa.

3 In this case, her mom happened to be working
4 late. The reasonable expectation is, you heard
5 testimony from Dr. Smith. Child was normally
6 asleep. She was almost five months old and lucky
7 for these two parents, she would go to bed. Some of
8 us don't get that that early in a child's life. But
9 Child did. She would go to bed. So nothing is
10 amidst. Nothing's standing out. What would be odd
11 and strange is if Shalita had come over that
12 bassinet and started picking Child up and messing
13 with her. You don't wake a sleeping baby. You
14 don't wake one that you think is fine.

15 Anyway, Dr. Berning also did state -- let me
16 back up. The mom testified that she heard a baby
17 noise, a baby noise when she came in. She thought
18 Child was acknowledging her as a mom or a dad or
19 anyone with kids. You have young kids, you walk in,
20 you'd think they'd hear you. She again never said
21 she came over to inspect her. She heard a baby
22 noise and considered her to be asleep.

23 Dr. Berning testified that after suffering the
24 injuries in this case, she could very easily have
25 been unconscientious, unconscious, I'm sorry.

1 Appear like she was sleeping and make these
2 involuntary sounds, which to a mom could be that
3 she's acknowledging my voice. Shalita talked about
4 how she had no contact with her daughter. She went
5 to bed and she thought everything was okay.

6 We get to the next morning. We have mom in
7 bed. You saw the picture. You'll have it back in
8 the jury room with you. But you can see the
9 picture. Shalita said she sleeps close to the wall.
10 The defendant slept closest to the bassinet. The
11 bassinet is right here. She remembered waking up
12 hearing this defendant telling her that he was going
13 to go run P.A. out to the bus stop. It was just
14 a couple of doors down. He was going to go get some
15 cigarettes. Again, according to this defendant and
16 the mom, she doesn't get out of bed. She doesn't
17 have anything to do with her child.

18 Then you have this defendant come back. He
19 says the mom is still in the bed. Nothing seems
20 amidst. He has to creep around. Remember that.
21 He's creeping around. Don't want to disturb Child.
22 When he left, she was sleeping. And when he left,
23 mom is sleeping. Everything seems normal.

24 He's been -- I'll tell you one thing now, the
25 issue of this defendant going to the bus stop is not

1 in dispute. The fact of him going to the Kwik
2 Store, I know Investigator Miller testified you
3 couldn't see him on the video. Just consider that
4 he went. Okay. That is not something the State is
5 going to try to argue about at all. Say he was gone
6 for 20 or 30 minutes and he went to get his
7 cigarettes.

8 You hear how he comes back. He comes in and he
9 takes a shower. As the mom is sleeping, the
10 defendant talks about all the stuff he does with
11 Child . He comes back in with the bottle. He says he
12 propped it up. He's left her feeding herself. A
13 baby five months old in a bassinet with a bottle
14 propped to feed herself. When he comes back, the
15 bottle is still in there and then all this stuff he
16 says he does. He says he puts her on his chest.
17 This is the defendant's story. Again, nothing to
18 say this happened. This is just what he say
19 happened. Then he say Child , she's fine. She's
20 still fine. She was fine when he went to bed. Fine
21 when he fed her that morning. And now he came back
22 from the bus stop and guess what, she's still fine.
23 I don't believe she was fine.

24 At this point, he's the keeper of the
25 information, Ladies and Gentlemen. He knows what's

1 going on with Child . He says that she got clingy.
2 He put her in the bed. Remember this part? I'm
3 trying to imagine how a five-month old does all
4 this. I don't know if she was shimmying across the
5 bed or what this was, but she got real clingy. She
6 kept getting under him so he had to slide her over.
7 Of course, Shalita is asleep. She doesn't know.

8 The next thing Shalita knows, he's waking her
9 up. Child isn't breathing. At that point, that's
10 when everything starts spiraling. You hear about
11 the trip the pediatrician's office. Even this
12 defendant, when asked what Shalita's doing, she's
13 crying. She's crying.

14 They get to the pediatrician's office. This
15 thing starts getting worse. Child is not breathing.
16 EMS is called. It's getting really bad. At that
17 point, they get to the hospital and they are up in
18 the pediatric -- first, you hear about them down in
19 the Emergency Room.

20 Lieutenant Pressley told you how he arrived at
21 the scene. At this point, he's bringing a coworker,
22 Ms. Dawkins' grandmother, uh, mother, the victim's
23 grandmother cause she's upset. He testified that in
24 that room, as Child is laying on a gurney and
25 doctors are trying to save her, the defendant's just

1 looking ahead. Shalita's crying.

2 You go back up to Dr. Berning. He talks about
3 the CT when he explained to this defendant and
4 Shalita Dawkins your child is most certainly going
5 to die. The defendant, according to Dr. Berning,
6 was flat. No emotion. Leaves the room. Shalita's
7 crying.

8 At the beginning of this case, I believe the
9 very first words out of the defense's mouth was rush
10 to judgement. Rush to judgement. You will be the
11 finders of that. What you heard is how this
12 investigation just started unfolding. Nothing
13 criminal at all. Then, before you know it, there's
14 a child with a completely devastated brain.

15 Lieutenant Pressley happens to be there, sees
16 the defendant in the parking lot and says, in any of
17 these cases, it's good to talk to the mom and dad
18 and try to figure out what happened. They got a
19 statement from this defendant. And we're going to
20 talk more about that in just a moment. But you
21 heard, at the beginning of this case, the defendant
22 made a statement. He went down there. He
23 voluntarily did. It was always the intention, when
24 you listen to this interview of Greer Police
25 Department, go talk to Shalita. Throughout the

1 interview, they pretty much come after Shalita
2 trying to get the truth from this defendant. You
3 heard them.

4 Then, what I would estimate is probably the
5 smartest thing so that her statement wouldn't be
6 attacked, it was passed off for Investigator Miller
7 to do so that nobody could come back and say because
8 her mama worked with Greer Police that she got an
9 easier deal in the interview.

10 You heard about how Shalita's statement took
11 about an hour and a half to do. Investigator Miller
12 testified to you there were just different policies.
13 If you are concerned about this, there are different
14 policies, different agencies. Investigator Miller
15 testified to you that if he had investigated this
16 whole case from the beginning, he wouldn't have
17 recorded the defendant's interview anyway. He would
18 have gotten written statements from both of them.
19 The agencies have different policies.

20 He got a statement from the mother. The mother
21 in this case consented to have her son Parrish
22 interviewed. Very briefly so I don't forget this as
23 to P.A. , what a stipulation is, we know that the
24 night in question on January the 18th, it was Child ,
25 this defendant and P.A. .

1 A stipulation is an agreement by the parties.
2 And what this said was that he has no firsthand
3 knowledge as to how his sister was hurt. So the
4 State didn't call him. We reached an agreement
5 P.A. doesn't know.

6 Go back to the defendant's statement. You
7 heard it. When you listened to it, is that what a
8 father would sound like who had just been told by
9 Dr. Berning your child is going to die? Is that how
10 you would sound? If you listened as I listened to
11 it, you hear him focus in on the word "beat". Beat.
12 And it just jumped out at me because it's like this
13 defendant as he sits there right now, he knows how
14 this went down. And the word "beat" isn't
15 corresponding with what he did. He doesn't believe
16 he beat -- you heard the tape -- beat the shit out
17 of this baby. So whatever the blow was and whatever
18 the shaking was, beat the shit, excuse my language,
19 is not what he thinks it is.

20 I go back. I look into his interview. You
21 said the word "beat". What I'm saying is I don't
22 believe somebody, quote, beat my daughter. Later,
23 he says I don't think he's lying, talking about the
24 doctor. I certainly don't think she was beaten.
25 Then 58 minutes in, you can listen to it if you want

1 to again, it just -- he says I don't know of
2 anything that happened to her, not in terms of being
3 beaten. It's like you're so close. They were
4 close. They could have used the right word.

5 He also won't put it on Shalita in the
6 interview. He know he didn't do it. How hard would
7 that be to know that you did something and come out
8 and put it on the mother of your child? The officer
9 says do you think Shalita did it? No. I think
10 Shalita will tell you the truth. I can't tell you.
11 She would call the police at the drop of a dime. If
12 she, Child , had a scratch, Shalita would call the
13 police. Never had any question about her putting
14 hands on Child .

15 Then, this one statement, I don't know if it
16 jumped out to just me. But at one point, the
17 officer said if Shalita did something while you were
18 at the bus stop -- and they are talking about that.
19 And he goes, and excuse my language, it's his, not
20 mine. If Shalita did something while I was at the
21 bus stop, I'll put it like this, she fucked me in
22 the ass. She "f'd" me in the ass. What is that?
23 Who says that? It's not the words of a father who
24 has just been told his daughter is on a ventilator
25 and dying. It's words where you're -- it's self-

1 preservation. It's where you are trying to make
2 sure it's put off on anybody but you.

3 The police knew her head just didn't explode.
4 They kept coming back to that. He mentions how the
5 roles are reversed in this family. She is the
6 breadwinner. She's 23. He's 40-something. I may
7 be hard on a man. I don't know. She's out there
8 making a paycheck. He's having to take care of
9 three kids. It's just not a normal dynamic.
10 Nothing wrong with it. But I would think it would
11 put stressors on any man. Talk about rush to
12 judgement.

13 When you listen to that interview, the
14 detectives -- did you not think -- you consider.
15 When you listen to that interview again, the
16 officer, "Help me. If there's somebody else, that
17 is who I want. What we're looking for is the truth
18 of what happened to Child . If it's you, we want to
19 know that. If it's Shalita, we want to know that."
20 If you had knowledge of what happened, you're in
21 trouble either way.

22 A key to this and it comes at the end of the
23 interview, but after he goes on and on and, I
24 believe Sergeant Fortenberry, he just sort of sums
25 up what's going on here. From the time Shalita got

1 home at 12:35 in the morning, I'm trying to go back
2 through the chronology and all that, up to the time
3 you noticed Child having breathing problems, she
4 hadn't picked Child up, held her between that time,
5 between 12:35 when y'all got home at 1:45 or 2:00 in
6 the morning, because the baby's in the bassinet, up
7 until that time when you put the baby on your chest
8 in the morning after you had gotten back from the
9 bus stop, Shalita had not picked up the baby at all.
10 Daron says -- Daron Davis says right. So Shalita
11 can't say the baby was fine at 12:35, you see what
12 I'm saying?

13 The baby wasn't fine at 12:35. The evidence
14 will show that something bad happened. Child was
15 injured before her mother got home. Take the
16 statement for what it is. It's self-preserving
17 lies. To not convict this defendant, you have to
18 believe that Shalita did it while he was at the bus
19 stop. We're going to go into that more in just a
20 second.

21 The defense might ask you why didn't they both
22 get charged. The question in this case would be
23 with the facts of this case, why would you charge
24 both? It would be horrible to be accused of killing
25 your child when you didn't. When the State has the

1 evidence to prove who committed the crime, you don't
2 just put two parents in a cage fight and see who
3 comes out. The criminal justice system is better
4 than that. That would be a horrible result.

5 The defendant is charged with homicide by child
6 abuse, not murder. The State is not and never has
7 been trying to prove that he committed murder. I am
8 not standing here telling you that I believe this
9 defendant on January 18th, 2011 woke up with the
10 intention of killing his child. What I'm telling
11 you is that the evidence shows that something went
12 very wrong. We can't prove to you and we don't have
13 to prove to you what was going on in his head, what
14 made him snap. There's no way the State can do
15 that.

16 As far as a rush to judgement, the interview
17 speaks for itself. You see how Greer Police
18 dispatched. You see how forensics responded. You
19 may have wondered why we put in the picture of this
20 prescription bottle. It's a small nothing in the
21 big screen. It's really to just show you here, you
22 have forensics in there. They're taking photographs
23 of everything. They see a pill bottle that says
24 Shalita Dawkins. It happens to be an antibiotic.
25 They don't know that. They are in there looking for

1 anything that could tell them what happened. Could
2 have been relevant. Just wasn't.

3 You go back to the fact that this defendant has
4 married himself to a window of time where he says
5 Child is fine. When the mom got home, the mom
6 didn't get up with her. He says Child is fine in
7 the morning. He says when he goes to the bus stop
8 she is fine and when he got back, she is fine. It
9 is his fantasy defense to get out of that house for
10 30 minutes in hopes that just one of you bites.

11 What you have in this case, number one, is this
12 testimony of the mother that she never got out of
13 bed. But even if any of you are even possibly
14 doubting that, the medical evidence, and I'll touch
15 on that. There are four main findings in this case.

16 Retinal hemorrhages. We don't know when they
17 happened. We know that these all happened at the
18 same time. Let's have that be a given. You heard
19 testimony. We don't know when the retinal
20 hemorrhages happened. They can't time it. They are
21 acute. It could be up to a couple of days, right?

22 Subdural hematoma. Can't time that. Same
23 thing. Skull fracture, can't time that. What was
24 important was the swelling in her brain. You heard
25 two doctors testify to you this is dead dark brain.

1 It takes a while to swell. So the only thing that
2 the defendant has set up in this case for him to win
3 and you have to believe that Shalita got up while he
4 was at the bus stop and did this horrific thing. It
5 doesn't work.

6 The medical evidence, Child was there at 10:04.
7 Dr. Berning was asked do you think these injuries
8 could have happened in the last three hours? No.
9 The swelling is more consistent with 8 to 12 hours.
10 It's been going on a while, which is consistent with
11 happening before the mom got home.

12 You heard Dr. Troup. Do you think these
13 happened, this swelling in her brain happened
14 between 7:00 and 7:30? That's how we know Daron is
15 lying. Child was not fine. I have no idea.
16 Probably didn't. You heard the testimony that after
17 she was injured, she was not fine. She wouldn't be
18 taking a four-ounce bottle.

19 Ladies and Gentlemen, the evidence in this case
20 has been laid out to you as far as the ability of
21 the mother to have done this. It's not fair. The
22 medical evidence, the only time that the defendant
23 himself, and I remember in his interview, you have
24 the interview, but there is a place where he says --
25 it's finally pretty clear to him that this is not

1 working. It's not working.

2 He says, well, if it happened, it happened
3 while I was at the bus stop. The bus stop. We know
4 that medically it didn't happen. Shalita didn't
5 think about -- even if we did not have medical
6 evidence in this case, even if no doctor could come
7 into this court, Ladies and Gentlemen, this case
8 would still be here. If Dr. Berning and Dr. Troup
9 could not tell you that this didn't happen between
10 7:00 and 7:30, imagine what the defense is expecting
11 you to believe happened?

12 We are told that she's in the bed. He said
13 she's in the bed. She said she's in the bed. We're
14 expected to believe that she got up and had what has
15 been described as an extraordinarily violent
16 encounter with her child where there was shaking and
17 a bang and she put her back in a crib, laid her down
18 in that bassinet to essentially die. That's what
19 you have to believe to not convict him. The medical
20 evidence says that's not possible. And your common
21 sense should say that isn't either.

22 The defense, in closing, Ladies and Gentlemen,
23 they want you to get distracted. They want to
24 confuse you and make this seem like it's just way
25 above any of our heads to figure out. But it is but

1 two people who did this in a very small amount of
2 time. This defendant has given us, through his
3 statement, he has hemmed himself in to a corner.
4 The State has no interest in convicting innocent
5 people. We do have an interest in protecting
6 children.

7 Ladies and Gentlemen, I ask that you use common
8 sense. Don't use passion. You heard a lot of
9 really tough testimony. It would be hard for you to
10 listen to this and not have it be gut-wrenching for
11 you. I ask that you use common sense. The cooked
12 up fantasy bus stop defense lacks all common sense.

13 I want to thank you for your service. You've
14 been subjected to a lot. The defendant's statement,
15 one thing that also really struck out to me was "not
16 on my clock". You remember how many times he said
17 it was not on his clock. So focused on time. Not
18 on my clock. Didn't get hurt on my clock. Child's
19 clock, Child's time on this earth ended January 23rd,
20 2011.

21 The one thing I will tell you at the end of
22 this trial that is a certainty, there is no winner.
23 At the end of you reaching your verdict, there is no
24 big happy day. There is still a mother without her
25 daughter. The world will never know who Child

1 was going to be. What I've come to realize, in
2 these cases, sometimes the only thing you can hope
3 for is justice.

4 **THE COURT:** All right. Mr. Mauldin.

5 **MR. MAULDIN:** Your Honor, if I may have a
6 moment to get my stuff ready.

7 **THE COURT:** Yeah.

8 (WHEREUPON, there is a pause.)

9 **MR. MAULDIN:** Madam Foreman, members of the
10 jury, there will be no distractions. I have no
11 intentions of intending to distract you from
12 anything. There was, as I mentioned in my opening,
13 a rush to judgement in the case. This case has been
14 pending now for almost two years. I've had it for
15 that length of time and I've studied it and I have
16 concluded from examination everything in this case.
17 There was a rush to judgement.

18 Now, I mentioned to you in opening comment that
19 the Court would talk to you about presumption of
20 innocence. And I will now rephrase my comment at
21 that time to say that there was a presumption of
22 guilt. From the very moment that Tonya Anderson,
23 the grandmother in this case, got into the patrol
24 car at the Greer Police Department at about nine
25 o'clock on the morning of January 19th, from that

1 very moment, there was a presumption of guilt of
2 Daron Davis.

3 You would simply have to just be putting
4 blinders on not to see that. The conversation in
5 the automobile on the way to the hospital.
6 Presumption of guilt. In the Emergency Room, there
7 and in the Intensive Care Unit when the grandmother
8 was there and the mother and Daron was there in the
9 hospital, there was a presumption of guilt. There
10 was a presumption of responsibility. It was like
11 seeing the race horses that they have their things
12 on the side. It was like they had blinders on.

13 Let's take a look at what we've got here. What
14 are the possibilities? From the time the State
15 chose not to call Tonya Anderson as a witness, there
16 has been a serious presumption of guilt prevalent
17 throughout this case. While Daron Davis was asked
18 by the Greer Police Department to come downtown,
19 while Daron was asked to waive his rights and give
20 up his protections, which he voluntarily did. He
21 literally did. You heard him. You see the thing
22 that he signed. There's no question. It was just
23 I'll tell you everything I know. I want to talk
24 about it. When Daron Davis was asked to
25 participate, while all of that was going on, Shalita

1 Dawkins never asked a first question. Was never
2 asked by anyone to sign any waiver or anything and
3 was never charged with a thing.

4 Madam Foreman, I am -- and members of the jury,
5 I am -- I'm going to use my notes because I don't --
6 I'm just not good enough to remember all this. I've
7 got to make sure I do the best I can. I don't want
8 to forget something. So I apologize for having to
9 look at my notes.

10 Uh, in January of '09, Daron and Shalita met.
11 A relationship developed and they became intimate.
12 In the holidays, holidays of 2009, Shalita was
13 pregnant with Daron's child. Went through the
14 pregnancy fine. The child was born. It was well.
15 It was fine. Child was born August 20th of 2010.
16 It was Shalita's third child. She said she had been
17 married, but no children by the former husband. But
18 she does have three children. The other fathers
19 have nothing to do with this case. They are not
20 involved. There's no connection.

21 P.A. at the time of this incident, was six
22 years old and in the first grade. JLNU was rarely
23 mentioned of because he wasn't present during any of
24 this. He was at his grandfather's at the time of
25 this situation.

1 There were three children. And Daron and
2 Shalita obviously were having discussions about
3 whether or not Daron should be living together.
4 They knew that Child was Daron's child. No question
5 about it. Daron did move in. And the two older, we
6 are told by everyone involved, called Daron their
7 dad. It was a bonded relationship between all
8 children and Daron.

9 He was not employed. He was staying home with
10 these children while Shalita worked. I guess the
11 roles of these parents, the roles that they play, is
12 a little bit unconventional. But in this day and
13 time, that is a more and more common situation. It
14 wasn't very common when I grew up in the 1950s in
15 Ware Shoals. I mean, mama stayed home and daddy
16 worked. But that's changed now. And that's fine.

17 Daron was responsible clearly, from his
18 statement, for homework, responsibilities for
19 P.A. . They went shopping together. There were
20 references to him being out in Greer with the
21 children, which was common. He did chores and so
22 forth. And Shalita worked.

23 And one of the things that I asked them as I
24 questioned them was she said -- she made reference
25 in one of my questions to rest. I responded back to

1 her and she said she needed her rest. Let me tell
2 you, any of you that work, we do need our rest.
3 There's nobody denying it. No dispute about it.
4 But let's don't forget. Let's don't just ignore the
5 comment. Cause she had worked that day we're
6 talking about, the night we're talking about. And
7 she had come home and she had gotten in bed. It was
8 her rest being disturbed. Did she lose control?

9 Let me say, I will guarantee you one thing. I
10 don't know. I absolutely suspect neither one of
11 y'all know. But this is the kind of information
12 that you must evaluate when you are asked by this
13 court to write a verdict in this case involving a
14 citizen.

15 January the 18th, Tonya came over for lunch
16 with Daron and Shalita. P.A. was in school that
17 day. They had lunch. JLNU is over at his other
18 granddaddy's. Shalita left the house about 2:00 or
19 a little after 2:00 cause she wanted to go get her
20 eyebrows arched. That's what she was going to do
21 before she goes to work.

22 We discover that P.A. went to bed,
23 apparently by 8:00 or 8:30 that evening. That's
24 pretty normal. According to Daron's statement to
25 police, he went to bed. And at, uh, -- and Daron

1 does dishes and cleans. He does whatever he's
2 supposed to do.

3 Between 12:30 and 12:40, 12:45, 12:35, some
4 time between 12:30 and 12:40 or 12:45, Shalita
5 arrives at home. And let me say, let me say this,
6 one thing that's apparently uncontradicted in this
7 case is from the moment Shalita walked in the house
8 until that child was put in an ambulance at the
9 hospital, Shalita was with that child. From 12:30
10 until 8:00. She arrived at the hospital at 9:13. So
11 it was some time before nine o'clock. For those
12 eight and a half, nine hours, nine and a half hours,
13 how many ever the clock says they are, the child was
14 with the mother every second. We do know that.
15 Keep that in mind when you start trying to figure
16 out what these doctor's testimony about hours here
17 and three hours here and eight to twelve hours here.
18 Keep in mind from 12:35 until the child was placed
19 in an ambulance at Pediatric Associates of Greer,
20 the mother was with that child.

21 Now, when she got home, they, uh, are talking.
22 Shalita made reference to whether or not they were
23 talking about the relationship, whether they were
24 talking about what they did that day, what the
25 children had done or whatever. There was a

1 conversation ongoing in a very small house in the
2 bedroom.

3 At that point, -- and the prosecutor simply
4 wants you to ignore a fact. They want you to assign
5 some extraordinary bologna label to a fact. I am
6 not going to let the prosecutor get away with this.
7 I'm going to tell you they were having a
8 conversation and the baby responded to the
9 conversation. Who said that? Daron said that.
10 Shalita said that. There is no doubt about it. And
11 what the prosecutor wants you to believe is that
12 this was an involuntary act by a fatally injured
13 five-month old. The prosecutor wants you to believe
14 that it's not because the baby heard anything.

15 Remember what the neurosurgeon said about high
16 brain function? High brain function. We have the
17 automatic involuntary function in our brain like
18 breathing and blinking our eye or something --
19 responding to heat or something like that. There's
20 automatic. The brain keeps our heart going. Those
21 are involuntary things. Then you have what's called
22 high brain function. High brain function is
23 something that I'm doing intentionally. I'm causing
24 myself to do it. I'm making a noise. I'm talking
25 to you. I'm raising my hands. I'm raising my

1 voice. Those are high brain functions.

2 When that child made that sound and gesture,
3 that was a voluntary action. According to the
4 State's medical testimony, after the incident that
5 killed her happened, the doctors said there was no
6 high brain function. I'm not making that up.
7 That's what they said. They want you to just simply
8 ignore it is a fact in the case. You are the judge
9 of the facts of the case. You can't ignore it.

10 If Child was fine at 12:40 when this noise was
11 made, voluntary high brain function response to the
12 voices of her parents and that fits all the medical
13 evidence, in terms of the timing, it fits all of the
14 time stamps, then remember that Shalita Dawkins was
15 constantly with Child from that point forward.

16 Now, Daron wakes at 6:30, I mean 6:20. This is
17 his routine. He wakes up at 6:20. He gets up. He
18 gets P.A. started. He gets him ready for school.
19 And he checks on Child. He said to the police that
20 she did not need changing. He then gave her a small
21 amount of food, of milk. And the doctors agree,
22 once again, that the child could not have responded
23 to any kind of feeding. That's a high brain
24 function.

25 And the doctor said that -- that -- actually

1 that was her questions. She asked him about the
2 feeding and whether or not the child would have to
3 have -- exercise high brain function to do that.
4 They said yes. There was no high brain function
5 after the incident that led to her death. It's
6 uncontested, it's uncontested that there was a
7 feeding of some sort. Whether it was four ounces,
8 six ounces, a little bit of spit up. I don't know.
9 But that is -- nobody is saying that didn't happen.

10 P.A. -- took P.A. to school. And
11 interestingly enough -- and this is in that
12 transcript. You got it. I don't remember what
13 exhibit it is. But it's the written transcript.
14 Each of you got a copy. P.A. prepares for
15 school. And as he's getting ready to leave, on page
16 29 of the transcript, Daron tells the officer, he
17 says, I was in and out of the room. You know, I was
18 back and forth. Officer, right. Back and forth.
19 And he even came in, you know, and talked to her
20 this morning, you know. Right. Before he went to
21 school. Right. This is a reference to the six-
22 year-old coming and talking to Child. Page 29.

23 Now, there is no dispute that the child was
24 taken to the bus stop. I mean, the child went to
25 school that day. Out to the bus stop. Shalita says

1 that she looked out the window. And let me say
2 something about that. She was asleep. She was
3 asleep. She was asleep. She wasn't asleep. She
4 wasn't asleep. She was awake. She's looking out
5 the window. The photograph of the bed with the
6 window that I attempted to show you on that thing
7 there. She watches them down to the stop sign.

8 Daron is -- you know, it's like there's some
9 things that just don't make sense. Boy, I
10 appreciate the prosecution for suggesting common
11 sense. I can't do anything better than tell you the
12 same thing. Common sense just seems to defy the idea
13 that a man who is not the father of a six-year-old
14 would care enough to go down to that bus stop and
15 sit there in the car and wait when the bus stop is
16 two doors down. I mean, do we ignore all that kind
17 of stuff? Do we just leave our common sense out on
18 the side walk?

19 Well, anyway, he leaves and comes back. The
20 estimate is anywhere from 20 to 30 minutes. What
21 happens during the 20 to 30 minutes, I clearly have
22 no clue. I don't know what did happen. I don't
23 know what didn't happen. The child out of the
24 bassinet. The child then on his chest and between
25 them. Waking up Shalita, the mother. Listen to her

1 breathing. Does this sound normal to you? Then
2 they listen. They go back to sleep or whatever. He
3 does it again. Then they say we've got a problem.

4 Shalita picks up Child from the bed. And, uh,
5 you know, uh, I don't blame the prosecutor for
6 saying something about her not having contact with
7 the child. I don't blame her. I remember, as I sat
8 listening to the testimony, I started looking at the
9 hours of the day. What it really meant was from the
10 time Shalita left the house to go get her eyebrows
11 done until she picked up the baby who was on the bed
12 that morning around 8 o'clock to determine what was
13 wrong with her breathing, according to her
14 testimony, she hadn't had not one single contact.

15 I remember sitting here. I've got 12
16 grandchildren. They are everywhere. You can't not
17 have contact with children. When you come home from
18 work, you go in and you look at this baby. That's
19 just instincts telling you that's what happens. I
20 don't know if she had any contact or not. But it
21 did seem like a rather bizarre thing that she would
22 have had no contact with this child.

23 Let me move on. I apologize. I'm not anywhere
24 near through. I want you to just be patient with
25 me. According to Dr. Shelley's records, they could

1 not have called until 8:15. The mother said that
2 the baby had been fussy this morning. That's what
3 the records of Pediatric Associates of Greer had.
4 The mother called.

5 The baby -- and if you recall, I'll remind you
6 how that testimony was, I asked the doctor how
7 important it was to make accurate records. She made
8 the progress note. She remember making the progress
9 note. I handed it to her. I then asked her did the
10 mother say the baby was fussy that morning. She
11 said yes. Said that there was abnormal breathing.
12 Absolutely no question about that. No question.

13 Now, to the hospital. A CAT scan was run at
14 10:04. 10:04. This is an important time in terms
15 of measuring the hours the doctors were talking
16 about. There were pictures the scan made.

17 Some time between 10:45 and 12:15, the Greer
18 City Police had a conversation with Daron about
19 pouring down concrete. Let me say another thing I
20 made a note of while the prosecutor was making her
21 statement. She said that they had that -- they had
22 a consult. The doctor says that the father had a
23 flat response, flat affect.

24 One thing that I recall that I thought was
25 significant. He said he leave -- left the room.

1 Tonya Anderson was in that room. Tonya Anderson was
2 slinging at Daron about what she said he had done to
3 her grandbaby. This was not a meeting now. It was
4 just Daron, Shalita and the doctor. Tonya Anderson
5 was in that room.

6 It was right thereafter Daron was required to
7 leave the hospital because he was screaming. The
8 flat affect. He was required to leave the building.
9 The testimony was because he was screaming. You
10 know, people have different personalities. Some of
11 us respond very -- I'm a -- I'm an arm waver. I
12 wave my arms about everything. My voice just goes
13 crazy. Some people are much more low key than that.
14 I'm certainly not a psychologist.

15 Anyway, subsequent to that, after he had been
16 required to go in the parking lot. He's out in the
17 parking lot. A police came out there from the Greer
18 Police Department and said will you go downtown. He
19 said yes. They advise him of his rights. He signs
20 them saying I'll give up all my rights. I'm going
21 to tell you everything. You want to talk about
22 Child ? Yes, absolutely. That's what he said.

23 Now, prosecutor repeats profane language.
24 Look. I guess, I can somehow say I apologize for
25 Daron's language. I'm not apologizing for Daron's

1 language. Maybe that's just the way he talks. It's
2 not something I would necessarily approve of. I
3 don't expect you to approve of it either. This was
4 a horrible situation. They complained about him not
5 being excited enough. Yet, they then turn around
6 and complain about the language he uses when he does
7 get excited.

8 While he's downtown, he's out searching the
9 house. He's searching the Greer Police Department..
10 They are searching the house. They are searching
11 the doctor's office and getting all the records.
12 Then, somehow, I don't know, a little birdie was on
13 one of the police officer's shoulder or something.
14 They were saying, you know, there's a conflict.
15 This is at 4:15. This is a conflict. We're going
16 to need to turn this thing over to the Greenville
17 County Sheriff's Department.

18 What had happened at that point? They had
19 taken a two-and-a-half hour interview. They
20 searched his house. They searched the doctor's
21 office. They had been back and forth to the
22 hospital talking to the doctors. They observed
23 conversations. Formed opinions about how people
24 responded to things. Then they turn the matter over
25 to the Greenville Sheriff's Department. There's a

1 conflict.

2 Well, let me tell you, make no mistake about
3 it, there are lots of conflict. There was a
4 conflict at 9:00 a.m. and it continued all the way
5 to 4:15 p.m. No question about it. Tonya was the
6 conflict. That was a conflict. She was a
7 policeman. She worked for the police department.
8 She's the grandmother. She's the mother of the
9 other person.

10 Officer Chris Miller of the Greenville County
11 Sheriff's Department. Many years with that
12 department. What's happened? What's going on?
13 What have we done? What have we not done? He
14 immediately determines that the other person has not
15 so much as been spoken to. He said it's just
16 priority to get a statement from the mother. He
17 took the statement. He did not read her any rights.
18 They said she was a suspect. He used the term
19 during his direct examination. He used the term
20 "suspect". But she was never a suspect in law
21 enforcement. If she was a suspect, they have ways
22 of doing it. They use these forms. If she's a
23 suspect and gives a statement and they didn't use a
24 form, they can't use the statement. That's good law
25 enforcement. She wasn't really a suspect. She was

1 a witness. She was a witness.

2 Four days later, Child dies. She was never
3 going to survive from the moment she went to the
4 Emergency Room. Daron was charged with Homicide by
5 Child Abuse. Daron comes into this court and is put
6 upon this country. I said rush to judgement and I
7 said presumption of innocence. I now say that from
8 that ride in that patrol car at 9:00 a.m. until the
9 case was turned over to the Greenville County
10 Sheriff's Office at 4:15 that there was a clear and
11 pervasive presumption of guilt by the Greer Police
12 Department.

13 Now, uh, talk a few minutes about the medical
14 evidence and the statement by Daron Davis. There
15 was no dispute that there was no car wreck, there
16 was no fall. Again, the prosecutor was saying is
17 not an accident. I told you in opening that I would
18 have to ask questions. Those questions were because
19 you need to know the answers. You don't get the
20 answers if you don't ask the questions. Sure I
21 asked hypothetical questions to those experts
22 because I wanted them to answer the questions.

23 You're going to go back in that room and the 12
24 of you are going to collectively discuss what you
25 think happened. And you got to decide what the

1 facts are. So I will tell you I asked every question
2 I thought would help you. Distractions? I am
3 trying to clarify the facts of this case.

4 The prosecutor did say just a moment ago -- I
5 wanted to make sure all of what happened to Child
6 apparently happened in the same event. It was not a
7 series of events. Mechanisms of injury is a little
8 misleading. All of the injuries, the three specific
9 injuries that that child suffered, apparently
10 happened all in the incident or occurrence.
11 Fletcher, the autopsy doctor, testified that the
12 difficulty with him in terms of a timeline goes from
13 the time the child was brought in until the child
14 was taken off life support. It would be real
15 difficult for him to after the fact go back. That
16 makes sense. That's a responsible thing for him to
17 say.

18 Dr. Berning, I confirmed with him that there
19 was no separation at the time of these injuries that
20 these all occurred during the same occurrence. Now,
21 he did say eight to twelve hours -- it could have
22 been eight to twelve hours for swelling. He did say
23 that.

24 But the interesting thing about it is that Dr.
25 Berning, in the eight to twelve is clearly what we

1 call in my business an outlier. That is, it was
2 inconsistent with what the other experts were
3 saying. They were talking about three hours or
4 more. More than three hours. Within hours. All
5 the others were talking about that range. Berning
6 said eight to twelve. So outliers obviously are
7 always suspect about what you relied upon. If
8 there's three the same and one different, then the
9 one different you've got to look at with some
10 skepticism.

11 But whether or not -- here's what he said
12 towards the end of his testimony about exhibit
13 number 21. This is what he said. This is Berning.
14 When shown Exhibit number 21 late in his testimony,
15 this is after he talked about the eight to twelve
16 and the swelling and how it changes the, uh,
17 fracture, how it spreads the fracture, he said that
18 he thought that it was more than three hours.
19 That's what he said.

20 Johnson was an extraordinary doctor. He talked
21 about it being hours. He said it could have been --
22 he actually said retinal hemorrhaging part, about
23 the retina. He said it could have been four weeks.
24 He thought it could have been two weeks. Could have
25 been a week. Could have been a day. Could have

1 been a matter of hours. That's what Dr. Johnson
2 said when the retina was on the screen.

3 Dr. Troup, pediatric neurosurgeon, this guy is
4 a smart guy. This guy operates surgery on babies'
5 brains. That's a pretty high level of medicine. He
6 says hours, within hours. What is it that -- these
7 are hard to get specifically defined. We've known
8 that all along. If it was that clear, he would not
9 have had a trial. Obviously, there was a dispute
10 about the interpretation about these points in time.
11 That's why you and you are here. To settle the
12 facts of the case. The state said you just can't
13 time that. That's what she said to you a minute
14 ago. You just can't time that. Unfortunately, I
15 agree.

16 The prosecutor in her opening made this
17 statement. She said that she was not going to be
18 able to tell you how this happened. She then said I
19 also am not going to be able to tell you when this
20 happened. I now say she also can't tell you who.

21 It's a sad situation, Folks. But the proof
22 must either succeed or fail. This is not
23 horseshoes. It's how now close we get. It's not
24 how much we might suspect. The judge is going to
25 instruct you on the standards that's used for

1 measuring the truth or the facts. I want you to
2 listen to him.

3 We have roles in this case. The prosecutor has
4 the role to advocate -- as an advocate for the
5 government. I commend her. She's doing a wonderful
6 job. I have a role to advocate for Daron. The
7 judge has the role of giving you the law. Your role
8 is to accept that law even if it's somewhat painful
9 and a horrible situation like this.

10 In Daron's interview, there were countless
11 times where he said he did not know what happened.
12 I'm going to only give you a couple. Then I'm going
13 to start wrapping up. I know the judge is probably
14 breathing hard as I'm talking.

15 But let me tell you, this is important. I hope
16 that what I'm saying to you is important. "How much
17 do you love your daughter? This is your five-month
18 old daughter." "She means everything to me.
19 Everything to me." "So with that in mind, what is
20 that something that happened?" "I can't tell you
21 what I don't know. I have not done anything to my
22 daughter. Let's put it like that." "Okay. Tell me
23 who did." "I have not witnessed anybody do anything
24 to her. I don't have any knowledge of anything.
25 I'm telling you that I did nothing to contribute to

1 my daughter's condition."

2 "Somebody did." "I'm not going to sit here and
3 tell you that I'm a perfect father. You learn as
4 you go. I certainly did not harm my child in any
5 way. In any way." "Who did? Who did?" "I am
6 telling you that I didn't. I don't know who did."
7 The interview, "I'm not sure I believe you." "Why?
8 Cause I won't make a statement saying something I
9 have no knowledge of?" "I want you to tell me the
10 truth." "I am telling you the truth." This is
11 decent. That statement was filled with just denials
12 over and over. They go back and start over. He
13 denied, denied, denied.

14 Now, there's more to it though than just simply
15 somebody denying something. There's something else.
16 I'm going to take a minute to show you. What we're
17 looking at is where does the common sense that you
18 are so strongly encouraged to use start playing a
19 pretty big role in evaluating evidence? I'm not a
20 doctor. I don't know. I couldn't understand half
21 of what those guys were saying. I'm not a
22 policeman. I'm not a defendant. I'm not a judge.
23 But I'm not stupid. I got good old horse sense, you
24 know.

25 Well, I want to get this right. I'm going to

1 try to. All right. I want you to look at this.
2 This actually is on page 40. Look up here at the
3 top, there where it says the officer, "Did you do
4 something to your daughter?" "No." "Did you smack
5 her in the head?" "No. No. No." "Well, how did
6 her skull get cracked?" "I don't know. I don't
7 know." "Did you think Shalita did this?" "No."
8 "Why? I mean, look at what we have from our point
9 of view." "I can't see her, you know." "One of two
10 people did it." "I can't see her doing anything to
11 harm that baby."

12 All right. This is a suspect. One of two
13 suspects and they are asking him questions about --
14 they're asking him questions about the other
15 suspect. It's either you or Shalita. It's either
16 you or Shalita. Right up here at the top, Daron is
17 finishing a statement. "Nothing to make me believe
18 that she had done something." "Could she have? You
19 know what her demeanor was this morning." "There is
20 no evidence" -- this is Daron -- "there is no
21 evidence to lead me to believe that."

22 The last one I was going to show you. In the
23 first paragraph there, the officer says is it common
24 sense? So what happened? I'm sitting here --
25 Daron, I'm sitting here saying. Officer, saying

1 what? "Shalita done anything to harm my daughter,
2 she better take it to her grave with her. I'm
3 saying that out of love."

4 Now, why am I harping on those quotes? Why is
5 that so important? Let me tell you. Why doesn't he
6 throw her under the bus? This is his opportunity to
7 say, hey, yeah, I remember. I heard the baby cry,
8 but I didn't think it was anything important. Yeah,
9 I remember her dashing out of one of the bathrooms
10 with the baby. Yeah. Yeah. Yeah. I mean, now is
11 his chance to escape. Why did he not do that?
12 Because he's not guilty. This was the clear
13 opportunity.

14 What common sense will say to us is that action
15 by him to ask those questions is a clear sign of an
16 innocent man. What did happen, folks, was this baby
17 was disturbed during the night. Something horrible
18 happened. Were they both involved in it? One or
19 the other.

20 Was the baby fussy as reported to Dr. Shelley
21 and that caused the mother to react? She was tired.
22 She had worked. She picked the baby up. Shake the
23 baby. Strike the baby. Is that what happened? Was
24 it in the middle of the night? Was it while Shalita
25 was in the shower or asleep? Was it while Daron was

1 in the shower or at the bus stop? Or was it
2 somewhere else? We don't know.

3 You hear all the time about exonerations.
4 People being found innocent after they spent years
5 in prison. What normally causes that kind of
6 horrible injustice is uncertainty in cases. That's
7 how those cases get there. That's how they get on
8 the front pages of our paper. The evidence is not
9 certain to prove it's not there. Yet, people get
10 convicted anyway.

11 The principles of the law, the Court's going to
12 explain to you. Reasonable doubt, as the Court will
13 define to you, is a doubt that leaves you hesitant
14 to act. It's a doubt that would leave you uncertain
15 about whether you should act, rely upon it or not.
16 It actually is a doubt that you can say a reason for
17 having. If you say I doubt that Daron Davis is
18 guilty of this crime and the reason that I doubt it
19 is X or Y, the reason I doubt it is something that
20 the fine prosecutor here said or didn't say or that
21 John Mauldin stumbled on. If you have a reason for
22 the doubt, then that's a reasonable doubt. It's not
23 an imaginary doubt. It's not a doubt just cause you
24 want to commit an act of revenge against the world.
25 I mean, that's crazy. It's something that a

1 reasonable person would hesitate to act on it.

2 We have that high standard. The reason it's
3 such a high standard, they have to prove their case
4 beyond all reasonable doubt. Beyond all reasonable
5 doubt. You have a reasonable doubt as to any
6 matters that relate to guilt or innocence of this
7 defendant, you must find him not guilty. That's
8 what your duty is, your solemn oath is. And the
9 reason is because if the State with all of their
10 resources and all the capabilities that the
11 government has to charge an individual with and if
12 there is a reasonable doubt, it's because they got
13 it wrong. It's because it didn't happen the way
14 they say.

15 The government must always be put to the test,
16 Ladies and Gentlemen. It is what protects all of
17 us. That test that I put the government to in this
18 case and that the law puts the government to is what
19 preserves the integrity of this court and this
20 system. It is fundamental to our rule of law that
21 every person is presumed innocent. Judge Miller is
22 going to talk to you about that and tell you what
23 that means, what it means to be the presumption of
24 innocence beyond all reasonable doubt. I'll tell
25 you what it means in plain old Ware Shoals street

1 talk, it means that if a person is charged by the
2 government with doing something wrong, that person
3 does not have to come into court and prove he didn't
4 do it. That's what it means. The burden is where
5 it should be.

6 I, as counsel for Daron, have not only a duty
7 but the highest responsibility. And I accept it,
8 not only for this client or anyone else that sits
9 across the room for the government to fully
10 challenge their proof. Guilty or not guilty.
11 Another way of saying proven or not proven.

12 In America, thank God, we live by a rule of
13 law. We live by the rule of law. We are governed by
14 the rules of law. This is a court of law. I have
15 served this court of almost 40 years. I'm proud of
16 it. This is not a court of vengeance. This is not
17 a court of vengeance or entitlement. It's not a
18 court of kings or king's court. It's not a court of
19 flipping a coin. It's a court of law.

20 Judge Miller will instruct you on that law. I
21 encourage you to listen to the words. I want you to
22 deliberate in this case without a friend to reward
23 or an enemy to punish. I want you to be fair. I
24 want you to be impartial. I want you to be
25 conscious of your responsibility. Follow his

1 instructions and look at your solemn oath to well
2 and truly try this case based upon the law and the
3 evidence of the case. Look at what the law and the
4 evidence is and what it is not. We ask that the
5 verdict for this case be not guilty. Thank you,
6 Madam Forelady and jurors.

7 **THE COURT:** All right. Well, everybody all
8 right? Okay.

9 Ladies and Gentlemen of the jury, during this
10 trial, you and I have certain duties to perform. As
11 the trial judge, it is my responsibility to preside
12 over the trial of the case and to rule on the
13 admissibility of the evidence offered during the
14 trial. It is also my duty to charge you the law
15 applicable to the case. And it is your duty as
16 jurors to accept and apply the law as I now state it
17 to you.

18 As I told you in my opening comments, if you
19 think you have any idea as to what the law is or
20 what the law ought to be and it does not agree with
21 what I now tell you the law is, you have sworn an
22 oath to set aside your own opinion and apply the law
23 precisely as I state it to you now.

24 I also remind you that in every case tried in
25 this court before a jury, the jury is the sole and

1 exclusive judge of the facts. And a trial judge can
2 not comment on or make any statement about the facts
3 in a case. Please don't think by anything I may
4 have said or done throughout the course of the trial
5 that I have any such opinion. I do not. The law
6 does not allow it. And you all are the sole judges
7 of the facts.

8 I again instruct you that the fact that the
9 defendant was arrested, charged and indicted in this
10 case is not evidence of guilt. Nor does it create
11 any presumption or inference of guilt. These
12 documents are simply the formal written instruments
13 which contain the charges made against a defendant.
14 They serve as the formal documents by which a case
15 is processed and brought into court for disposition.

16 Now, necessarily, your job as jurors requires
17 that you must determine the credibility or
18 believability of witnesses who have testified. It
19 becomes your duty as jurors to evaluate the evidence
20 and determine which evidence convinces you it is
21 true.

22 In determining the believability of the
23 witnesses, you may believe one witness over several
24 or several over one. You may believe a part of the
25 testimony of a witness and reject the remaining

1 part. You may believe the testimony of a witness in
2 its entirety or reject that same testimony in its
3 entirety. You may consider whether the witness has
4 an interest in the result of the trial, whether the
5 witness is prejudiced towards either the State or
6 the defendant, the opportunity for the witness to
7 have seen the matters and things about which the
8 witness has testified and the way the witness acts
9 on the witness stand or what we call a witness'
10 demeanor.

11 Now, the rules of evidence ordinarily do not
12 permit witnesses to testify to opinions or
13 conclusions. An exception to this rule exists for
14 witnesses we call experts. A witness, who by
15 education and experience has become expert in some
16 art, science or profession, may give an opinion as
17 to the subject the witness has been qualified as an
18 expert in and may also give the reasons for that
19 opinion. You should consider any expert opinion
20 given by any witness, any expert witness and like
21 all of the other evidence, give it the weight that
22 you think it deserves.

23 I also instruct you and I emphasize that the
24 fact that the defendant did not testify is not a
25 factor to be considered by you in any way in your

1 deliberations on the question of the guilt or the
2 innocence of the defendant. It must not be
3 considered by you in any manner whatsoever. Every
4 citizen has the constitutional right to remain
5 silent. The assertion of this right must not be
6 considered by you in your deliberations.

7 Now a statement alleged to have been made by
8 the defendant has been admitted into evidence in
9 this case. While the Court has determined that the
10 statement is admissible, I instruct you that you
11 make the ultimate decision on whether or not the
12 defendant made the statement. If the defendant did
13 make the statement, you must determine whether the
14 statement was made by the defendant voluntarily and
15 of his own free will. This means that the statement
16 was not caused by pressure, force, fear, threats,
17 coercion or intimidation or by hope or a promise of
18 leniency or a reward of any kind.

19 In determining whether the statement was
20 voluntary, you should consider both the
21 characteristics of the defendant and the details of
22 the questioning. Some of the factors that you must
23 consider are the age of the defendant, the
24 defendant's education or lack thereof, the
25 defendant's mental ability or capacity, the

1 defendant's IQ or intelligence, the defendant's
2 background and environment, the place and length of
3 detention, the nature of the questioning and the
4 advice or lack thereof to the defendant of his
5 constitutional rights including but not limited to
6 the right to remain silent, that any statement could
7 be used against him in a court of law, the right to
8 have a lawyer present, that if he could not afford a
9 lawyer, a lawyer would be appointed to represent him
10 without cost and that he could stop making a
11 statement at any time. You must carefully consider
12 all of the surrounding circumstances before you give
13 any weight to an alleged statement.

14 I remind you the State has the burden of
15 proving beyond a reasonable doubt that the alleged
16 statement was voluntary. If you determine that it
17 was voluntary, you may give the statement any
18 further consideration that you deem proper. You
19 must decide what weight, if any, should be given to
20 the alleged statement. And if you determine the
21 alleged statement was not the free and voluntary
22 statement of the defendant, you should not consider
23 the statement at all.

24 The defendant has pled not guilty to this
25 indictment. That plea puts the burden on the State

1 to prove the defendant guilty. A person charged
2 with committing a criminal offense in South Carolina
3 is never required to prove themselves innocent. I
4 charge you that it is a cardinal and important rule
5 of the law that a defendant in a criminal trial will
6 always be presumed to be innocent of the crime for
7 which an indictment is issued unless guilt has been
8 proven by evidence satisfying you of guilt beyond a
9 reasonable doubt.

10 Now, a reasonable doubt is a kind of doubt that
11 would cause a reasonable person to hesitate to act.
12 A reasonable doubt may arise from the evidence in
13 the case or the lack or absence of evidence in the
14 case. And you, the jury, must determine whether or
15 not reasonable doubt exists as to the guilt of the
16 defendant.

17 The State has the burden of proving each and
18 every element of the crime beyond a reasonable
19 doubt. Any reasonable doubt that you may have in
20 your deliberations should be resolved in favor of
21 the defendant.

22 There are two types of evidence which are
23 generally presented during a trial. They are direct
24 evidence and circumstantial evidence. Direct
25 evidence is the testimony of a person who claims to

1 have actual knowledge of a fact such as an
2 eyewitness. It is evidence which immediately
3 establishes the main fact sought to be proved.

4 Circumstantial evidence is proof of a chain of
5 facts and circumstances indicating the existence of
6 the main fact. It is evidence which immediately
7 establishes collateral facts from which the main
8 fact may be inferred. Circumstantial evidence is
9 based on inference and not on personal knowledge or
10 observation.

11 The law makes absolutely no distinction between
12 the weight or value to be given to either direct or
13 circumstantial evidence nor is a greater degree of
14 certainty required of circumstantial evidence than
15 of direct evidence. You should weigh all of the
16 evidence in the case. After weighing all of the
17 evidence, if you are not convinced of the guilt of a
18 defendant beyond a reasonable doubt you must find
19 that defendant not guilty.

20 In this case, the defendant is charged with
21 Homicide by Child Abuse. The State must prove
22 beyond a reasonable doubt that the defendant caused
23 the death of a child under the age of 11 while
24 committing child abuse or neglect.

25 Child abuse or neglect is an act or a failure

1 to act which causes harm to a child, to that child's
2 physical health or welfare. Harm to the child's
3 physical health or welfare means that the defendant
4 either, one, inflicted or allowed to be inflicted on
5 the child physical injury, two, failed to supply the
6 child with adequate food, clothing, shelter or
7 health care and this failure caused the physical
8 injury or condition which caused death or abandoned
9 the child causing the child's death. The State must
10 also prove beyond a reasonable doubt that the
11 child's death occurred under circumstances showing
12 an extreme indifference to human life.

13 Now, Madam Forelady and Ladies and Gentlemen of
14 the jury, there are two possible verdicts which you
15 may reach in this case. There is absolutely no
16 importance to the order in which I state those
17 verdicts. One has to be stated first. The two
18 verdicts that you may consider in this case are
19 guilty or not guilty. We have prepared a verdict
20 form which we will send back into the jury room with
21 you. I think it's very simple and self-explanatory.

22 Ladies and Gentlemen, all 12 of you must agree
23 on the verdict. Your verdict must be unanimous.
24 Your verdict can not be paced -- be based on
25 sympathy, passion, prejudice, emotion or any other

1 consideration which is not in evidence in this case.
2 And you have no friends to reward or enemies to
3 punish.

4 So Madam Forelady and Ladies and Gentlemen of
5 the jury, I'm going to excuse you to your jury room
6 now. I'm going to ask you not to begin your
7 deliberations just yet. Wait until you receive all
8 the evidence in the case and the verdict form to
9 begin your deliberations. I need to go over my
10 charge on the law with the attorneys to make sure I
11 did not misstate something or omit something. With
12 that, I'll excuse you to your jury room with the
13 exception of Mr. Childress.

14 I'll have to ask you to remain behind.

15 (WHEREUPON, the jury exits at approximately

16 11:44 a.m.)

17 **THE COURT:** Mr. Childress, this is one of
18 the more difficult times I have when dealing with
19 the jury cause you sat through this trial. You paid
20 every bit as good attention. You are just as
21 qualified as the 12 folks who are back there to
22 deliberate. But I can not, because the law will not
23 allow me to let you deliberate with them. I
24 appreciate your service. I hope I didn't make a
25 liar out of myself when I told you you should feel

1 rewarded.

2 While even you are not allowed to deliberate,
3 your presence here was vital to the case. You can
4 see the first day we had a juror we had to excuse.
5 In a multi-day trial, you never know when that could
6 happen,

7 So you are through with your service. You
8 completed it for the year. So you don't have to
9 worry about serving for the next three weeks. But
10 you can exempt out for three years. I do thank you
11 for your service. You are free to talk about it
12 with whoever you'd like to. If you don't want to
13 talk about it and someone bothers you, let the clerk
14 of court know and we will fix that problem. We're
15 not going to have you be intimidated or harassed in
16 any way. Okay. Thank you, sir. And you are
17 welcome to stay, leave, whatever you want to do.

18 (WHEREUPON, the alternate juror leaves the
19 courtroom.)

20 THE COURT: All right. Any exception or
21 objection to the charge other than those previously
22 stated from the State?

23 MS. SUSTAKOVITCH: None from the State.

24 THE COURT: And from the defense?

25 MR. MAULDIN: Judge, I do renew the request

1 for the circumstantial evidence and the mere
2 presence for the record.

3 **THE COURT:** Okay. All right. Y'all --
4 here's the verdict form. Make sure we've got all
5 the evidence and let's let them go.

6 **(WHEREUPON, jury deliberation begins at**
7 **approximately 11:55 a.m.)**

8 **(WHEREUPON, the Court resumes at approximately**
9 **12:16 p.m.)**

10 **THE COURT:** All right. We got four questions
11 and four requests. One, could the defense have
12 called an expert medical witness. Two, could the
13 defense have called the grandmother to testify.
14 Three, could we have a copy of the mother's
15 statement to the police. Four, could we have a copy
16 of the medical examiner's report. Signed by the
17 foreperson.

18 I would propose that I write on here that they
19 have all the evidence, all the evidence has been
20 admitted and it's in their possession.

21 **MS. SUSTAKOVITCH:** Yes, sir, Your Honor.

22 **THE COURT:** Okay. (Pause.)

23 Teresa, would you put a marker on that.

24 **COURT REPORTER:** Yes, sir. It's Court's 9.

25 **(WHEREUPON, Court's Exhibit 9 is marked for**

1 identification purposes.)

2 **THE COURT:** Y'all can look at it and send it
3 on back.

4 **(WHEREUPON, Court's Exhibit 9 is delivered to the**
5 **jury.)**

6 **THE COURT:** All right. We'll be at ease.
7 We've got your numbers.

8 **(WHEREUPON, the Court resumes at approximately**
9 **2:36 p.m.)**

10 **THE COURT:** Thanks. Please be seated. All
11 right. We have a verdict. This is a, uh, very
12 emotional case. I don't know what the verdict is
13 going to be, but I don't want any outbursts. If you
14 are not able to handle it, please leave now. With
15 that, uh, bring them in.

16 **(WHEREUPON, the jury enters at approximately**
17 **2:39 p.m.)**

18 **THE COURT:** All right. Madam Forelady, I
19 understand you have reached a verdict.

20 **THE JUROR:** Yes, Your Honor.

21 **THE COURT:** All right. Please hand it to the
22 bailiff.

23 **(WHEREUPON, the verdict form is passed to the**
24 **Court.)**

25 **THE COURT:** Madam Clerk, would you please

1 publish?

2 **THE CLERK:** All right. Your Honor, in the
3 case of 2012-GS-23-1479, the State of South Carolina
4 versus Daron Duane Davis, as to the indictment of
5 2012-GS-23-1479, the charge of Homicide by Child
6 Abuse, we, the jury, find the defendant guilty.
7 This is signed by Lori Anderson, our foreperson.

8 Ladies and Gentlemen of the jury, if you agree
9 this is the verdict you reached in your jury
10 deliberation room, would you please raise your right
11 hand.

12 (WHEREUPON, each juror responds.)

13 **THE COURT:** Thank you. Anything further of
14 the jury from the State?

15 **MS. SUSTAKOVITCH:** No, sir, Your Honor.

16 **THE COURT:** From the defense?

17 **MR. MAULDIN:** Your Honor, I would like the
18 Court to poll the jury as to whether or not any
19 outside influence participated in their verdict, if
20 you would.

21 **THE COURT:** All right. Ladies and Gentlemen,
22 uh, let me ask this question and then I will ask the
23 clerk to, uh, to poll you. Has there -- any outside
24 influence, outside of what's been presented in this
25 courtroom had any influence or impact on your

1 deliberations or decision in this case. So Madam
2 Clerk, if you will just poll them.

3 **THE CLERK:** I'll call their names. The
4 verdict I just published, was the verdict you
5 reached in the jury room and I ask you is it -- was
6 it your verdict then, is it your verdict now. When
7 I call your name, please answer yes or no.

8 **THE COURT:** Well, actually, I've asked the
9 question.

10 **THE CLERK:** Okay.

11 **THE COURT:** We were polling to make sure that
12 there has been no outside influence. So the
13 question is any of you had any outside influence
14 direct or indirect which influenced you in your
15 deliberations in this case. Have you had any
16 outside influence is the question.

17 **THE CLERK:** All right. Thank you, sir. All
18 right.

19 Lori Anderson?

20 **THE JUROR:** No, Your Honor.

21 **THE CLERK:** Jeffrey Challenger?

22 **THE JUROR:** No.

23 **THE COURT:** Lori -- Laura Barlow?

24 **THE JUROR:** No.

25 **THE COURT:** Romicus Wideman-Jones?

1 THE JUROR: No.

2 THE COURT: Mary Mooney?

3 THE JUROR: No.

4 THE COURT: Amy Frazier?

5 THE JUROR: No.

6 THE COURT: Billie Toney?

7 THE JUROR: No.

8 THE CLERK: Mary Thompson?

9 THE JUROR: No.

10 THE CLERK: Valerie McCall?

11 THE JUROR: No.

12 THE CLERK: Mark Strait?

13 THE JUROR: No.

14 THE CLERK: Faye Chapman?

15 THE JUROR: No.

16 THE CLERK: Jena Hadden?

17 THE JUROR: No.

18 THE COURT: We get everybody? Okay. All

19 right. Ladies and Gentlemen, I want to thank you

20 for your service. I'm happy to tell you that your

21 service is complete for the week. You certainly

22 done a great job. You are free to stay, go,

23 whatever you'd like to do. With that, thank you

24 very much.

25 You are free now to talk to anybody you want to

1 about the case and you are free not to talk to
2 anybody. If anybody approaches you and bothers you
3 about it, just get their name and give it to the
4 Clerk of Court's office. We'll correct that
5 problem. We're not going to allow anybody to be
6 harassed or intimidated in any way. Thank you so
7 much for your service. I excuse you to your jury
8 room now. You are welcome to stay. Whatever you
9 would like to do.

10 (WHEREUPON, the jury exits at approximately
11 2:42 p.m.)

12 **THE COURT:** All right. Okay. How many days
13 did he spend in jail?

14 **MS. SUSTAKOVITCH:** Uh, Your Honor, I would
15 like to pass up to the Court. This is the State's
16 motion for notice of life without parole. It's
17 already been served on defense counsel. As to days
18 in jail, I'm not certain. We can find that out.
19 This is a life without parole case. I'll pass up
20 the notice of intent to seek life to the Court.

21 I would also by way of record like to make part
22 of the record his prior conviction for Homicide by
23 Child Abuse. It's under Indictment 94-GS-42-2632
24 out of Spartanburg county. It was the death of an
25 infant, S.D., in 1994. I make that part of the

1 Court's record.

2 THE COURT: All right. Anything you want
3 to --

4 MR. MAULDIN: Your Honor, if I'm not
5 mistaken, Daron would have been taken into custody
6 on January 21st, which was two days after Child was
7 taken into the hospital, of '11.

8 THE COURT: Okay.

9 MR. MAULDIN: So the sentence appropriately
10 would start that day.

11 THE COURT: Begin at that time. All right.

12 MR. MAULDIN: I do acknowledge that the State
13 did deliver us a life without parole notice. We
14 were on notice with regard to that. Would make a
15 couple of final comments before you pass sentence,
16 Your Honor. Would, quite frankly, commend the State
17 for their willingness to try this case on the facts
18 of this particular incident. The State is to be
19 commended. Law enforcement is to be commended for
20 the fact that they focused on this particular case
21 instead of attempting to, uh, work around and get
22 the old Spartanburg case of many years ago. I
23 commend the State for taking that posture.

24 I think that the jury in this particular case
25 -- uh, I observed them during the trial. I felt

1 like they were very attentive and tried to do
2 whatever they could do. There were certain
3 limitations obviously. The, uh, -- my client Daron
4 has informed me that he does want me to file an
5 appeal which we will be filing with the Court within
6 the statutory 10-day limit. We'll file that
7 necessary paperwork and then the Office of Indigent
8 Defense in Columbia would take over the legal
9 appeal.

10 **THE COURT:** Okay.

11 **MR. MAULDIN:** Other than that, Your Honor, I
12 don't have anything else to say. It was a horrible
13 situation. I know the jury had a difficult decision
14 to make. That's a hard day in court, Your Honor.

15 **THE COURT:** Okay. I'll compliment both the
16 prosecution and the defense for an extremely well-
17 tried case.

18 Anything you want to tell me, sir?

19 **MR. DAVIS:** No.

20 **THE COURT:** All right.

21 **MS. SUSTAKOVITCH:** I believe Child's
22 mother, Shalita Dawkins would like to address the
23 Court --

24 **THE COURT:** All right.

25 **MS. SUSTAKOVITCH:** -- the court.

1 No, just stay right there.

2 **MS. DAWKINS:** Uh, this has been a trying time.
3 I'm glad that the jury saw the truth in this matter.
4 I still don't have all the answers as to what
5 happened to Child , but I know that we did the best
6 that we could do. I'm thankful for the State of
7 South Carolina. I'm thankful for the solicitors
8 here and the prosecutors just searching for the
9 answers. And I don't want him to get out to do it
10 again.

11 **THE COURT:** Okay. All right. Well, I don't
12 have any discretion in this case. Mr. Daron Duane
13 Davis, you are sentenced to life in prison without
14 parole. Best of luck to you.

15 **(WHEREUPON, Court's Exhibit 10 is marked for**
16 **identification purposes.)**

17 **(WHEREUPON, the proceedings conclude at**
18 **approximately 2:47 p.m.)**

19

20

21

22

TRANSCRIPT OF INTERVIEW
WITH DARON DAVIS

Officer - Daron, What was your last name again?

Daron - Davis

Officer - Daron Davis. Okay

Officer - You and I have been around each other a little this morning, but ah.. I don't know if we have actually been introduced.

Officer - Okay, my name is Eric Pressley. I am a Lieutenant and investigator with the Greer PD. Okay. You spoke with Sgt. Fortenberry - okay - He is an investigator also with the Greer PD.

Officer - Are you working? You said you were not working anywhere right now.

Daron - No

Officer - Okay

Daron - A little

Officer - Okay. And how long have you and Shalita been together?

Daron - About two years

Officer - Two years - Okay

Officer - How many children do you guys have together?

Daron - Just that one

Officer - Just the one - Okay. That is Child

Daron - Yes

Officer - What is Child's full name?

Daron - Child

Officer - Okay and how old is she now?

Daron - She will be 5 months tomorrow

Officer - 5 months tomorrow - is that right

Daron - Yes

0:01:13 9



Officer - Okay - who generally kept the child at home. Did she go to daycare or.....

Daron - No. I generally kept her. Stay at home dad for....

Officer - Okay. Cause Shalita works

Daron - Yes

Officer - Correct

Daron - Yes

Officer - And she works at Verizon

Daron - Yes

Officer - Where

Daron - Right here - actually it is in Mauldin

Officer - In Mauldin

Daron - Yes - Says Greenville. but it is in Mauldin

Officer - Okay

Daron - She works at the call center

Officer - Okay

Officer - How long have you been unemployed?

Daron - Year and a half

Officer - Year and a half - Okay - What kind of work did you do before?

Daron - Worked BMW

Officer - Really - What did you do for them?

Daron - I worked for the UTI Logistics

Officer - What is that?

Daron - It's a contractor within.... Like MAU

Officer - Yeah... They got lots of subcontractors and things like that

0:01:56.3

Daron - Yes

Officer - What did you do for them?

Daron - Fork lift.... Drove a fork lift... material handler

Officer - What?

Daron - Material handler

Officer - What does that mean?

Daron - Bring them things...take parts to and from the line...you know

Officer - Okay

Daron - Maintain production of the assembly line

Officer - Okay. We are here to talk about Child

Daron - Of course

Officer - Child is going to be 5 months tomorrow. Okay. She is obviously sick. Okay. so the doctors are there looking out for her and treating her and hopefully making her better and they are there to protect her. Okay in some sense we are also. Okay. And we want to find out why she is sick.

Daron - Absolutely.

Officer - And you are entitled to the some protections also. Okay. So, before we start talking about Child who is going to be 5 months old tomorrow, is that your only daughter?

Daron - Yes

Officer - Do you have any sons?

Daron - No

Officer - No. So Child is your only child

Daron - Yes

Officer - Okay

Daron - Only biological. Her son's my son... but

Officer - Right... before we go any further talking about her we want to make sure you understand your protections. Okay. Sgt. Fortenberry is going to read those to you and we will make sure you understand them before we go any further.

0:03:20.7

Daron - Okay

Officer (Fortenberry) - You aren't under the influence of any alcohol or drugs right now?

Daron - No...

Officer - Nothing.... Okay

Officer - What level of education do you have, Daron?

Daron - High School

Officer - Okay - Did you complete... did you get your diploma?

Daron - Yes

Officer - Go to any colleges or technical schools?

Daron - I went to Greenville Tech for the job automotive research.

Officer - How long did you go there?

Daron - About a year

Officer - Okay

Officer - Okay - This is stuff you have seen on TV and probably that you have had read to you before just letting you know what your rights are and everything so.... Just quickly going to go over this....ah..... ask you just a couple of questions, and it says here before we ask you any questions you must understand your rights...

Officer - You have the right to remain silent

Anything you say can be used against you in court

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you have no money to pay a lawyers fee a court will appoint one to represent you without cost if you wish.

0:04:42.2

If you decide to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at anytime until you talk to a lawyer.

Officer - What this last paragraph says is I have read my rights and I understand what my rights are. I am willing to make a statement and answer questions. And I don't want a lawyer at this time. I understand I know what I am doing. No promises or threats have been made to me or pressure or coercion of any kind has been used against you.

Officer – Do you know what the word coercion means. Daron?

Daron – I do

Officer – What does that mean to you?

Daron – Nobody made me talk or nobody forced me to do it.

Officer – Right. I always describe a coercion as there is good coercion and bad coercion. We not going to use either of those. What you described was what I would describe as bad coercion. We are not going to holler and scream at you or fuss or make you talk to us or anything like that. We not going to use good coercion.

Officer – Its getting about lunch time and a T-Bone steak sounds real good right now... but you know.. I am not going to sit here and tell you, "You talk to us and we will get a T-Bone steak later...." I love to eat one. But after we are finished I am not going to go out and buy either one of us one. Okay? Is that fair enough?

Daron – Yes

Officer – What I want you to do right now, Daron.... Right here.... You see I put some check marks. What I need for you to do is have one of these 4 check marks... I need you to read that out loud to me just to make sure that you can read.

Daron – You have a right to remain silent

Officer – Okay. Now where these check marks are, if you would put your initials if you understand what it means for me.

Daron – Anything... anything you can say can be used against you in court

Officer – Okay

Daron – You have a right to talk to a lawyer for advice before we ask any questions and have him with you during questions.

Officer – Okay

0:06:22.1

Daron – If you have no money to pay a lawyer's fee the court will appoint one to represent you without cost if you wish.

Officer – Okay. Right there where the word coercion is... if you understand what the word coercion means, if you will do that. And if you want to talk with us, just sign your name and I will sign my name right up underneath that.

Officer – Today's date is the 19th - 1-19-11 – let me go ahead and sign.. okay.

Officer – Ah... Can we talk about Child

Daron - Absolutely - yes

Officer - Okay - we have mentioned that...uh, uh... you are a stay at home dad and, uh, uh... Shalita works at Verizon in Mauldin. So you are at home? Was... did Shalita work yesterday?

Daron - Yes

Officer - What time did she go into work yesterday?

Daron - She left ... ah... She don't have to be at work until 3:15. But she left yesterday at 2:00 to go get her eyebrows arched.

Officer - She left work early.

Daron - No. She left for work at 2:00. She left about 30 min earlier yesterday than she normally does.

Officer - Okay.. Okay... so she would work from she left at 2:00 but she would work from about 3:00 or so..

Daron - Until 12:00.

Officer - Until midnight... really?

Daron - Yes

Officer - Alright... What does she do for Verizon?

Daron - She works at the call center..

Officer - Okay.. Okay... Alright.. so she left about 2:00 yesterday. What did you guys do.. What time did you get up yesterday morning? Do you recall?

Daron - About 8:00

Officer - Was that the earliest?

Daron - Actually - we got up about 6:30 because we never went back to bed after we got the 6 year old off to school.

0:08:31.4

Officer - Okay... so you woke up about 6:30

Daron - No, before that probably... but yeah about 6:30

Officer - Okay. Do you get up to an alarm clock or do you just wake up

Daron - Alarm clock

Officer - So you get up around 6:30 give or take a little bit and then what did you do?

Daron - Well yesterday, she got P.A. her oldest son she got him off to school yesterday. His hair was braided so she took it loose to wash it and he cries when he gets it combed. So she wanted to.. you know... to pick it out for him. So she got up with him. Plus, she don't get to see him because when she goes to work he is in school he gets home from school 30 min after she goes to work and then when she gets home he's normally in bed.

Officer - I got you.... Yeah... Okay

Daron - So... you know.. 2 or 3 times a week she gets up and spends some time with him.

Officer - So she got up and did that.

Daron - Yes

Officer - Right.. and what else was going on in the house about that time

Daron - That was about it. I mean she got up and got him ready for school.

Officer - Did you get up with her?

Daron - Yeah.. because she was fusing about a page of his homework... that actually got done but misplaced and.... yeah.

Officer - So she was fusing at you about the homework. Were you suppose to keep up with the homework?

Daron - Yeah.. Well actually I do keep up with ... he did it but did not turn it in. He did it. But it's same thing as not having it really.

Officer - Right

Daron - But, he didn't turn it in

Officer - Right.. right... okay.. So you get up and she kind of works with his hair and she is fussing with you about the homework. Did ya'll find the homework?

Daron - No. No. I don't think she did

Officer - Okay. What time does he get off to school?
0:10:16.6

Daron - Seven o'clock.

Officer - Okay. That's pretty quick

Daron - Yes

Officer - Pretty quick time to get up and get....

Daron - Yes. He is 6 years old. He gets his shower at night, gets up, eats his cereal and brushes his teeth and washes his face.

Officer – Yeah. She fixed his hair and sent him off.

Daron – Yes

Officer – What happened then? What did you do?

Daron – Her sister called. You know... her sister they... going through... same story you know. Whatever they are going through and she has her little girl over at her granddaddy's house and I am sure you are all aware of all of that.

Officer – I don't know that

Daron – Yeah... well anyway, she has her sister over at her granddad and they didn't they needed some things from the store. So we get up and went to the store. We went to Quality Foods right there in Greer and picked up a couple of items for her grandfather and her niece.

Officer – Okay. Was Child up then? I guess... What time did she get up?

Daron – Yes -Child normally gets up at about 6:30.

Officer – Okay. Who fed her yesterday?

Daron – I did

Officer – Alright. How was she yesterday? Because you were speaking to one of the medical personal and apparently she has had some congestion or something?

Daron – Yes, she was a little under the weather, but nothing abnormal. Nothing out of the ordinary.

Officer – When you say under the weather, what do you mean?

Daron – You know, when baby's teethes, you have a little more bowel movement. You know a little more irritable, I guess.

Officer – She's teething right now?

Daron – Yes

0:12:02.1

Officer – Has she been to the doctor lately?

Daron – Um... She had an appointment December 14th, but her pediatrician wasn't in. So we are waiting for her to get back to reschedule.

Officer – Okay, and what was that for?

Daron – Just a normal check up. Shots, 4 month shots.

Officer - She was getting her 4 month shots, right.? Okay.. so she was a little fussy. She had some kind of cold or something yesterday.

Daron - Yes

Officer - Did she nap yesterday at all?

Daron - Yeah, a little bit.

Officer - Okay. Do you recall about when she took her naps?

Daron - Uh. Let's see....she was napping when Shalita left for work.

Officer - Okay

Daron - She probably got up about 4:00. Yeah... she probably got up about 4:00. Actually it was a little earlier than that, about 3:30, right after I got P.A. off the bus. She got up. She stayed up to about 5:30 I guess. She ate again.

Officer - So she has been eating pretty well?

Daron - Yes

Officer - No issues there?

Daron - No

Officer - You said one of the children is at the grandfathers.

Daron - The two year old. He just went yesterday because Tonya's other daughter is over there with her little girl. His cousins, so it is convenient to just..... actually when we took the food over there yesterday.. he wanted... he saw her and he wanted to stay.

Officer - Okay

Daron. - So Shalita let him stay overnight.

Officer - Okay.. Where does he live?

0:13:35.2

Daron - Right off 101. I don't know the address, just right off 101.

Officer - Okay.. I got you. Okay

Officer - Tonya's father

Daron - Yes

Officer - I got you. I was having trouble putting the relatives together there for a minute. So.. okay.

Officer - So...she napped. She went down a little before... before Shalita went to work.

Daron - Yes.

Officer - Is that right?

Daron - Yes

Officer - Has she been running a fever at all?

Daron - No

Officer - No. No fever. Had she had any bad coughing?

Daron - No

Officer - No. And she was taking her formula pretty well.

Daron - Yes - Well she threw up yesterday. She threw up. Doctors call it... I can't think of it right now.
But it was a forceful vomit.

Officer - She threw up a lot?

Daron - Yeah a good bit.

Officer - Okay.

Daron - But she is a spit up baby too, though.

Officer - So that's not uncommon.

Daron - No.

Officer - For her to throw up like that

Daron - No

Officer - Okay. How long had she had this cold?

0:14:35.8

Daron - I would say about 3 days. 3 days or so.

Officer - Okay. But she had not been to the doctor for that.

Daron - No.

Officer - Okay. And prior to that she was suppose to have an appointment back in December for her 4 year shots and just a general checkup?

Daron - 4 months

Officer - 4 month shots - I'm sorry. And a general check up.

Officer - Between then and the last couple of days had she had any issues at all?

Daron - No.

Officer - No. No issues. so she's been pretty healthy.

Daron - Yes

Officer - And, so for the last three days or so she has had a cold or something. but she has been sleeping okay.

Daron - Yes

Officer - And she has been eating okay

Daron - Yes

Officer - And no other complaints that you know of. Has she been particularly fussy at all?

Daron - No. Not at all.

Officer - So. all in all she has been doing pretty well.

Daron - Yes

Officer - Okay. so she went down around two or so for her nap yesterday. and got up around five.

Daron - She went down about..... between 12:00 and 1:00. I don't know exact time. Between 12:00 and 1:00, she got back up about 3:30, after P.A. got off the bus.

Officer - And did she eat then?

Daron - Yes she ate.

Officer - Okay. Took her bottle well?
0:15:53.2

Daron - Took her bottle well. changed her diaper. She stayed up and played awhile

Officer - Sure.. sure.. What did.... so you were in the house by yourself then or was Shalita..... was Shalita there while she was napping some.

Daron- Just me. Child and the 6 year old.

Officer - Okay, What did you do while Child was napping?

Daron - Watched TV

Officer - Alright. How long has Shalita lived in that house?

Daron - About 4 years.. 4 or 5 years.

Officer - And you been in there for...

Daron - Since 2007

Officer - How long have ya'll dated?

Daron - 2 years

Officer - 2 years. And how long have you been in the house?

Daron - About..... almost 4 months.

Officer - Child is yours?

Daron - About 3 weeks after she was born I moved in.

Officer - Okay. So Child is yours and the 2 year old is not. Do you care for that child at all? I don't know that baby's name.

Daron - J. LNU

Officer J. LNU Okay. And P.A.

Daron - P.A. , yes

Officer - Do you have a bond with P.A. at all?

Daron - They call me dad. I am the only dad they know.

Officer - So the father of those children don't participate at all..

Daron - No.

Officer - Correct. Okay

0:17:10.7

Officer - Okay, so she gets up from her nap. She takes another bottle. Everything is good. What happens then?

Daron - She is sitting in her.... We have a car seat on the couch... just sitting in the car seat. The 6 year old is playing with her. watching TV. I am in the kitchen frying fish at this time and Shalita's sister called. Again, I really don't want to.... You know.... Get in ... you know... but apparently this is serious ya'll questioning me. I don't want to get in her business like that. But

she is having some problems with her daughter and her daughter looks to me as a big brother.
So she confides in me. and so she called.

Officer - Who is having the problems?

Officer - You're saying Tonya and her daughter are having some issues.

Daron - Yes

Officer - Tonya and Shalita or Tonya and the other daughter.

Daron - Tonya and the other daughter

Officer - Okay

Daron - And, she called me and you know... to talk to me. I am talking to her and I have some fish going... you know.... You see the house. She's not out of my vision...ever out of my vision right there watching TV.

Officer - Okay. What were they watching? Do you recall?

Daron - I really don't. May been Judge Judy or something. Something I was watching.... You know

Officer - Right

Daron - Probably _____ (inaudible)

Officer - Okay

Daron - Wasn't no kid show

Officer - Okay. What kind of fish were you frying?

Daron - I think croaker. only thing Quality Food had....

Officer - Okay. When did you buy them?

Daron - uh, yesterday

Officer - Okay, so ya'll went out at some point

0:18:44.1

Daron - Yes

Officer - Did.... Who went out to buy the fish?

Daron - I did

Officer - Okay, by yourself

Daron - No. Me, Shalita Child, and the 2 year old, J. LNU

Officer - Okay. So ya'll went out and bought some fish and you were frying it up.

Officer - Okay. About what time was this? Judge Judy was on, you think.

Daron - I think she comes on at 4:00

Officer - Okay. Alright, what next. What did you do next?

Daron - Cooked the fish. I asked P.A. what he wanted since his little brother was not there on account of you can pick and choose what you want. He wanted peanut butter and jelly and Doritos. And that is what he had and I fixed that for him and we actually sat in the living room and ate instead of the table. A little different when mama's not there and I went back in and sat down beside Child. She is still playing with her little.... Whatever it is that little thing she has and he is sitting on the couch eating and by that time Shalita called. She gets her first break at 5:00.

Officer - What does the call center do?

Daron - They take the phone calls for people that are having problems with their texting, or bill, or whatever.

Officer - Kind of like customer service or whatever

Daron - Yes, exactly, exactly.

Officer - Okay. And she does not get off until when... Eleven?

Daron - Twelve

Officer - Twelve, okay. Alright. Did ya'll had a good supper? Ya'll ate in the living room, watching TV and what did you do next?

Officer - Do you recall everything you had? Do you just have fish? What else did you have?

Daron - No, that was it, fish and a Sunkist soda. That was it.

Officer - I got ya.. okay. So what happened after super?

0:20:45.6

Daron - We continue to sit there and watch TV, and by this time P.A. didn't eat all his food. He wanted to get up and play with his DS, so he played with his DS and I took Child out of the car seat and you know... she starting to cry a little bit. She didn't like sitting there to long. Plus she is getting to the point where she can slide down and get out of it. So I took her out of it and continued to sit there and watch TV.

Officer - Okay

Daron – And then Shalita's sister called back, so I am talking to her and I got her on this side while I am talking to her. Talking to Shalita's sister.

Officer – Okay. What time was it that she called again? You have already eaten super by then, right? You got Child out of her car seat...

Daron – After five. I don't know exactly.

Officer – Okay. Did ya'll go anywhere else last night?

Daron – No

Officer – No. So you were at home all night long?

Daron – Yes

Officer – Okay. Ah...

Daron – Oh yeah... I did make a phone call to a friend guy after that. because I heard he was in some trouble, so you know... I called to check on him.

Officer – Who did you call?

Daron – Marcus Cowan

Officer – What kind of trouble is he in?

Daron – I don't know. I just... you know.

Officer – You just heard People talking and stuff

Daron – Yes

Officer – Okay. How was P.A. all night? In the evening he didn't eat all his sandwich or Doritos. He wanted to play with his DS.

Daron – Right

Officer – That's pretty normal, isn't it.

Daron – Right

0:22:33.5

Officer – How as he during the evening? Any issues. has he been healthy?

Daron – Yes. Normal

Officer – Do you know when the last time he went to the doctor?

Daron – I don't

Officer - Okay

Daron - No, not to the doctor. I remember the last time he went to the Dentist. Almost a year ago.

Officer - Okay. But he has been in school regularly?

Daron - Oh yeah..

Officer - Do you recall the last time he had to stay home from school for being sick?

Daron - About two months ago. About two months ago they called home and said he had a headache. [went to the school and got him

Officer - Okay, where does he go to school?

Daron - Woodland

Officer - What grade is he in?

Daron - First

Officer - Do you know what his teacher's name is?

Daron - Ms.... I met her ten times. I can't think of what it is at this second

Officer - Do you know what it starts with? It's not "T" is it?

Daron - No

Officer - Not Ms. Troy Ann

Officer - I can't remember the others out there. That's the only one I know.

Daron - If you hadn't of ask me I would have told you.

Officer - You will think of it in a few minutes. It will come to you, just blurt it out.

Daron - She is a pretty women. I will definitely won't forget her name.

Officer - Okay, so you didn't go anywhere.

0:23:57.0

Daron - No

Officer - You and Child and P.A. just kinda hung out.

Daron - Yes.

Officer - Stay around the house. anything else to eat?

Daron - No.

Officer - Did Child eat again before you put her down for the night?

Daron - Yes...yes she did.

Officer - Do you remember about what time she ate?

Daron - It was about 8 or 8:30. It was after I put P.A. down. P.A. went to bed about 8:00 or a little after 8:00. It was about 8:30.

Officer - Okay. How many ounces did she take?

Daron - Six

Officer - Six ounces. Wow. That's pretty good for her to be eating. I mean, that's pretty good eating. I don't know... one of my children was a good eater and one was not a good eater, so...

Daron - She started out not eating like that, but she kind of progressed.

Officer - Right, she picked it up.

Daron - Yes.

Officer - Did she spit up at all after that one?

Daron - Yes she did. She spit up a couple of times after that, not unordinary.

Officer - Was it the..... a lot of throw up or a little spit up or do you know how might you describe it?

Daron - It was not a lot compared to the time when I told you that she had a forcible throw up. It was not a lot compared to that.

Officer - Okay. During the day yesterday, um...she took the one nap, other than that she had been up, and when you say she played, what did she do?

Daron - Well you know.... She is making these noises and you know.... worlds new to her, so she is looking around, watching the ceiling fan go around, and just watching everything going on. Very attentive.

0:25:43.9

Officer - So yesterday she was very alert, attentive, making normal baby sounds. Did she have any periods in the last 3 days where she wouldn't sound like that?

Daron - No

Officer - So she, other than the cold she's been alert, active like babies are.

Daron - Yes.

Officer – Is there a room, I guess, in the house where she is doing this playing?

Daron – She sleeps right in the room right beside us.

Officer – Okay.

Daron – In a bassinet.

Officer – Okay, but yesterday....

Daron – The house, we talking about moving houses

Officer – Okay

Daron – Small.. but you know... but we need a room for the boys

Officer – Right. Yesterday, when you said she was up and playing, what room was that?

Daron- In the living room

Officer – In the living room. Okay, and where were you?

Daron – In the living room. I am always in there.

Officer – So yesterday, was there ever a time she was out of your sight?

Daron- I mean.... no not really. Because of the way the living room is made there is no partition. I can walk in the kitchen and be looking right in the living room...you know. I can still watch TV from the kitchen. It's that small.

Officer (26:55) – Where did she take a nap?

Daron – In her bassinet.

Officer – In her bassinet, which is in the bedroom?

Daron – Yes

Officer – Okay... How did you know she was ready to get up?

0:27:07.0

Daron – She will cry.

Officer – Okay, so you heard her

Daron – Yes

Officer – Okay, and when you heard that she was awake, you went in there and was she still in the bassinet?

Daron - Yeah.

Officer - Okay, so you put her down in the bassinet. She took her nap, and you got her up from the bassinet.

Daron - Right

Officer - Okay, was there any other nap she took during the day?

Daron - No.. just the one between 1:00 & 3:30.....and then..... the one 1:00 & 3:30. She didn't go back to sleep until about 8:00. Eight something, maybe.

Officer - Okay. You gave her a bottle you said about 8:30.

Daron - I gave her a bottle before that.

Officer - Okay

Daron - It was around 8:00 though

Officer - Okay. And she spit up that time a little bit

Daron - Yes

Officer - Is she one to go to sleep in the bassinet or does she have to lay on you or sometimes.....

Daron - No, she definitely has to lay on me. She is spoiled.

Officer - Okay. What were ya'll doing when she went to sleep?

Daron - Well, I sat and held her for probably..... she went to sleep probably about fifteen to eight. I held her until I got up to get P.A. ready to go to bed.

Officer - Okay

Daron - So I didn't actually put her down until I got up to put him to bed.

Officer - Okay

Daron - She was probably asleep a little bit before then.
0:28:34.9

Officer - You gave her a bottle and she went to sleep on you and then around quarter to eight or eight, you go up and did you put her in the bassinet then?

Daron - Yes.

Officer - Okay. How high off the ground is the bassinet?

Daron - About as high as this desk.

Officer - Okay - About two feet

Daron - Yes

Officer - About 2 feet high

Daron - Yes

Officer - She is five months, so she is crawling pretty good?

Daron - Trying

Officer - Trying too

Officer - Can she pull herself up at all?

Daron - No

Officer - Not yet

Daron - No

Officer (29:10) So she is crawling a little bit

Daron - She is crawling a little bit. She's trying to turn over or roll over more

Officer - Right...right

Daron - Let me say this too before....when she napped at between 1:00 and 3:00, she napped on the bed not in the bassinet.

Officer - Okay, on the bed. But you put her down on the bed, correct?

Daron - Yes

Officer - And you got her up from the bed.

Daron - Right

0:29:27.3

Officer - Okay, so you gave her a bottle and she drifts off to sleep, do you put her on the bed or bassinet?

Daron - When after eight?

Officer - After she has eaten and fallen asleep at the end of the night

Daron - Oh... in the bassinet

Officer - Okay, you put her in the bassinet and she is asleep and then you put P.A. to bed.

Daron - Right

Officer - Is that correct?

Daron - Yes

Officer - What did you do after that?

Daron - Washed dishes and watched TV

Officer - Okay. Do you recall what was on? What were you watching?

Daron - uh...Miami Heat played somebody. Miami Heat and Atlanta Hawks.

Officer - Okay. Alright. Did you have anything to drink last night, any alcohol or anything else?

Daron - No

Officer - Did you have any drugs? Did you smoke weed or anything else?

Daron - No

Officer - Okay. Nothing there.

Officer - So, you watch..... You put Child down in the bassinet. You put P.A. to bed.

Daron - Right

Officer - You hang out and watch some TV

Daron - Yes

Officer - Do you recall what time it was when you went to sleep?

Daron - I always stay up till Shalita gets home

Officer - Okay

0:30:43.6

Daron - I don't go to bed until Shalita gets home

Officer - So you were up

Daron - Yes

Officer - That's good

Daron - With the front door wide open

Officer - What time.... Do you recall what time she got home?

Daron - She got home about 12:35 last night; because she normally gets there about 20 minutes after, but she was late. Some girls that live in Juniperridge (sp?), which is right down the street from Popular Drive works there and her mom didn't pick her up for whatever reason, so she dropped her off at Popular Place Apartments, which is right there around the curve.

Officer - Okay. At the time that Child was in the bassinet, any fussing or was she sleeping pretty good?

Daron - She was sleeping pretty good. For the last couple of months, I would say 2 months, she has been sleeping all night.

Officer - Good, Good. I would say that is a blessing too. Good eater and a good sleeper.

Daron - Yes

Officer - So Shalita gets home about 12:35

Daron - About 12:35

Officer - Ya'll up for a little while or did you go straight to bed or.....

Daron - We were up for a little while. She came in and heated her fish. And I was sitting up watching a retake of the lakers and Oklahoma on direct TV. They play the games over and over

Officer - Sure

Daron - Watching the retake of that while she was heating up fish. And you know.... tried to bull for a minute and she went to take a shower.

Officer - Okay

Daron - Matter of fact, I was still sitting there when she went to take a shower.

Officer - Okay - Then what happened?

Daron - Then we went to bed. Talked before we went to bed

Officer - Okay

0:32:25.4

Daron - Actually - I went in the room with her. We were talking whatever we were talking about. I was following, went to the room together at that time. Child was at the point were she hears a voice, she moves or she raises up. Still asleep but raised up and laid back down.

Officer - Okay - So this was around one or so?

Daron - Yes - about 1:00

Officer - And she went right back to sleep

Daron - Yes

Officer - Did she open her eyes at all?

Daron - No

Officer - No. So she just popped her little baby head up and

Daron - Turned her head a little.

Officer - Okay - So yesterday, Shalita had left about 2:00 because she wanted to get her eye brows done. Is that correct?

Daron - Yes

Officer - Ya'll had been around the house. It was you, Shalita and Child.

Daron - Actually.... Actually before Shalita left, we were.... We were actually sitting there... Tonya normally comes over on her lunch break. We were actually sitting there talking to Tonya about the situation with her and her other daughter. You know.... Young teenager lashing out and what not.... You know...

Officer - Yes

Officer - Do you remember about what time that was?

Officer - Had to be before two. I guess, because that's when Shalita left

Daron - It was before two. About 12:40 I guess, because the guy next door called rescue and police department and ambulance came to take the guy next door to the hospital.

Daron - So actually, while her and Shalita was talking during that period I was outside talking to this lady Ms. Anderson from down the street about Mr. Olan. You know... why don't he give one of us a key, cause he is constantly getting sick and... you know... give somebody a key. I'm off. I'm get on you everyday anyway, give me a key.. you know. And he has a guy next Across the street from him, he has a key and he is 90 something years old.

0:34:47.8

Officer - Okay, Child had been alert. She played. She had been up and watching and making baby sounds just like babies do. She threw up that once that was a little more than spit up.

Daron - Yes

Officer – But other than that she was sleeping well. She is eating well. She is having a pretty good day. She takes the nap later in the afternoon. You feed her and you feed yourself, you feed P.A. and then you feed her again in the early evening sometime between 7:30 and 8:00.

Daron – Right

Officer – She takes 6 ounces again. She is eating well, spits up a little bit, but that's it. It was not the same volume as before.

Daron – Yes

Officer – Then you put P.A. to bed and then Shalita gets home about 12:35.

Daron – Right – And see I took a shower about 10:30. I guess..... yeah..I would say about 10:30.

Officer – Okay – You put her down in the bassinet when she had taken her nap, though you had put her in the bed..... You put her in the bed?

Daron – I am not sure if I put her in the bed or Shalita. One of us did. I'm thinking..... I think it was Shalita, because I got the groceries out of the truck, so I am sure it was Shalita.

Officer – Okay. So Shalita put her down for the nap in the bed, but when you hear that she is ready to get up, you get her up from the bed.

Daron – Yes

Officer – Okay –

Daron – That not.... That's not everyday either. I am not saying that's an everyday thing. She was in the bed yesterday.

Officer – Okay. So Shalita came home about 12:35. She eats, heats up some of the fish, eats, ya'll talk a little bit and she goes and gets her shower. What time do you think it was when you guys hit the bed?

Daron – About 10 or 15 minutes to 2:00. Laid in the bed, played on the phone or whatever....

Officer – Okay – You hit the bed and probably talk a little bit and then drift off to sleep, right?

Daron – Right

Officer – Is Child still sleeping pretty good then?

0:37:13.1

Daron – Child is still sleeping.

Officer – Okay

Daron - Phone alert went off that morning about 6:20. I always have mine set fast because Shalita like most women, you have to do so much..... I trick them with the time so they will be on time.

Officer - Right

Daron - So, when the clock went... when my phone went off at 6:20, I automatically make her a bottle. There's not did for Shalita. She will wake up when the 6 year old slams the door and what not. So I went ahead and made her a bottle.

Officer - Right

Daron - And so she whined a little bit and you know... put her a pillow up under her head and gave her a little bit and she wouldn't take it.

Officer - She didn't take any of her bottle this morning?

Daron - No. She didn't take any, maybe 4 ounces. She spit it up. I don't take that as taking anything. About 4 ounces.

Officer - Okay, and then she would.... Did she spit up or throw up like the big throw up for the day before?

Daron - I only knew that she spit it up once I got her up which was after I got the 6 year old to school. See what I am say....

Officer - Okay. So you gave her the bottle in her bassinet?

Daron - Yes

Officer - And she held it and took it herself?

Daron - Yes

Officer - Okay - And then you gave her the bottle and go to get P.A. : off to school.

Daron - Yes

Officer - Okay. And what is Shalita doing this morning? Is she still asleep?

Daron - Asleep

Officer - She is still sleeping during all that time? Ok....

0:38:46.3

Officer - Okay. So you get P.A. off to school and you come back and what happens then?

Daron - I came back... because I smoke Black & Mild..... you know... about smoking. Then I took a dump, and then you know.... and so I took a brief shower and got back in the bed.

Officer - Okay. At what point did you realize that Child had spit her formula up?

Daron - When she whined again, she was lying on her stomach and then raised up and whined again.

Officer - Okay

Daron - That's when I realized she had spit up or what not.

Officer - Okay

Daron - So I picked her up and got her out. That's a normal time for her to get up.

Officer - What time was this?

Daron - About seven or a little after seven.

Officer - Okay, was P.A. already gone?

Daron - Yes - He was already gone.

Officer - Okay. So it's a little after seven. You realized that she.....

Daron - Yes. I got P.A. off, taken a shower and was proceeding to get back in bed and you know... She was whining, so I knew she was on her tummy so I rolled her over and realized she had spit up, so I cleaned her up, checked her diaper. she was fine.

Officer - Okay - Did you change her?

Daron - She wasn't wet.

Officer - Did you change her clothes though?

Daron - No

Officer - Okay - So she couldn't have spit up a whole bunch.

Daron - No - It wasn't a whole lot, you know.... It wasn't a whole lot

Officer - So, she took about 4 ounces but she spit up a little bit. How did you clean her up?

Daron - A rag, baby cloth.

Officer - Okay. But it wasn't so much you needed to change her clothes.

0:40:25.1

Daron - No - Just changed her clothes

Officer - The bedding there in the bassinet, did you have to change it?

Daron - No

Officer - Okay. So it wasn't much?

Daron - No, it wasn't much at all.

Officer - Okay. So you took a baby cloth and cleaned her up a little bit and did you lay her back in the bassinet?

Daron - No

Officer - What did you do?

Daron - I got her out of the bassinet cause I was getting back in the bed and laid her on my chest. She went back to sleep. So when she went back to sleep, I made Shalita slide over a little bit and rolled her off between us. I sleep on the side of the bed that's closer to the floor, because the room..... it's a small room, and Shalita's part of the bed is near the wall.

Officer (41:20)- Right, Okay. So you clean her up and then you put her on your chest and you guys lay down in the bed and you notice that she is asleep, so you set her in between you and Shalita. Was there anything out of the ordinary to that point?

Daron - No.. No.

Officer - Everything was good?

Daron - Yes - Everything was good.

Officer - Okay - So you lay her in the bed next to you.

Daron - Yes

Officer - Okay. And what's happening then?

Daron - She is real clingy. You know anytime you lay a baby in the bed with you they are clingy. She kept getting up under me, so I would slide her back over. I realized she would humm... humm... and she has always had a funny sound when she is breathing. Everybody that would know her, even Tonya would say, "Why is that baby breathing like that? She needs to go to the doctor." So it wasn't abnormal for her at first. And I noticed she wouldn't take anything. It was like she was breathing out but not breathing in. I mean... she wasn't taking anything in... you know her stomach wasn't going up or down or fast enough to me.

0:42:24.9

Daron - I'll tell you why in a minute. It wasn't going up and down fast enough for me so, I said... I woke Shalita up. I said Shalita do you think something is wrong with her breathing... you know... she was like... No. She is fine, so okay. we laid back down and she was still doing it. So I picked her up and she was like, almost limp at first then she got straight but almost limp at first. She was still breathing, slow, way slower than normal... still breathing slow. So I asked

Shalita again, could you roll over and look at her tell me... you know.. if her breathing sounds to you. And she listened and listened. And she picked her up and... you know.. called her and she was not responsive. That's when we took her to the doctor.

Officer - Okay - What I heard you telling the doctor, you and Shalita, was that you noticed in the car the breathing seem to be.....

Daron - I was driving, so you know.

Officer - You were driving, but Shalita said she noticed the breathing became...

Daron - And I believed it, because she got really, really, upset halfway to the pediatric clinic at about the same distance from the emergency room. So It was like.... You know... Damn. And her eyes opened and she said Shalita just saw the white's of her eyes.

Officer - Okay, so backing up you noticed about three days ago that she had a bit of a cold.

Daron - Yes.

Officer - She had some.... Describe that for me again? Just some congestion, was she

Daron - Yes, congestion.

Officer - Runny nose

Daron - Yes, runny nose

Officer - But no particularly bad cough

Daron - No - Nothing that slowed her down

Officer - No fever

Daron - No

Officer - No diarrhea

Daron - No

Officer - Okay, and up through all that.....

Daron - All the kids had diarrhea about three days ago.

0:44:42.7

Officer - Okay

Daron - All of them did... you know

Officer - How long did that last?

Daron - Just that day.. just that day

Officer - Okay. A quick stomach bug for a day

Daron - Yes

Officer - So, up through this cold, what you just said was that nothing really slowed her down.

Daron - No

Officer - She seemed happy. She was alert. She was responsive. She played. She ate well, and she was napping well. She was sleeping well.

Daron - That's right

Officer - And that brings us up to.... You wake up about twenty after six this morning. You fix her a bottle. You give her the bottle in the bassinet, and you propped her head up a little bit with a pillow?

Daron - Yes

Officer - Okay. And she feeds herself with a bottle already?

Daron - Yes. I mean.... I propped it... but you know.. I mean she's holding it now, but I propped it.

Officer - Right. Right. While she is doing that you get P.A. off to school?

Daron - Yes

Officer - Okay. And you come back and you hear

Daron - I wasn't out of the room the whole...you know ... I was back and forth

Officer - Right

Daron - Back and forth and he even came in, you know, and talked to her this morning.. you know

Officer - Right

Daron - Before he went to school

Officer - Right

0:45:56.8

Daron - When I realized she was asleep, she wasn't sucking as hard, so I pulled it out of her mouth.

Officer - Right - And then at some point you hear her a little fussy.

Daron - I pull it out of her mouth and turned her back on her tummy.

Officer - Right, and you get him off and you notice these things. You are still awake, you notice she is still a little fussy

Daron - Yes

Officer - So you check on her, and she spit up just a little bit, but not so much that you have to change her or the bedding there in the bassinet. You just wipe her off with a baby cloth.

Daron - Yes, nothing abnormal

Officer - You put her in the bed with you

Daron - Yes

Officer - She is on your chest

Daron - Yes

Officer - and at the point.....

Daron - About twenty minutes

Officer - And at the point you realized that she is asleep, then you lay her in the bed and you hear that breathing?

Daron - Yes

Officer - It doesn't

Daron - No, not right away. She..... when I rolled her off, she was asleep and I may have dozed off. I would say dozed off, I wouldn't have gone into a deep sleep. I may have dozed off. I probably did sleep thirty good minutes.

Officer - Okay - Was that when she was on your chest, or between you?

Daron - Yes

Officer - So you slept when she was on your chest?

Daron - No, I slept when we laid her down between us.

Officer - Okay

0:47:17.1

Daron - When I laid her down between us.

Officer - Okay. So, what caused you to wake up?

Daron - Cause she was getting closer to me

Officer - So it just became a little uncomfortable because she is right up next to you?

Daron - Yes. Because Shalita is all over the bed and everything too.

Officer - Okay. And when you woke up, tell me if you are stretched out or

Daron - I am laying this way with my back to the open space and I can fall back onto open space. She is laying here facing me and Shalita has her back to her facing the wall. So she is up under me. So when I slide her over that's when I realized she is Hmmm.. Hmmm. you know like.... What the hell! You know.....

Officer - Right. When you wake up, are you on top of her or you next to her?

Daron - I am next to her. I absolutely am not on top of her. That's not it.

Daron - I am 42 years old. I wasn't born yesterday. I certainly know how this can look if what the doctors are saying is true. I certainly don't believe that..... I certainly don't believe that.

Daron - Like I said Tonya's been by the house every single day. She has seen the baby everyday. It is unthinkable and the doctors said she had skull fractures?

Officer - Yes.

Officer - For the last three days the only issue we have is a cold. .Okay. Child !!!

Daron - Okay. Get to it! I know exactly where you are going.

Officer - Child !! Your only child

Daron - Yes. My only child

Officer - Yes. Has had no problems

Daron - Yes

Officer - She has had a cold

Daron - Right

Officer - Suddenly, this morning she can't breath

Daron - Yes

Officer - Suddenly this morning we have to go to the doctor

Officer - Suddenly this morning she has to go from the doctor to the emergency room at Greenville Memorial.

Officer - Do you know why they took her to Greenville Memorial instead of Greer?

Daron - Because of the pediatrics, right?

Officer - Right, because Greenville memorial is set up to handle serious cases.

0:53:24.0

Officer - Okay, for three days now she has had a cold, to use your words. It has not slowed her down a bit. But suddenly this morning, she can't breathe. Okay.

Officer - Suddenly this morning she has skull fractures.

Officer - Suddenly this morning she has retinal bleeding.

Officer - Suddenly this morning she has bleeding on the brain. Okay, alright....

Daron - Yes

Officer - Suddenly, today a doctor who has had years and years of medical training..... He didn't learn this in high school at Greer High or Burns High or any other high school.

Officer - Suddenly this morning a doctor said somebody beat the shit out of that baby..... Child , somebody beat the shit out of Child ,

Daron - Yes

Officer - Okay. Somebody beat the shit out of Child

Daron - I don't believe that.

Officer - He has no motivation to lie.

Daron - I am not saying..... What he is saying is not true. What I am saying..... I don't believe somebody beat my daughter.

Officer - What happened to her then?

Daron - I don't know!

Officer - She is your daughter.

Daron - She is my daughter

Officer - She is in the house with you and Shalita and no one else.

Daron - That's right..... And

Officer - I guess Shalita did it

Daron - I certainly never believe that

Officer - Did she

Daron - No

Officer - So.....

0:54:38.0

Daron - You couldn't pay me to say that.

Officer - Child's little head it just snapped? Is that right?

Daron (54:42) Look I.....

Officer - Is that what you want to go to court and say?

Daron - I'm not saying.....

Officer - Is that what you want to go to court and say? Child, your only daughter who would be five months old tomorrow. Child's little head just snapped.

Daron - I am not saying that.

Officer - There is nobody in the world that is going to believe that Daron.

Officer - How did it happen?

Officer - Nobody.... Nobody is going to believe that.

Daron - I don't know. I don't think she was beaten.

Officer - What do you think?

Daron - I don't know what to think. I don't think the doctor is lying. I think he said she had blood in her brain or whatever. I don't think he is lying. I certainly don't believe that she was beaten.

Officer - Did she fall?

Daron - Not on my clock

Officer - Did she fall on Shalita's clock?

Officer - You were there

Daron -- No that I am aware of...

Officer - Daron!

Daron - Yes

Officer - Child's little head did not just snap. It just didn't happen

Officer – Something happen!

Officer – You know it and I know it. It doesn't just happen. Okay. It doesn't just happen.

0:55:41.2

Officer – You know what happen!

Daron – I don't know what happened.

Officer – You were there.

Daron – This is what I am telling you.

Officer – Shalita said she was asleep. You just told me she was asleep.

Daron - She was..... So what. I beat the baby while she was..... the baby never left the room, so I beat the baby while she was in the bed. Is that what you are telling me.

Officer – I want you to tell me....

Daron – I can't. I don't know.

Daron – I just gave you my story and that is the truth.

Officer – Did somebody else come in the house?

Daron – No... No..

Officer – So there are only 2 people that could have done this. Your son. you know he has already went to school. He is only 6 years old.

Daron – Right

Officer – You mentioned early on that Child was teething and you mentioned, you know, you mentioned some of the things that happened with baby's that are teething. Irritable, more bowel movements. Has she been irritable the past few days because of her teething?

Daron – Yes, but nothing out of the ordinary.

Officer – Something happened and there is only 2 adults that were present.

Daron – I believe it now. But I can tell you what didn't happen.

Officer – Tell us what you think happened?

0:57:21.3

Officer – You are telling us what didn't happen isn't helping us.

Officer - Tell us what you know. You can't sit here and hold it in. Cause you are not doing yourself any good.

Officer - Daron - Tell us what happen!

Daron - Nothing happened on my clock. I mean.... I havn't been aware of anything happen that was significant enough to cause trauma or whatever.

Officer - Something insignificant to you that may have potential to cause that. Something happened.

Officer - Did you spank her?

Daron - No. No..... Hell No.

Officer - Did Shalita do something?

Officer - Daron, we both are down here. We know something happened.

Daron - I would never in a zillion years believe that..no.

Officer - What do you know happened to your daughter?

Daron - I don't know of anything that happened to her. Not in the terms of her being beaten.

Officer - Okay. Well, in the terms of something else.

Officer - Because you are using some specific words and not being.....

Daron - I mea.. I am not using.... I mean, we are not kids. I know what ya'll are saying.

Officer - Right. So if she wasn't beaten, what happened? There has to be a plausible explanation for what happened and you see you are not giving us anything.

Officer - Okay. Shalita put her down in the bed yesterday for a nap. You got her out of the bed. She didn't fall out of the bed then?

Daron - No

Officer - Okay. She is just barely crawling. She can't walk. She can't pull herself up, okay. She is completely dependant on you.

Daron - That's right.

Officer - Child is completely depends on you

Daron - That's right

0:59:09.7

Officer - Okay. Alright. Child has a fractured skull. Child has a fractured skull....something happened to Child. You were the only one in there with Shalita and Child in the house. Something happened to Child and you know what that was.

Daron - No I don't

Officer - Daron - You do

Daron - No I don't no I don't

Officer - It doesn't just happen. And the thing of it is, that those doctors are prepared to go to court. Those doctors are prepared to back up there testimony with years and years of experience and training, and you are going to court..... I don't know..... my almost 5 month old, Child her skull just shattered.

Officer - It didn't happen on its own. Something happened.

Daron - I'm not saying that something did happen. I'm telling you nothing happened on my clock. I'm.... you see what I am saying.

Officer - I understand what you are saying. Something didn't happen on your clock, which means something happened on somebody else clock.

Daron - No No . I didn't say that either. I just said nothing happened on my clock.

Officer - Right. Which stands to reason, if you say you didn't do anything then the only other person that could have done something is Shalita.

Officer - How much do you love your daughter?

Officer - This is your 5 month old daughter.

Daron - She means everything to me..... everything to me.

Officer - So with that in mind.... What is that something that happened?

Daron - I can't tell you what I don't know.

1:01:39.2

Officer - But you know something.

Daron - I don't

Officer - You do

Daron - I don't

Officer - You know the baby just don't sit there by herself and get those types of injuries herself. And this is your opportunity to tell us what happened; otherwise we just have to go on based on what we think.

Officer - The doctors will tell us..... okay, now do you want the evidence to speak for itself or do you want to speak. Okay.. Tell us what happened. This is your opportunity. otherwise the evidence is going to go to court and its going to do all the speaking and it's going to say everything that Child went through, Okay. Do you want that kind of opportunity or do you want that opportunity to speak..... and now is the opportunity.

Officer - Okay... because we know....we know Okay.... That her little head just didn't snap...It had to have some help.

Daron - There is nothing I can tell you.

Officer - Is that what you are prepared to deal with? Are we prepared to testify that 3 whole days leading up to this nothing slowed that baby down. nothing slowed it down? She's healthy, got a little cold, that happens all the time.

Daron - Yes

Officer - Okay. Alright. Babies have runny noses almost constantly, Okay. She spits up a little bit. She threw up once. Nothing that you even took her to the doctor for.

Daron - Right

Officer - Okay - No concerns. Even yesterday, okay, all day yesterday nothing slowed her down.

Officer - Okay - She took her nap as always... Okay.

Officer - Somebody's got to speak for Child now. Okay... Somebody's got to man up and speak for Child . Okay. Because we know leading up to this. there was nothing wrong with Child . Nothing. She is healthy, and now she is over in the Pediatrics Intensive Care Unit with doctors and tubes and ventilators and machines trying to help her. Trying to save her because her skull is fractured, because it is broken. Okay.

Officer - You know what that means to a child that size? She is in a rough spot Daron!! Okay. She is in a rough, rough spot. Okay. Somebody has got to man up and speak. Okay. You can't.... you can't sit here and tell me that it just happened. There is nobody in the world that is going to believe that.

1:04:25.4

Daron - I am not telling you that. They is no way in the world..... you are right.

Officer - Then tell me what did happen?

Daron - I would never sit here and tell you that.....

Officer - No. That is what you have been telling us.

Daron - I am telling you nothing happened to my daughter on my clock.

Officer - I know, on your clock

Daron – I have not done anything to my daughter, so let's be clear about that.

Officer – Okay. Well tell me who did?

Daron – I have not witnessed anybody do anything to her. I don't have any knowledge of anything done to her.

Officer – Okay. What does Shalita tell you? Be honest.

Daron – What do you mean, what did Shalita tell me?

Officer – What did Shalita tell you happened?

Daron – Shalita was asleep. She don't know... I don't guess...

Officer – What do you mean, you guess.

Daron – She was asleep. I mean... you know... how can she say what happened if she was asleep.

Officer – Well you said you didn't know anything so that only leaves Shalita.

Officer – Nothing happened on your clock.

Daron – What! She done something to her then rolled back over and went to sleep.

Officer – I don know, did she?

Daron – I don't know. I am just saying.

Officer – You were there. What did you and Shalita talk about on the ride to the doctor's office?

Daron – We didn't talk about.... She was telling me to slow down. We didn't talk about anything.

Daron – Except for... you know... I told her... you know.. is she okay... is she breathing.

1:05:37.2

Officer – Do you understand that when we talk to Shalita if she says she did something and as well you have knowledge of this that you can be held responsible as well?

Daron (1:05:45) – Yes

Officer – And you are sitting here telling us that nothing has happened.

Officer – And you are the one that has primary care of your daughter.

Officer – You are a stay at home dad. That is what you said.

Daron – Right

Officer - The doctors are prepared to say that somebody beat the shit out of that kid. Now he is going to put that in medical terms. Okay. That is what he is going to say. No doubt.... Those were his words to me.... no doubt.

Officer - Okay. He doesn't come to that conclusion just reading stuff out of a magazine. Okay. Alright. He has had more training than the 3 of us have had on anything put together in our lives. Okay. He knows what happened. He knows. that little head just doesn't snap like that. Okay.

Daron - I am telling you that I did nothing to contribute to what my daughter is dealing with right now. Okay.

Officer - Someone did

Daron - I am not going to sit here and tell you that I am a perfect father. You learn as you go.

Daron - I certainly did not harm my child in anyway.... In anyway

Officer - Who did? Who did?

Daron - I am telling you that I didn't. I don't know who did.

Officer - Well we have two choices. We have you and Shalita. Those are our choices. That's it.

Officer - You or Shalita

Officer - Do you love Shalita more than your daughter?

Officer - That is what you need to think about.

Daron - You know what? They are a lot of shit going on in the world and I can't believe you.....you look like a smarter man than that.

Officer - I think at this point in the conversation it is an absolute fair question. It is absolutely fair.

1:07:49.1

Daron - There is unequivocally no one on the earth more important to me than my daughter and that includes my 96 year old grandmother.... Period.

Officer - I am not sure I believe you.

Daron - Why, because I won't make a statement.

Daron - Saying something I have no knowledge of

Officer - I want you to tell me the truth.

Daron - I am telling you the truth

Officer - No you are not

Daron - Yes I am....

Officer - And I tell you why.... Here we are.....not on your watch.... Well you had her all day yesterday.

Daron - She was fine all day yesterday.

Officer - She was fine.

Daron - She was fine. Shalita come in last night. You think a mother don't come in and look in on her daughter. She was fine.

Officer - Sure

Daron - She was fine.. So all I can get from this is that under no uncertain terms is that apparently I done something to her this morning between the time that I get the 6 year old off to school and her getting to the hospital.

Officer - That is a legitimate question... yes. I am going to ask you.

Officer - Did you do something to your daughter?

Daron - No..

Officer - Did you smack her in the head?

Daron - No.. No... No...

Officer - Well how did her skull get cracked?

Daron - I don't know.... I don't know....

Officer - Did you think Shalita did this?

1:09:10.8

Daron - No

Officer - Why

Officer - I mean..... look at it from our point of view

Daron - I can't see her.... You know.

Officer - One of two people did this

Daron - I can't see her doing anything to harm this baby.

Officer – Who else besides you and Shalita could have fractured your daughter's skull?

Officer – Help me. If there is somebody else there... that is who I want.

Officer – And it gets back to that question that you thought was ridiculous of me asking you there... you know. I can tell that you love your daughter, but how much.. We are right there at that point.

Officer – Either one of you did something. She was irritable and something happened or Shalita did something. You know more than you are telling us. You know that as a man and a father.

Daron – I think for the doctor to say what he said, that something went wrong or perhaps something was even going wrong, that I have no knowledge of... and because I have no knowledge of I can't speak on that.

Officer – What do you mean? I am not following... I don't mean to sound stupid.

Daron – Like you said, I certainly don't believe that her head just popped. I certainly don't believe that.

Officer – Right, so what

Officer – Well let's talk about Child right now. I understand, but my whole point with that is, you have a bunch of people that was able to say things, of course, to say they have there bunch of people that can sit there and say things.

Daron – That's right. If you don't have... You are indigent.. guess what. Whatever the State says, that's what happen.

Officer – What we are looking for is the truth in what happened to Child . That's what we are looking for. If its you, we want to know that. If its Shalita we want to know that. If it's your 6 year old son, we want to know that. Which I know, he is not your biological son, but looking at you, you consider him your son.

Daron – I do.

Officer – Help us. Help us.

Daron – I don't know

Officer – Child can't tell us.

Daron – I don't know.

Officer – Even if she wasn't there with tubes and needles and machines hooked up to her. She couldn't tell us. Because that was your job. That is mommy and daddy's job to speak for the baby on every thing. When they are healthy. When they are sick. When they are happy. When they are sad, at this point, that is mom and dad's job.

Officer – Now, the only people in the house with Child where mom and dad. Now Child has a fractured skull. And her brain is bleeding. Help us. Cause all roads lead to you and Shalita. Did Shalita do it? Your relationship with Shalita from this day.... if you think there is anything... if you are holding on to

salvage something there. I am going to tell you straight up its done. Okay. That relationship is done. Okay. We have a seriously injured child. Okay. And the only two people who were around her are you and Shalita.

Daron - Sgt. Fortenberry said he asked....

Officer - Help us. How did it happen?

Daron - I don't know.

Officer - Not on my watch is not going to get you everywhere. Not on my watch is not going to get you anywhere.

1:14:49.8

Daron - If I thought for five minutes for five seconds that Shalita done anything to harm my daughter then they would have tubes in her. Ok?

Officer - How could this have happened then?

Officer - It just doesn't..... Biologically it just couldn't happen

Daron - Listen. I understand what you are saying. Trust me I do. I understand what you are saying. And in my mind I am thinking.....something had to happen.... something had to happen....

Officer - You are right. That's why we are here asking you these questions that are hard for us to ask and harder for you to answer.

Daron - And is it possible for something to have happened and it didn't happen this morning?

Officer- I don't know. Why don't you tell us what happened.

Daron - I don't know what happened.

Officer - What's something in your mind that stands out that could have lead to where we are today.

Daron (1:16:01)- I don't know... I am just saying... you know... I am at home most of 80% of the time. but there are times I do step out. You know... I don't know. I don't believe that Child woke up this morning with fractured skulls. Nobody can make me believe that. If her skull is fractured. then it was fractured long before this morning. That is my thinking. That's what I think. Nobody can make me believe different than that.

Officer - For the past three days she has been going pretty strong. Eating well.... Eating... sleeping

Daron - Yeah... she hasn't been 100%..... but she's been normal.

Officer - But she has had a little cold. She has been normal.

Daron - I mean nothing that would make you think that... you know... something is wrong.

Officer - Okay, a baby does not live with a fracture skull for three days and you not know it.

Daron - Well I am telling you... I am telling you that when Shalita came in last night she was fine. She looked in on her. She heard her mommy talking she did a big peek-a-boo and laid back down.

Officer - How does your son get to school?

Daron - Bus

Officer - Where does the bus pickup?

Daron - Just right down the street.

Officer - About how far is it.

1:17:14.6

Daron - About....

Officer - two, three, four, five, six houses up or....

Daron - About two houses down. About 40 feet I would say....

Officer - Do you walk them to the bus stop?

Daron - I didn't this morning. I drove them because it was real foggy and he is the only kid that gets on the bus right there. I don't know why they want stop in front of the house. But he is the only kid that gets on the bus down there and it was real foggy this morning and he is six years old.

Officer - How long were you down at the bus stop?

Daron - Till about twenty after 7:00.... maybe... fifteen or twenty after 7:00 I guess.

Officer - So how long from the time you left the house to the bus stop? Fifteen or twenty minutes.

Daron - How long was I down there?

Officer - Yes. Because I think you had mentioned earlier that it was about 7:00 that you left.

Daron - About 7:00. I would normally leave the house about 7:00.

Officer - 7:00 to 7:20 you aren't in the house.

Daron - Yes.

Officer - What did you see when you came back in the house?

Officer - You came back to bed because you said you laid back down.

Daron - Actually, I didn't see anything. I mean.. you know... I didn't even... I turned the hall light on. I didn't turn the bedroom light. I went straight to the bathroom.

Officer - Do you think something happened in that fifteen or twenty minutes?

Officer - Wheels are turning in your head.

Daron - I don't know. It... I don't know, that would be unthinkable.

Officer - Well yeah.... You don't want to think that.

Officer - We are dealing with an unthinkable situation, Daron.

Daron- I... I don't know. I can't think that.

Officer - Shalita tired or maybe the baby was a little bit irritable this morning.

1:19:07.1

Daron - She was tired. When I came in from the living room and like I said I turned on the hall light... you know....it was dark in the bedroom so I was running into stuff and she said damn it... D... and you know.

Officer - So she was awake then.

Daron - I'm not going to argue..... She was awake long enough to say damn it D.. you know.

Officer - So she was a little bit

Daron - And I said ah... I think I said...you know... she said it real hateful like and. I said something to the effect that ah..... Because I smoke Black and Mild so I hit it before I walked in the house. And I said something to the effect that... you know... you don't want me in the bed with you smoking so damn... chill out...or something like that...you know..... just bullshit. Something to that effect.

Officer (1:20:08) - Right

Officer - So why do you think Shalita was so irritable this morning?

Daron - I am thinking because I was noisy... but you know... I certainly was a little.....I don't want to say offended... I just feel like.. you know.... Damn. I got the light off..damn. I am creeping around in the dark... you know what I am saying.

Officer - Did she say anything when you got into the bed?

Daron - No.

Officer - Where was Child ?

Daron -Child was in the crib in the bassinet at that time.

Officer - Still had the bottle in there with her?

Daron - She didn't have it in her mouth.. yeah... it was still in there.

Officer – Was she sleeping?

Daron – Yes

Officer – Shalita say anything about the baby?

Daron – What, when I got out of the bed?

Officer – Anytime.

Daron – No

Officer – Let's ask again. What did you and Shalita talk about on the ride over here?

1:21:23.4

Daron – We didn't talk about anything. I was driving and Shalita was crying and saying that....talking and calling Child and... and Child don't do this to me or some shit she was saying. You know. Or.... I didn't do nothing in the whole body or some shit... you know... it didn't have nothing to do with the situation.

Officer – So she said...

Daron – Why this... you know... why me.. or something to that effect.

Officer – What was she saying?

Daron – I don't know my whole thoughts was getting to the hospital.

Officer – Sure.

Daron – Okay.. what was what now?

Officer – She said why.... What was she asking?

Officer – You said.....

Daron – Why is this happening to me, or I never done anything to anybody or something to that effect... something to that effect.

Officer – What do you think Shalita is going to tell us?

Daron – Think.... You can think anything. I think she is going to tell you the truth.

Officer – Okay. And what do you think she is going to tell us?

Daron – I think she is going to say that...she didn't do anything to the baby and that I didn't do anything to the baby. That's what I think. You know I don't think isn't don't know.

Officer – If we were to go over to that house right now, and look through that house, what would we find?

Daron – Nothing. What do you mean?

Officer – Would we find anything that would lead us to understand how this thing happened?

Daron – No... I mean... Not from my view..... I don't... No.

Officer – Okay. We have already served a search warrant there this morning.

Daron – That's fine

Officer – And we have had forensics in there.

1:24:02.8

Daron – That's fine.....nothing to hide.

Officer – We're We're back... ah... We are back to you and Shalita, and a baby with a busted skull.

Daron – They been talking like my baby's dead.

Officer – We are back to you and Shalita and a baby with a busted skull... you know... You are going to have to talk about it.

Daron – Talk about what?

Officer – Not on my watch isn't going to get you anywhere in court, and we are ready to go to court. I am telling you, okay.. We can say I don't know.. I don't know I don't know.... I mean we will stay here for days. I mean what do you want to do? You want us to listen to that?

Daron – You want me to give you information that I don't have.

Officer – Somebody's got to have it.

Daron – I agree with you on that one. But that somebody's not me.

Officer – Who is that somebody?

Daron – I don't know..... right now...

Officer – Besides God, we know he knows

Daron – Right

Officer: You are the one bringing up those words not on my clock, not on my watch. Which means it happened on somebody else's and there is only two people that could have done this at that house.

Officer – I know you don't want to think that. She and you have some type of conversation. What was that conversation?

Daron -- When!

Officer -- You have to have.. in the car riding to the hospital or to the doctors office or something Child was in good health yesterday other than a little bit of a cold.

Daron -- Shalita was crying. I was driving, she was ah..... telling me to hurry up and basically telling me to slow down before we get killed before we get there. You know... why is this happening to me... ah... I didn't do anything to anybody. Looking back, nothing to make me believe that she had done something.

Officer -- Could she have?

Officer -- You know what her demeanor was this morning.

Daron -- There is no evidence to lead me to believe that.

Officer -- That is not what I asked.

Officer - Unless somebody else magically appeared in that house without you knowing it and Shalita knowing it.

Officer -- Either you had to do something or Shalita had too.

Officer -- Unless there is another explanation that we just don't know. And that is what we are trying to find out. What is that explanation? You know that it just didn't happen.

Officer -- Nobody knows it but you and Shalita. What happened?

Officer -- You can help yourself or not. But we are moving forward. What happened Daron?

Daron -- Just what I told you.

Officer -- You don't know

Daron -- If something happened other than that, I am not aware of it.... That's the truth.

1:30:39.2

Daron -- She was fine. Absolutely fine.

Officer -- Till this morning

Officer -- And you left to go to the bus stop.

Daron - She... you know... she cried and took her bottle.. normal stuff... you know.

Officer -- And when you got back from the bus stop things just started spiraling out of control. And we are here right now.

Officer – That type of injury, if it had happened yesterday, two days ago, three days ago, she would have had those breathing problems then. You know your daughter. You know what is normal for her. After you got back from the bus stop things just started going out of control. What happened?

Daron – I don't know. I can't tell you what I don't know.

Officer – Who does know?

Daron – I don't know.

Daron – I can't tell you who does know. I can tell you who don't and that is me. That is all I can tell you.

Daron – I know she was fine. She was fine when I put her down last night. She... like normal clock work. She... when she hears P.A. and them slamming doors, brushing teeth and all that stuff, she wakes up and was real alert child. I know this. I do it everyday. I fixed her a bottle, so she don't even get crunk like that.... You know.... Nip it before it happens. She was fine..... She was absolutely.....

Officer – Give the bottle to shut her up before she gets started.....

Daron – Those are your words. Okay.

Officer – And I am sitting here talking to a man who has a daughter with a busted head. With a fractured skull. We are not talking about a couple of snitches.. We are talking about a fractured skull. Okay. And I am going to be honest with you. She may not make it. There is a good chance she won't Daron.

Daron – Don't say that

Officer - Yes sir. There is a good chance she won't.. And if she doesn't make it the only two people we have to look for are you and Shalita. We are not talking a couple of snitches. Do you understand that? Do you understand what we are looking at? She couldn't breath on her own. She couldn't breath on her own. Not on my watch and I don't know aint going to get it in court. She could not breath, and all that time.... I was there for a long time, you guys had already been there. They were still pumping that little ventilator into her. Cause her little lungs would not work on their own. They were having to do that. They couldn't get them started. They couldn't get those lungs started. Do you understand that? I don't know and not on my watch don't cut it. Nobody believes that. Nobody will believe that. You only have a couple of opportunities in life to really take advantage of something, and you are blowing one right now by telling me I don't know and not on my watch, because you do know.

1:34:46.5

Daron – She was fine.

Officer - You do know.

Daron – I am telling you that. I gave her a bottle this morning she was the same child she was yesterday.

Officer – Right.

Daron – Okay

Officer - And then her head just exploded. Is that what happened? Her little head just snapped man. Those little bones... that little skull just snapped... like that....

Daron - I am not saying that.

Officer - You know what Shalita is going to tell us....

Daron - I certainly don't believe that

Officer - You know what Shalita is going to tell us.

Daron - No what is she going to tell you.

Officer - Do you think she is going down for you?

Officer - What we want is the truth.

Daron - I certainly know how this looks. Don't ever get it twisted, way more so than you do. And I respect what you are doing and I respect what you do, because, you know like I do. I certainly know how this looks. Okay. It was very evident right there, that's why Tonya showed out like that, because it was very evident... That was why.... Right there.. Nothing she don't She has... nothing

Officer - Or maybe she loves Child just like you do..... listen to me.

Daron - Sure she does

Officer - She loves Child as a Grandmother

Daron - She does.

Officer - And she doesn't was to believe her daughter did something, so she believes you did something. We are asking you if you did something, Daron. You told me you didn't. Not on your watch, not on your clock. So, there is only one other person that could have done this to Child. And you are protecting her.

1:37:03.5

Daron - I am not protecting anybody. You asked me a question and I answered it.

Officer - I also asked you if she could have done that.

Daron - If something was done to her, I didn't do it.

Officer - Okay. Which means there is only two people that could have done it.

Daron - All the other options, they're out there. I am telling you that I did not do anything to contribute to harming my daughter.

Officer - So what do you know about your daughters file. You said she is perfectly fine. You know your daughter. You go to the bus stop and you come back and the next thing you know you are in pediatric ICU with your daughter. What happened?

Officer – You can't sit here and say that you are looking out for the best interest of your daughter right now. You know something happened. It is common sense. So what happened?

Daron – I am sitting here saying.....

Officer – Saying what

Daron - Shalita done anything to harm my daughter. She better take it to the grave with her. And I am saying that out of love.

Officer- Right

Daron – There is no evidence to make me believe that.

Officer – There is certainly evidence to show that either you or Shalita did it

Officer – Look at it common sense wise that is all I am asking you to do. Either you did it or Shalita did it. Nobody else came in that house, did they?

Daron – And ya'll... you.... You are Pressley right?

Officer – Yes

Daron – Mr. Pressley, of all people, you dealt with Tonya, but all people know that if Shalita thought that between the time I got her 6 year old off to school and come back in the house, hurt my daughter, she would certainly call the police. She would call the police at the drop of a dime for anything. Okay. If she had a scratch, Shalita would call the police.

Officer – If you did it.

Daron – If she thought I did it.

Officer – Right. Everything you are saying is revolving around one common thing. You can dance around it, as much as you want.

1:40:01.6

Officer – If you had a knowledge of what happened and you are not going to help us with that.... I mean you are in trouble either way. You are not going to win by saying I don't know and not on my watch. You will not win with that. It won't help you a bit.

Officer- Being an accessory makes you just as guilty before or after the fact all that sort of stuff. Want help you... This is the time to get it out, because we are not going to stop after talking to you.

Officer – There was only two people, you and Shalita that had an opportunity to harm Child .. That is it. There was nobody else in there. That is why we are here. Don't blame it on anything else. Okay. Your daughter is in the hospital with a busted skull. Okay. And she may not make it. Alright.. That is why we are here. What it is that the evidence says somebody beat the shit out of that kid? Okay. And you and Shalita are the only two possibilities. Is it beginning to get a little over whelming for you. Do you see

how it is beginning to stack up, and we have just begun. And we are already this high above you. We have already done a search warrant on the house. We are going to get all the medical records. We are going to bring the doctors and we are going to bring your own testimony. Okay.

Officer - I don't know and not on my watch will not help you. It will not help you. Do you understand that? Tell us what happened?

Daron - She was fine..... She was fine when I took P.A. to the bus stop. I have no reason.....

Officer - You say you have no reason to believe Shalita did anything. If you didn't do anything....

Daron - I put it like this. If she did she fucked me in my ass. She really did.

Officer - Is that the best we get out of you man? Is that the best we get out of you? Is that the best Child is going to get out of you? You are a father.

Daron - That right's

Officer - Is that the best she is going to get out of you?

Daron - She was fine.....

Officer - Did your..... it sounds brazen but, did your concern end at the point that you left to go to the bus stop from Child Because from that point on you brought her to the hospital, but now this is just as important for Child. What we are doing here right now.

1:44:20.6

Daron - It is... It is.....

Officer - But you are dancing around an issue. You can dance around it all you want, but it is still the same song. And it is not going to end anytime soon.

Officer - What we need to know is what happened?

Officer - She was fine up to the time you left to go the bus stop, and then it just spiraled out of control and it is still spinning. But you have a chance right now to slow it down just a little bit. You can slow it down for Child if you want to. Or you can just let it get faster and faster and faster. What happened?

Daron - I didn't see anything happen. So I am not saying nothing happen. I am certainly not saying that at this point. I didn't witness anything happen

Officer - Okay. You obviously love Shalita more than you love your daughter.

Daron - Please, I am 42 years old.

Officer - Yes, and I am 43.

Daron - And when do you know have a love a women

Officer - And I am telling you, you love Shalita more than you love your daughter.

Daron - You never.....

Officer - You won't put it on Shalita because you did it.

Officer - You come in and Shalita is damn Daron.... Damn D.... She is on your ass. the baby is crying. You deal with her all day long. You are tired of it. You won't put it on Shalita because you did it. Didn't you?

Daron - Never that.... No... never that...

Officer - Never

Daron - Never that.... Never

Officer - Then... then.. never what then? If it is never that, then tell me what it is.

Daron - Never that.

Officer - You didn't do it?

Daron - No

Officer - Then I guess Shalita did it. You want us to go lock her up.

1:46:57.2

Daron - You do what you feel like you have to do. You know.. whatever leads you to do whatever you got to do.

Officer - You don't care one way or the other as long as its not you.

Daron - I'm telling you I didn't..... yeah, I do care... but I am telling you that I didn't do anything. That is what I am telling you.

Officer - But you are not telling us what you know or what you heard.

Daron - I didn't hear anything. When I came back in the house she was in the bassinet. Okay. Took a shower, eased into the bed in the dark. She whimpered a little bit. It was about that time of the morning that she gets up anyway so hey... I got her up and.. you know... every now and again you can get her up and she just wants to be with you and then she will go back to sleep. That's what she did. I put her on my chest. She went to sleep. but she was never fully awaken... you know what I am saying. Put her on my chest. She went to sleep. I rolled her off my chest and probably just got into a light sleep before feeling her too close to me. Pushed her over. when I pushed her over she was just HMMM....HMMM....you know. It was kind of like loud... I did not do anything at the time. I just laid there and looked at her. The second time I you know... it was weird.

Officer - Well..

Daron - I shook Shalita.. I said Shalita does this sound normal to you?

Officer - Something certainly went wrong with Child

Officer - If you didn't do it, there is only one other person that could have.

Officer - Shalita is not going down for you.

Daron - I am not going down for her. You know.

Officer - Not on your watch.. Not on your clock. Didn't see anything.

Daron - I didn't and I'm not a detective so I didn't observe her you know in a way to try and analyze whether something went wrong.... You know our baby is in the hospital about to die.. So that is the last thing on my mind, at least up until the doctors say about her cat scan. None of this was on my mind.

Officer - But it is now.

Daron - Of course it is

Officer - So you look back on things and put and two and two together now.. you see what I am saying

Daron - I see exactly what you are saying

Officer - Because I am certain that Shalita is going to be doing that.

1:50:45.3

Daron - And she can

Officer - Right

Daron - Please by all means

Officer - Both of you. Because you are the only two people there

Daron - Yes

Officer - She was suppose to be caring for Child

Daron - Right

Officer - Somebody wasn't

Officer - Somebody didn't

Officer - Somebody put her in the hospital

Daron - It certainly wasn't me

Officer - So you don't know....

Daron - _____

Officer- Did you see Shalita do it?

Daron - No

Officer - Did you see her hit her in the head?

Daron - No I didn't

Officer - Did you see her spank her?

Daron - No

Officer - Did you see her hit her anywhere else?

Daron - No

Officer - Did you hear anything while you were in the shower hear her do any of that?

Daron - No

Officer - Was she saying anything to you..... D come get this baby?

1:51:35.2

Daron - No

Officer - So you have no reason to believe anything bad is going on.

Daron - The only thing she said was.....

Officer - Damn D....when you were making.... When you were making all the noise

Daron - in a real bitchy way... I thought that was fucked up to say the least.... But hey you know, that's not no reason to harm a child. You know what I am saying!

Officer - Yes

Daron - Lots of people, you just don't think that way.

Daron - It's like....

Officer - When we talk about... when we talk about what you and Shalita discussed this morning, what were the words that you guys exchanged when you came in? We get, she talk to me in a bitchy way. I thought that was fucked up... you know.

Daron - But that's how I talk...

Officer - That's fine... that's fine... you are showing some emotion, that's fine. I got you. You are emotional about that. You didn't appreciate it, did you?

Daron - No..... I didn't appreciate it. I certainly was not going to....If that's where you going....

Officer - No No No.... that is not where I am going. Okay. Don't tell me where I am going. Alright. You didn't appreciate it. You didn't like the way she spoke to you. You thought she was out of line for that. Didn't you? Yes

Daron - Yes.. damn

Officer - We get some emotion out of you for that. when we say how did Child get a fractured skull.... I don't know. Not on my watch...

Officer - You don't know... you don't know

Daron - I don't know.. I am analyzing like you are. I am thinking like you are thinking

Officer - What are you thinking then? What do you think happened?

Officer - Because we have had a lot of time to think about this now, and so have you. If you are analyzing like we are analyzing. what do you think happened?

Daron - A lot of things..... I was a primary care taker of all the children. Anybody can testify to that... of all the children. To the point to where.....

1:53:50.6

Officer - What?

Daron - To the point where at times, Shalita seemed like she couldn't handle them. You know.

Officer - Yes

Daron - I mean... you know... I don't know..

Daron - Anytime I was away ... it's like... you going to leave me here with all these kids or ... you know. Shit like that....

Officer - Did she get on you about it?

Daron - No, she didn't get on me about it.. she would just make me feel like.. Damn.. you can't You know.. I can't step out for a second... you can't handle the situation. You know.. normally the women can.

Officer - Yes

Daron - You know.. I can go out and take them to the grocery store. Shop, all the time.

Daron - Ask anybody in Greer, who the kids were with. Every time.... All of them... They say that dude.... The kids are always with him.

Daron - It not that I just choose it to be that way... because she felt like she couldn't handle it. It is frustrating for her. You know.

Officer - Yes. Uh huh.

Daron - It's like.. man I think a lot of things. She was frustrated.... She would get frustrated with the kids and say that... they don't..... they act different... you know... they wild out when they are with me, or whatever.... They wild out with me.... they want mind me or.... And I am not going to deal with them... I am tired.... I work.... You know.... That kind of shit.

Officer - So she had problems dealing with the kids. Did they not mind her?

Daron - They were the typical kids.. I mean you have..... I can only tell you what I think... man... I don't know shit. I can only tell you what I think.

Officer - Well when she is tired and she has been working and the kids are wild, what have you seen her demeanor with the kids. You been there, you seen it.

Daron - I've never witness her do anything to hurt the kids. However, she has done some... you know.... Done some things or been in a way that has been inappropriate for a mother.. You know... I went out with my brother that was Saturday, and so as I came back in the kids was saying that daddy fix me something to eat... I was like damn its 1:00 ya'll haven't ate yet? You know... God Damn... I was tired.... Tired... I mean...you know.... We all feel shit like that... tired... fuck you tired... damn... you know.

1:57:34.3

Officer - What else? What was she doing? Was she sleeping? She didn't want to get up and feed them anything.

Daron - She is a late sleeper anyway. Late sleeper.....

Officer - What else have you seen?

Daron - I been..... this past weekend one of the commodes was stopped up.. man... I was working on the commode and I heard Child crying and damn if I heard her crying I know you did.. you had her.. you know what I am saying. And I said.... You hear Child crying, don't you? You know... I am here digging in shit.... You hear the baby crying... you know... she did to take care of her... to me I shouldn't have to say that... you know... I am digging in shit... You not doing anything. Go make it happen.

Officer - Where was she when she was crying?

Daron - Shit... she was in the bassinet in the bedroom at the time.

Daron - Just little.... You know.... Nothing..... that was normal for us.

Officer - Okay, so she is a little lazy. Right

Daron - Yes

Officer - I got you there. There was a little smirk there... Is she a lot lazy?

Daron - She could do more

Officer - Okay

Daron - She could do more... but you know how it is when the rolls are reversed and of course women say the same thing when the man is working and bringing home the money you kind of control the situation or whatever.... Feel like....

Officer - She is bringing home the money so that is your job, is that right?

Daron - Yes

Officer - You don't work.... She is bringing home the money.... So it's your job... is that what she was telling you? Kinda

Daron - Not in those words... but...

Officer - Does she ever discipline the kids?

Daron - Yes, every now and then.

Officer - How would you describe discipline?

2:00:13.8

Daron - Taking the TV.. Taking the DS... Spanking when it is something really.... Really bad. A lot of times it was... lot of times it was... you know.... Makes things... you know. We different people... I discipline them too... but I discipline for... in my opinion for the right thing... but of course that might not be her opinion.. But you know... we had an incident were P.A. threw a rock at school and.. you know... it hit somebody's car. I felt he should have got his butt busted for that...but he didn't. And there was a time when the teacher said he spanked another kid... you know I.... I wouldn't say he needed to be spanked but he definitely needed to be addressed.. But... you know.... she didn't feel like that was important, that maybe the teachers have the problem. You know... I don't think he is like that.. I didn't say he was like that. You can't go to school spanking other peoples kids. Cause the other parents they don't know that... you know.... the teachers she just doing her job. She probably don't think he like that either.. She just saying you can't do that.. That is all she is saying. Then what you add to that is what you adding? You know. Bullshit to me...you know...

Officer - Did P.A. get his butt busted for throwing the rock?

Daron - No

Officer - Did he get in trouble for spanking the other kid?

Daron - No

Officer - So you seen her spank the children?

Daron - Oh yeah!!!!

Officer - You seen her spank P.A.

Daron - and J. LNU .

Officer - J. LNU What about Child ?

Daron - No... No...

Officer - Has she ever done anything where you were like hey.....? wooo ... back off with the kids? Have you ever seen her get to that point where it made you nervous?

Daron - I don't think I have used the words... she has done some shit to make me angry.

Officer - She has done some things to you to make you angry.

Daron - Yes, make me angry.... The 6 year old... when I got with her the now 2 year old was just an infant baby itself, and the 6 year old got in the crib.. got in his crib... the baby had actually held his baby bed and took the scissors and cut his damn hair. And I thought he should have had his ass tore up for that. Because, first of all I would have tore his ass up... and Because how did he get scissors without you knowing and then get over in the crib. Do you see what I am saying? And if I ever thought that she done anything to Child we would not be having this conversation. But I thought, he should have had his ass busted for that.

2:04:02.9

Officer - So... she is lazy..

Daron - You used that term. I didn't

Officer - You... I think your term is... she could do more. Those were the terms that you used.

Daron - She could be more assertive as a female parent, in my opinion.

Officer - Okay... And you guys differ in the discipline sometimes. But you have never seen her put a hand on Child ?

Daron - No

Officer - And you have never had any concerns about her putting her hands on Child ?

Daron - No

Officer - Why did she do it now? Why did she do it now?

Officer - We can't get away from this thing. There is nothing that indicates that there is a problem. Healthwise, other than a little cold. Okay. Shalilta could do more as the female parent.

Daron - That certainly has nothing to do with this.

Officer - Right.... We can't develop any pattern here. We can't develop any problems. Other than the fact that Child somehow suffered a fractured skull. That's where we keep coming back to. And nobody can tell us anything.

Officer - We know she didn't do it by herself.

Officer - Do you understand that? It is not going anywhere.

Daron - I understand that.

Officer - Daron, it not going anywhere.

Officer - Even after we walk out of here today, it's not going anywhere. The situation is not going to improve.

Daron - And I am not going to sit here and tell you that I harmed my child, because I didn't.

Officer - Well then, it must have been Shalita.

Officer - You know out of everything that you said.... Not you...not you...not you.... not once did you say Shalita did not do anything to Child. Not once have you said that. And there is a reason why.

2:06:41.5

Daron - That reason why is..... this neurologist is telling me my baby had a busted skull, and it didn't just fucking happen. Okay.. I didn't see her do it.. I don't know if she did it or not.. but it didn't happen.. it just didn't fucking happen. She was fine when I went to that bus stop this morning. She was fine when I put her in that bed with me. And now she is not fine. Okay. I didn't see any.... I have my own speculations just like ya'll do. I didn't see anything. I don't know.

Officer - And Shalita has not said anything to you.

Daron - She hadn't said anything to me.... and when we were outside. you told me to go back in and talk to the officers. I called her.... I called her..

Officer - What did ya'll talk about?

Daron - We didn't talk about anything; because her mama said don't say anything get off the phone.

Officer -- What about....

Daron - So she hung the phone up.

Officer - What about when we were outside? Shalita called and ya'll were talking outside. What did ya'll talk about there?

Daron - We....

Officer - I know you were asking how Child was....

Daron - Right

Officer - I know that.

Daron - She just said the doctor says... that it is 50/50 that she could die. Than I heard Tonya telling her to get off the phone and she said I got to go. That was it.

Officer - So what you are saying, here, is that Shalita has not said she has done anything.

Daron - She hasn't

Daron - And I can assure you that as long as it is being investigated I will never get the chance to ask her that face to face. Cause I should of.

Officer - Well we are going to ask her.

Daron - Okay... yeah!

Officer - You know... we are going to ask her.

2:08:50.1

Daron - Obviously something went wrong. I am not going to sit here and deny that. I am telling you that, when I went.... Because I drove to the bus stop this morning because it was so foggy outside, that when I came back, she was fine. She was ... you know... she wouldn't breathing like she was breathing when we went to the doctor. You can't go to the bathroom without seeing that bassinet right there. Because I....

Officer - Then you took a shower.

Daron - I do the same thing every single day. I would never go in the room and not just look in... even if Shalita was in the bed, I would never go in the room and just not.... Just being observing to what is going on with her.. never... never

Officer - Right

Daron - You know.

Officer - But you made...

Daron - Tonya is a cop and she is constantly always about that... real big on that "not having her in the bed stuff" and all that... you know.

Officer - Right

Officer - Well you may have not gotten close to her enough to see whether or not she was having a breathing issues right then before you went in the shower. I am assuming. You know. Because you didn't say you stopped and bent down and all that sort of stuff at that point until you got her in bed with you.

Daron - Yes.. but when I picked her up I didn't observe anything..... you know.

Officer - Right

Daron - She was still between sleeping. I never observed anything being wrong with her. Soon as I put her over there she....

Officer - Other than the fact that she spit up just a little bit.

Daron - Yes.

Officer - And she was limp.. Isn't that how you described her when you picked her up?

Daron - She wasn't when I picked her up out of the crib this morning.

Officer- She was... so you are saying she was okay when you got her up out of the bassinet.

Daron - She wouldn't..... I mean she was still halfway asleep.

2:10:43.7

Officer - Right

Daron - So you know... she wouldn't.... like oh.... So when I picked her up she didn't.... she didn't feel like that.... She didn't feel like when we took her out of the house.. or anything like that.

Officer - When you took her out of the house, she was much more.... She was unresponsive by then, and not holding herself up at all. Even asleep they will... I mean I picked up a babies, I know what you....and lets make sure I am explaining this correctly. When you got her up out of the bassinet, you still had... there was a little tension to her body and she just didn't drop like a rag doll.

Daron - Right

Officer - But when you picked her up to go to the hospital she was completely limp by then.

Daron - Yes

Officer - Okay.

Officer - And you're.... if anything happened while you were at the bus stop with Shalita and the baby, you didn't notice anything when you got back in the house then. That is what you are saying. Everybody is perfectly calm....other than Shalita.. you know...cussing at you. there, everything was just hunk-kee-doree.

Daron - Yes

Officer - She was in the bed.

Daron - Who was?

Officer - Shalita.. She was still in the bed.

Daron - Yes.. She had never got out of the bed. She didn't get up this morning. At least, not to my knowledge. Unless she got up while I was gone.

Officer - Did she say.... Did she.... I mean you walk in she goes...

Daron - Let me... I missed something that let me say this.. When I took P.A. to the bus stop I went to the Quick Store right there on 101 and got me a Black and Mild. I don't know if I said that or not.

Officer - No

Daron - Okay. Yeah... But you know the store.

Officer - Yes.. right there

Daron - But no...no ... you know. She was laying there with her back to me. She didn't say anything. She was just..... she really had an attitude about me making noise though.

2:12:50.8

Officer - She said damn D.

Daron - Damn D - She don't call me D anyway.

Officer - So from the time, say when she got in at 12:35 in the morning, trying to go back through the chronology of all that, up to the time that you notice Child having breathing problems she hadn't She hadn't picked up Child and held her between that time? Between 12:35, when she got home ya'll went to bed about 1:45 or 2:00 in the morning... cause the baby is already in the bassinet sleeping... up to the time when you put the baby on your chest that morning after you got back from the bus stop and all that. Shalita had not picked up the baby at all, that you saw between that time.

Daron - Right

Officer - So Shalita can't say that the baby was okay at 12:35 then. See what I am saying.

Daron - Right

Officer - I am thinking of all avenues...you know... once again... you and Shalita are the only two people.

Daron - Actually, she can say that though. Cause when she came in.....

Officer - When she raised her head up.

Daron - She raised her head... and you know.... and acknowledged her... you know.

Officer - Right.. raised her head up and put it back down.

Daron - Yes.

Officer - But the baby didn't open her eyes like you said. You said she just kind of looked up and maybe tried to open her eyes.

Daron - Yes... you know... cooing...or smile or whatever they do.

Officer - Right... okay. But there was nothing with Shalita's demeanor this morning after you got back from the bus stop to show that there had been anything going that she.... You know... gotten irritated at Child or anything? Right

Officer - It is just going to be real hard a jury of your peers and her peers to sit here and listen. And I haven't heard what Shalita s yet. You know...

Daron - A jury...we talking like she is dead.

Officer - No... as far as we know she has a 50/50 chance. We have not heard any different right now.

Officer - It is real bad.. Anytime a baby is on a ventilator, 5 months old and got a fracture skull with... you know.... bleeding. It is extremely serious. You know. just think about you, if you had a fractured skull and bleeding on the brain, that's bad. Real bad. But a 5 month old little baby.

2:15:37.1

Daron - She going to be alright.. yeah

Officer - I hope she is. absolutely.

Officer - No defenseless child deserves what happened to her. She can even feed herself. And all that we will be able to go on is what you told us and what Shalita tells us and what forensics tell us. What the doctors tell us.

Officer - And there is no other possible explanation for her injuries. Do you see what I am saying? It is not something that just happens. You know... she is not a toddler where she is just running around and fell down and hit herself on the dresser or the bed post or something like that.. you know kids do. Or she was walking outside and fell down the steps or something. Whatever happen to Child , was an intentional act.

Officer - It may have been done in the heat of the moment, where somebody just lost it for a second.. you know.... who knows. Somebody was tired.

Daron - How the fuck you going to lose it for a second on a baby... like you said... defenseless.

Officer - I understand what you are saying there.

Officer - That is what we want to know. It may seem like a lot of these questions are kind of brazen but, I don't want to ask them but I have to.

Daron - I understand.. doing your job

Officer - Okay

Daron - And all I can do is tell you what I know. I don't... I don't know.. I can't.... I can't sit here and tell you that she did or didn't. I don't know

Officer - Right.... I don't want you lie to me

Daron - What I can tell you is that baby was fine this morning.

Officer - Up until the time when you came back in.

Daron - Yes, She.. I mean... you know.. I really didn't observe her that way. Cause it was time.. about that time for her to get up anyway.

Officer - Right

Daron - Knowing that she was sleeping..... still sleep a little bit if I hold her or whatever.

Officer - Right

Officer - And you know....

2:18:37.6

Daron - Because she was awake. She didn't wake up on her own.. she... you know... the alarm always wakes her up.

Officer - Right

Daron - So you know.. That is early for her to get up and her longest period of sleep... stretch of sleep is in the morning anyway. Like once he goes off to school and she sleep. She will sleep to about 11:00. That is her longest stretch of sleep during the day.

Officer- So was it unusual for her to wake up like she did?

Daron - No.... I mean...she wakes up because things are noisy and of course the phone woke her up but she will go right back. She would always go right back... Cause she was waking up. It was not like she woke up on her own. She would always go right back.

Officer - Right... And you know the only other thing is you know... when you picked her up out of the bassinet and laid her on your chest for a little bit and she was fine then.... Some point between then and the time you noticed her up along your side and you slide her out a little bit and then heard her breathing, then you would have been there if something happened to her.

Daron - Right

Officer - Do you hear what I am saying?

Daron - Right

Officer - So I am trying to look at every thing.

Daron - That is impossible because, I never went back into a deep sleep and I certainly would have heard it. I never got out of the bed.

Officer - Right

Daron - Do you hear what I am saying?

Officer - Right. I definitely would think if I was laying in there in bed with my child and something happened to her I would know.

Daron - If something happened it happened while I was at the bus stop obviously.

Officer - Right

Daron - I don't know.

Officer - Still saying....

Officer - Not on my watch... I don't know... correct?

2:20:24.8

Daron - Nothing happened in my presence (inaudible) I am just being honest with you man.

Officer - That all means the same thing.

Daron - I am basically telling you what I just told you.

Officer - Uh.... We been talking for a while....and we are still at the same place. Ah... Is this somewhere you going to..... you are done.

Officer - You sticking with this?

Daron - It's all I know man... It is all I can do.

2:33:09.8

Daron - I want to get back to the hospital

Officer - Well you can't go back to the hospital.. They told you that you can't go back to the hospital right now.

Daron - They told me that I had to call first.

Officer – Well... you will have to call.

Officer – And once again what they said is that you have to call to see if the nursing manager will let you come back. Remember when the officer told you.... And then when you get..... if she says you can... then when you get there to notify security and they will go with you up there. Remember that is what the two security guys told you when they explained all that to you.

Daron – Right ... I understand that... but I am sure by now my family and everybody is at the hospital

Officer – Right... I don't know.

Daron – No... I am telling you they are

Officer – Right

Daron – What time is it?

Officer – It is 2:45

Officer – Ah..... Sgt. Fortenberry, so is there anything else?

Officer – The only thing else I can say is that you get very few windows of opportunity to really help yourself. I just want to make sure you not closing that window on yourself right now.

Daron – I know.

Officer – Okay

Daron – I know.

Officer – Once again, not only for yourself but your daughter too, because she is a victim. That's the thing. Not only am I looking out for the truth in what is good for you and what is best for you no matter what happened, but mostly importantly for your daughter. Because once we all walk out that door, your statement is done. You've told us everything that you pretty much want to tell us about every thing. And so we just.... There is always different sides to a story... you were there we weren't. Medical evidence, the forensics will tell us one thing. You told us something. Of course we are going to be talking to Shalita. So, we just don't want us to get up and walk out this door and you regret you left things this way, that's all.

Daron – That's all I know. I certainly can't sit here and say I'm leaving things out. Cause I haven't. But like you....you know... There is some things I needed to know.

2.35:53.1

Officer – Some things we all need to know.

Officer – If you don't go... I know you will be at the hospital, but if you don't go back to the house on Popular Drive, where would you go? Who would you spend the night with? I am not saying you can't go back there or anything. I am just saying.. if you for some reason choose to not too.

Daron - My grandmother

Officer - Do you know what her address is?

Daron - I don't. It's a road right around on Redacted If you are familiar with where it is.. 5th house on the left. That's if you are coming through Redacted now. If you are coming through Redacted its 5th house on the left. If you going down 290 you make that left over the tracks and it will be...

Officer - Make a right hand turn onto Redacted and follow it on around

Daron - There you go

Officer - 5th house on the left

Officer - And what is your grandmother's name

Daron - Annie Mae Jones

Officer - Okay... And you are going to keep your cell phone on..

Daron - Yes

Officer - Okay.... We're done

WITNESSES

C.T. Miller

CTM

Greenville County Sheriffs Office

1/24/2011

ARREST WARRANT NUMBER
1344271

ACTION OF GRAND JURY

TRUE BILL

Joseph P. Davis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Lou A. Anderson

Foreperson of Petit Jury

Date: 12-6-12

AMENDED INDICTMENT
DOCKET NO. 2012-GS-23-001479

CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2012

12-6-12

THE STATE

VS.

DARON DUANE DAVIS

Amended Indictment for

2356

HOMICIDE BY CHILD ABUSE

VIOLATION § 16-03-0085(A)(1)

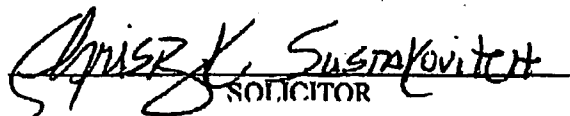
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on **JUL 31 2012** the Grand Jurors of Greenville
County present upon their oath:

That DARON DUANE DAVIS did in Greenville County, between January 18, 2011 and January 19, 2011, cause the death of K. D., a child under the age of eleven, while committing child abuse or neglect, and the death occurred under circumstances manifesting an extreme indifference to human life. This is in violation of §16-03-0085(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

462

COUNTY OF Greenville
STATE VS.
Daron Duane Davis

INDICTMENT/CASE#: 2012GS2301479

AKA:

A/W#: 1344271Race: BLACK Sex: M Age: 44Date of Offense: 1/18/2011DOB: [REDACTED] SS#: [REDACTED]S.C. Code §: 16-03-0085Address: [REDACTED]CDR Code #: 2356City, State, Zip: Taylors, SC 29687-5519DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Homicide by child abuse (20Y to Life)☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0085 of the S.C. Code of Laws, bearing CDR Code # 2356
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST
Christy Kedroci SC Bar# 70325
Stasakovich Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE WITHOUT PAROLE day/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Final 1/21/11☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u>12</u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u>25</u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ <u>50</u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u>5</u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$ <u> </u>
TOTAL	\$	\$ <u> </u>

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Paul B. WickensCourt Reporter: T. Johnson

Presiding Judge

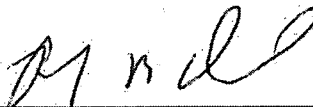
Judge Code: 2730Sentence Date: 12-6-12

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 18, 2014



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

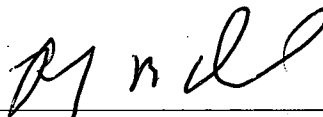
SEP 18 2014

SC Court of Appeals

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