

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Frank R. Addy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MATTHEW ANTWAIN JACKSON,

APPELLANT

APPELLATE CASE NO. 2013-001857

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT (dated August 7-8, 2013)	1
OPENING STATEMENT BY MR. TAYLOR	5
OPENING STATEMENT BY MS. FLANNERY	8
TESTIMONY	
LASHONDRA WARDEN-FAIR	
Direct examination by Mr. Taylor	11
Cross-examination by Ms. Flannery	21
UNDREA SEGAR	
Direct examination by Ms. White	23
Cross-examination by Ms. Flannery	29
RODNEY FREE	
Direct examination by Ms. White	31
Cross-examination by Ms. Flannery	35
MARTIN HARALSON	
Direct examination by Mr. Taylor	44
Cross-examination by Ms. Flannery	53
PHILLIP NICHOLS	
Direct examination by Ms. White	54
Cross-examination by Ms. Flannery	65
MARY-FRAN CROSSWELL	
Direct examination by Ms. White	67
Cross-examination by Ms. Flannery	86
Redirect examination by Ms. White	92
MOTION FOR A DIRECTED VERDICT	98
TESTIMONY	
MATTHEW JACKSON	
Direct examination by Ms. Flannery	112
Cross-examination by Ms. White	128

Redirect examination by Ms. Flannery.....	135
CLOSING ARGUMENT BY MS. FLANNERY	148
CLOSING ARGUMENT BY MS. WHITE	152
CHARGE ON THE LAW	161
VERDICT	173
SENTENCING	180
MOTION FOR A NEW TRIAL	185
ORDER DENYING MOTION FOR A NEW TRIAL.....	189
INDICTMENT	190
SENTENCE SHEET	192
STATE’S EXHIBIT# 31 (MEDICAL DIAGRAM)	193
CERTIFICATE OF COUNSEL.....	194

**THE FOLLOWING EXHIBITS WILL BE ON FILE WITH
THIS COURT:**

STATE’S EXHIBITS# 1-4 AND #22-29 (PHOTOGRAPHS)

STATE OF SOUTH CAROLINA
 COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MATTHEW ANTWAIN JACKSON,)
)
 DEFENDANT.)
 _____)

2011-GS-24-01328

TRANSCRIPT OF RECORD

AUGUST 7-8, 2013
 GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JUDGE, AND A JURY

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 CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
Opening Statements	43
Lashondra Warden-Fair	
Direct Examination by Mr. Taylor	46
Cross Examination by Ms. Flannery	56
Undrea Segar	
Direct Examination by Ms. White	58
Cross Examination by Ms. Flannery	64
Rodney Free	
Direct Examination by Ms. White	66
Cross Examination by Ms. Flannery	70
Sheryl Haupfear	
Direct Examination by Ms. White	79
Martin Haralson	
Direct Examination by Mr. Taylor	81
Cross Examination by Ms. Flannery	90
Phillip Nichols	
Direct Examination by Ms. White	91
Cross Examination by Ms. Flannery	102
Mary-Fran Crosswell	
Direct Examination by Ms. White	104
In Camera Examination	109
Direct Examination by Ms. White	117
Cross Examination by Ms. Flannery	123

Redirect Examination by Ms. White	129
Matthew Jackson	
Direct Examination by Ms. Flannery	149
Cross Examination by Ms. White	165
Redirect Examination by Ms. Flannery	172
CLOSING ARGUMENTS	185
JURY CHARGE	198
VERDICT	210
SENTENCE OF THE COURT	227
CERTIFICATE OF REPORTER	232

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S1-S4	Photographs		85
S-5	DVD In Car Video		89
S6-S21	Photographs		94
S22-S29	Photographs		99
S-30	Self Regional Medical Records		81
S-31	Redacted Medical Diagram	116	117

C-1	Un-redacted Medical Diagram	116	

1 the attorneys an opportunity to object to anything I've said
2 to you during these opening comments. And then we'll resume
3 with the trial. Any objection by comments from the State?

4 MS. WHITE: Not from the State, Your Honor.

5 THE COURT: From the defense.

6 MS. FLANNERY: None from the defense.

7 THE COURT: Very good. We'll now resume the trial. Ms.
8 White, you recognized for your opening, ma'am.

9 MS. WHITE: Mr. Taylor is actually delivering.

10 THE COURT: Oh, I'm sorry. Mr. Taylor, you are
11 recognized for your opening, sir.

12 MR. TAYLOR: May it please the court, Your Honor?

13 THE COURT: Yes, sir.

14 **OPENING STATEMENT BY MR. TAYLOR**

15 MR. TAYLOR: Good morning, my name is Aaron Taylor. I'm
16 actually helping assistant solicitor White. She's the lead
17 prosecutor. We're the prosecutors. Our job is to seek
18 justice, do what's right no matter who the defendant is,
19 what the facts are. We'll also introduce you to the
20 Defendant, that's Matthew Jackson. He's charged with
21 inflicting great bodily injury on a child. Back in January
22 2011 he was at his house with his son, Child
23 who was less than two years old at the time. And he beat
24 the crap out of that kid. He beat him so bad they took him
25 to the hospital here in Greenwood. Unfortunately, Greenwood

1 isn't capable of treating those type of injuries. The kid
2 almost died. They had to airlift him to Greenville. That's
3 what this guy did. The evidence that we're going to present
4 to you during this trial is going to prove this beyond a
5 reasonable doubt.

6 Now, there's quite a few red flags about Mr. Jackson.
7 He gives two different statements, two different stories
8 about what happened. The first story he gives is, yeah, I
9 was sitting on the couch with my son playing video games and
10 he fell off the couch and he got hurt, quit breathing.
11 That's the first story. Way after that he's talking to the
12 -- Child , the little boy, talking to his mother and said,
13 listen, we were just wrestling, that's all we were doing and
14 he fell. Well, the red flag not only is that he changed his
15 story, he has two different stories. You're going to hear
16 from a medical expert who's going to say neither one of
17 those stories are even possible. Fell off the couch? Was
18 wrestling? The injuries that you're going to hear about way
19 more than that. The last red flag, as well, that we're
20 going to talk about is the defendant after this happened
21 didn't even call 911. Someone else had to call 911. He
22 called his mommy. This is an adult, and he called his mommy
23 to come over there instead of calling 911. Fortunately, the
24 kid lived. He's okay. Thank God. But when this happened
25 he almost died.

1 Now, during this trial you're going to hear all types
2 of evidence. You're going to hear testimony from witnesses.
3 You're going to see some pictures. You're going to hear
4 from medical experts and you'll have medical records, so you
5 get the whole picture on what's going on. Our job is to --
6 our burden of proof is not just to find the defendant
7 guilty, it's to find him guilty beyond a reasonable doubt.

8 Well, what is reasonable doubt? What does that mean?
9 We've all heard that. We've all seen Law and Order and CSI
10 which, by the way, is so not true. Try to put that out of
11 your mind right now. But beyond a reasonable doubt is
12 simply are you firmly convinced that he's guilty. Now, at
13 the end of this trial the judge is going to tell you about
14 reasonable doubt and talk to you about some other stuff.
15 But it's that simple. The defense's job is to protect their
16 client's rights. And he has two very good attorneys over
17 there. But not only protect their rights, it's to poke
18 holes, create doubt, muddy the water. So they're going to
19 come up with stuff that doesn't even really matter and make
20 a deal out of it and try to create doubt. And they're going
21 to tell you if you have any doubt, you can't find him
22 guilty. That's not true. There's not some magical formula
23 and you have to get to the top of the mountain, nobody can
24 get there. Reasonable doubt is are you firmly convinced
25 he's guilty of what you say he's guilty of. That's it,

1 firmly convinced. Just keep that in mind. So, if you've
2 listened to anything I've said today, please remember that.

3 I know this is a burden. Fortunately, this isn't a
4 three day trial. We're not going to be in here until next
5 week or the weekend. So thank you for your service. Please
6 pay attention. And I'm going to turn it over to the defense
7 to give their opening statement. Thank you.

8 THE COURT: Thank you, Mr. Taylor. Ms. Flannery, you're
9 recognized, ma'am.

10 MS. FLANNERY: Thank you, Your Honor. May it please the
11 court?

12 THE COURT: Yes, ma'am.

13 **OPENING STATEMENT BY MS. FLANNERY**

14 MS. FLANNERY: I am representing Matthew Jackson. He
15 goes by -- His middle is Antwain. He goes by Twain to his
16 friends. The week lending up to January 20th was a great
17 week. His son, Child , got to come visit him. Five whole
18 days spending quality time with him. Played with him,
19 brought him to see family members, went to the park, played
20 video games where he was playing but Child had the remote
21 control, all the things that a father does with his son.
22 The 20th started out just like every other day that week:
23 playing, having dinner, having lunch, taking a bath, the
24 normal things every parent does. Twain was playing with
25 Child and the unthinkable happened, he dropped him. His

1 heart stopped. I'm sure it felt like hours, but it was
2 really less than seconds. Child was laying on the floor,
3 he wasn't moving. It's every parent's worst nightmare
4 coming to fruition. He grabs up Child , runs out the house
5 because he doesn't have a phone in his house. He's running
6 across the street to his neighbor's house because that's
7 where the phone is, that's where he can get help. He's
8 holding Child as hard as he can. And he's worried. He's
9 worried about Child . He's worried about right now. He's
10 worried about how hurt he could be. In the back of his head
11 he's also worried that this -- that somehow he's going to be
12 blamed for this, that this is going to be the situation of
13 let's never see his child again. Something is going to
14 happen and he's never going to be able to see Child again,
15 and Child is going to grow up without a father the same way
16 he grew up, no father.

17 So, this 21-year-old guy, not a lot of schooling,
18 doesn't get to see his kid very often, runs to get help. He
19 bangs on the door. Bangs and bangs, bangs. No one answers.
20 Another neighbor comes out, asks what happens. He starts
21 screaming help me, help me, call 911. She grabs the phone.
22 She calls 911. As that's happening the other neighbor opens
23 the door. He grabs the phone and calls his mom. His mom is
24 a CNA. It's the person he trusts most in his life. Someone
25 who has medical experience. Someone who can help him.

1 Someone who he knows is only seconds away who can be at that
2 door immediately before the paramedics can even get there.
3 So that's what he does, he calls his mom. His mom gets
4 there and helps.

5 In those seconds where he was thinking of everything,
6 Twain made a horrible decision. He decided to tell a story
7 to law enforcement. He was afraid that everyone else was
8 going to blame him as much as he blamed himself and he
9 wouldn't get to see his child again. So he told law
10 enforcement Child fell off a sofa.

11 I can't really explain that you other than to say he
12 was scared and in the moment and that's what happened. And
13 then later on as time went on that's the story he said. Law
14 enforcement asks him about it and he thinks to himself if I
15 change this I'm admitting I lied to a police officer during
16 investigation. That's a crime. Again, I'm going to get
17 taken away from my child. So he sticks to it. It's a
18 mistake. There's no doubt about it. He shouldn't have said
19 it, but he did. He was scared. But he did reach out to get
20 help for Child. That's how the paramedics got there so
21 fast. He reached out for help. His mom reached out for
22 help.

23 You're going to hear a lot of facts in this. You're
24 going to hear a lot of complex medical information. I just
25 ask you listen to it very clearly. Try to process it, think

1 about it over and over and again. And just as you're
2 thinking about it think he called for help. He ran with
3 Child in his arms begging anyone to help him. And that is
4 what the made the difference for Child in terms of
5 something really bad, Child possibly even passing away, and
6 Child being a normal, healthy four-year-old that he is
7 right now.

8 So I just ask that you listen to everything and think
9 in your mind about all the facts and make a decision on
10 that. Thank you.

11 THE COURT: Thank you, Ms. Flannery. Solicitor, if
12 you'll call your first witness, please.

13 MR. TAYLOR: Your Honor, the state calls Lashondra
14 Warden-Fair.

15 THE COURT: Ma'am, if you'll come around this way, right
16 up here where the microphone is and the Clerk will put you
17 under oath, okay.

18 LASHONDRA WARDEN-FAIR, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. TAYLOR

21 Q Good morning, how you doing?

22 A Good morning.

23 Q Could you tell everybody your name, please? Could you
24 tell everybody your name, please?

25 A Lashondra Warden-Fair.

1 Q Do you know Child is?

2 A That's my son.

3 Q Okay. How old is he?

4 A He's four.

5 Q Now, do you have custody of your son?

6 A Yes.

7 Q Have you always had custody of your son?

8 A Yes.

9 Q When was he born?

10 A .

11 Q Let me take you back to January 20, 2011. You remember
12 that day?

13 A Yes, sir.

14 Q Could you tell us why you remember that day?

15 A Because I had just got from home from work and I got a
16 call from Matthew's sister. And she --

17 Q Who is Matthew?

18 A Child's father.

19 Q Is he in the courtroom today?

20 A Yes.

21 Q Could you point him out for him?

22 A Yes, sir.

23 Q Just let the record reflect that she pointed to the
24 defendant, Judge.

25 THE COURT: All right. The record will -- did she

1 identify the defendant in that case just now?

2 MR. TAYLOR: Yes, sir.

3 THE COURT: Okay. The record will reflect that the
4 defendant was identified by this witness.

5 Q I'm sorry to interrupt you. So you mentioned Matthew's
6 sister?

7 A Yeah. She called me and she told me that Child wasn't
8 moving and I was -- I didn't understand why she was yelling
9 and stuff, so I told her to calm down. And she said Child
10 wasn't moving and that I needed to get to Greenwood. So I
11 went upstairs and got my mom and my step-dad and we went
12 there.

13 Q Where were you at when you got this phone call?

14 A I was sitting downstairs watching TV.

15 Q Where do you live?

16 A I was living in apartments called Clagett Apartments.

17 Q Was that in Greenwood?

18 A No, it's in Spartanburg.

19 Q So how far or how long did it take to get to Greenwood?

20 A It didn't take us too long because my mama was doing 80
21 on the way there.

22 Q How did you feel when you were driving to Greenwood?

23 A I was scared, and I didn't know what had happened to
24 him.

25 Q So nobody -- you didn't talk to anybody else on the way

1 there?

2 A Huh-uh. (Negative.)

3 Q So you had no clue what was going on?

4 A No, sir.

5 Q How did you know where to go?

6 A I had -- they told me -- she told me they was taking
7 him to Greenwood Hospital.

8 Q Okay.

9 A That's where I went.

10 Q All right. So tell me about what happened when you got
11 to Greenwood Hospital.

12 A When I got to the hospital they had us go in a family
13 room. And at first I know my mom wouldn't go because she
14 said a family room is when they get everybody together and
15 they -- like if somebody passed or something like that.
16 They come out and tell them they were dead. So my mama
17 wouldn't go in, so I went in. And everybody was just
18 talking to me. Then a doctor came out. That's when he
19 explained what was going on with Kenya.

20 Q What did he tell you?

21 A He said that he had head trauma -

22 MS. FLANNERY: Objection, hearsay.

23 THE COURT: Sustained as to hearsay.

24 Q Did the doctor tell you there were injuries?

25 A Yes.

1 Q What did the doctor tell you how were they going to
2 treat him?

3 MS. FLANNERY: Objection, hearsay.

4 THE COURT: Do you claim an exception?

5 MR. TAYLOR: I'll just rephrase the question, Judge.

6 THE COURT: Go ahead.

7 Q Did Child , was he -- did they keep him in Greenwood or
8 did they send him somewhere else?

9 A They let me go to the back and see him and they
10 explained to me they were going to send him to
11 Greenville Hospital.

12 Q Let's backtrack a little bit. Why was he in Greenwood,
13 your son?

14 A He went to go visit with his grandmother and his dad.
15 To go visit.

16 Q Okay. Explain the circumstances. Is that normal for
17 him to go to Greenwood to stay there?

18 A Yeah, it was normal that he went there to go see him.

19 Q Okay. And what was the arrangement during that time
20 period, in terms of who got to keep Child ?

21 A He was with his grandmother at the time.

22 Q Okay. How long was he supposed to stay on that
23 occasion?

24 A Well, it was during the weekend, but I sent him extra
25 clothes so I just -- well, let him stay longer because I had

1 sent him extra clothes.

2 Q Okay. Did you give the defendant permission to watch
3 Child or have him that week?

4 A Yes.

5 Q You did, okay. When you sent him to Greenwood did you
6 drive him?

7 A No, his grandmother came and picked him up.

8 Q What's his grandmother's name?

9 A Undrea Segar.

10 Q And that's -- is that the defendant's mom?

11 A Yes.

12 Q All right. What -- when you sent him down there what
13 was Child's condition?

14 A He was fine. He was okay. And before he left the
15 house I told him I loved him and to have fun. And he was
16 fine.

17 Q Did he have any bruises on him at all?

18 A No, sir.

19 Q Okay. So what happened after the doctor said we're
20 taking him to Greenville or sending him to Greenville? What
21 did you do?

22 A I had left Greenwood. They told me to go home and pack
23 some stuff. And by the time we got to Greenville the
24 helicopter will already be there and they will have Child
25 situated by the time I got there. So I left Greenwood, went

1 home to Spartanburg, packed my stuff, and then went to
2 Greenville.

3 Q Okay. Now, when he was staying with his father do you
4 know where he was living?

5 A No.

6 Q Do you know what county it was in?

7 A I know it was in Greenwood, but I didn't know where he
8 stayed exactly.

9 Q Okay. Did y'all have partial custody? Did y'all split
10 custody with him?

11 A Then - Yeah.

12 Q I mean, was that family court --

13 A But he just lived with me.

14 Q Okay. So there was no like --

15 A No.

16 Q -- week on, week off?

17 A Huh-uh.

18 Q It was just kind of whatever?

19 A Yeah.

20 Q Okay. All right. So let's go back to -- you made it
21 to Greenville.

22 A Uh-huh. (Affirmative.)

23 Q Did you get there before or after the helicopter got
24 there?

25 A I got there after, because they already had him set up

1 in the room. He was already set up in the bed when I got
2 there.

3 Q Had you talked to the police at all during this time?

4 A No, sir.

5 Q How were you feeling when you got to Greenville?

6 A I cried a lot, because I didn't know what had happened
7 to him. I didn't have no answers on what happened to him,
8 only from what I had heard what happened to him.

9 Q Did you talk to Child s' grandma or father?

10 A He came in the room --

11 Q Who is he?

12 A Matthew came in the room to see him.

13 Q Did y'all talk at all?

14 A Yeah. I asked him what had happened. He just told me
15 Child fell off the couch.

16 Q Did you get any details?

17 A Huh-uh. (Negative.)

18 Q How did he appear to be, based on your recollection?

19 A I mean, he went over there. He touched him. He talked
20 to him and everything, and then I thought he was going to
21 stay, but he didn't.

22 Q Did he ever give you a different story about what
23 happened?

24 A Yes.

25 Q What did he tell you?

1 A He told me that him and Child were wrestling and that
2 he accidentally dropped him.

3 Q When did he tell you that?

4 A This was January 2012, because I had my daughter
5 January 4th. It was a little bit after I had her.

6 Q How did you feel when he told you a different story?

7 MS. FLANNERY: Objection, relevance.

8 THE COURT: Sorry?

9 MS. FLANNERY: Objection, relevance.

10 THE COURT: Sustained as to relevance.

11 Q How would you describe Child , his personality before
12 this event occurred?

13 A He was a happy baby. He was okay. He was learning
14 things like how to eat with spoons and stuff like that. He
15 was a happy child.

16 Q Now, after this happened, did he -- has his personality
17 or demeanor changed at all?

18 A Yes. He's been going -- he had to go through therapy.
19 He has, you know, outbursts and stuff like that, behavior
20 problems.

21 Q On that night when you saw him at the hospital, based
22 on what you saw, did you see any injuries from where you
23 were at?

24 A Well, when we got to Greenville?

25 Q Yes.

1 A Because I didn't see the bruises on his legs until I
2 got to Greenville Hospital.

3 Q Okay. How long was he in the hospital there?

4 A Almost a week, four days. Around there.

5 Q And they released him about that time?

6 A Uh-huh. (Negative.)

7 Q Who did he go live with after that?

8 A Me.

9 Q Did y'all do any follow up medical --

10 A Yes.

11 Q -- stuff?

12 A Uh-huh. (Affirmative.)

13 Q What did y'all or what did he have to do?

14 A He had to go to a doctor. And everything had to be
15 done in Greenville since that's where he was in the hospital
16 at. For his head, he had to go to a doctor. The Juliette
17 Center, they had me to take him and get HIV tests done on
18 him and everything.

19 Q Okay. How many times did you have to do follow up
20 medical exams?

21 A Well, I had to do it twice with the head doctor. But
22 after the second time he was like that Child didn't have to
23 come back because he told me everything was fine. But he
24 said if he -- if I seen any difference or anything to bring
25 him back.

1 Q Did you ever fail to bring him to a medical checkup at
2 all?

3 A No. I went to all his checkups.

4 Q Okay.

5 MR. TAYLOR: I have no further questions at this time.
6 Just answer any questions Ms. Flannery may have.

7 **CROSS EXAMINATION BY MS. FLANNERY**

8 Q Thank you. Ms. Warden-Fair, you said that you took
9 Child to all his followup appointments?

10 A Uh-huh. (Affirmative)

11 Q Including all the neurology appointments?

12 A Uh-huh. (Affirmative)

13 Q Okay.

14 THE COURT: And if you could, ma'am, will you answer yes
15 or no, because she has to write down everything that's said
16 and sometimes it's hard for her to distinguish affirmative
17 or negative a uh-huh.

18 A Yes.

19 Q So if the neurologist said that you didn't come to all
20 the follow ups that would be incorrect?

21 A Yes. Because I did go to all of them.

22 Q Okay. Child is doing well now?

23 A Yes.

24 Q He eats well?

25 A Uh-huh. Yes.

1 Q Walking?

2 A Yes.

3 Q Talking?

4 A Yes.

5 Q Behaves like a four-year-old does?

6 A Yes.

7 Q Sometimes there's some tantrums, but you have a lot of
8 great days with him?

9 A Yes.

10 Q Okay. He doesn't have -- you're not having to bring
11 him to the doctor on a regular basis for this now?

12 A No.

13 MS. FLANNERY: If you'll hold on just one moment for me.

14 Q So, just to clarify, you only had to see the
15 neurologist twice after this --

16 A Uh-huh.

17 Q -- correct? And that was in -- would have been 2012
18 that --

19 A Yes.

20 Q Right afterwards?

21 A Uh-huh.

22 MS. FLANNERY: All right. Thank you very much.

23 MR. TAYLOR: We have no further questions, Your Honor.

24 THE COURT: Thank you, ma'am, you can step down. Call
25 your next witness, please.

1 MS. WHITE: Your Honor, State calls Undrea Segar.

2 UNDREA SEGAR, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MS. WHITE

5 Q If you could just tell us your name and spell it for
6 the court reporter.

7 A My name is Undrea Segar. It's u-n-d-r-e-a. Segar is
8 s-e-g-a-r.

9 Q All right, Ms. Segar. What is your relationship to Mr.
10 Jackson?

11 A He is my second son.

12 Q How many children do you have?

13 A I have three.

14 Q And I guess Child would be your grandson?

15 A Grandson.

16 Q How many grandkids do you have?

17 A I have four.

18 Q Is Child oldest, youngest?

19 A He's oldest.

20 Q Oldest. Did you -- Child, did he live with his
21 mother?

22 A Yes.

23 Q How often would you say that Child came to stay with
24 you?

25 A Sometimes it was twice a month. Sometimes it might

1 have been once a month, maybe get him for the weekend. Some
2 days she would let him stay a couple days extra, so we had
3 to take him back Monday. Once he started to school Sundays.

4 Q Now, did Mr. Jackson live with you or did he have his
5 own house?

6 A He had his own house.

7 Q When Child would come to stay with you would he stay
8 with you the entire time or would he kind of bounce back and
9 forth?

10 A Back and forth.

11 Q Turning your attention to January 2011, do you remember
12 what day it was that you got Child from Ms. Warden-Fair?

13 A I don't remember the exact day. I know he had been
14 there just about a week. So I don't remember the exact date
15 that I went and got him.

16 Q So if we said around January 14th that sounds about
17 right?

18 A Uh-huh.

19 Q Now, did Child come to stay with you or did he go to
20 his father's house?

21 A I would have to keep Child at least a night, because
22 once I took him to his daddy he wouldn't want to leave. He
23 wouldn't let me get him. He would cry if I tried to take
24 him back. So I always kept him my first night myself.

25 Q Okay. So do you remember what night Mr. Jackson

1 actually got him during that time frame?

2 A During that time frame it was the second day.. I took
3 him that afternoon after he got up.

4 Q Okay. Now, you had made a phone call to Child s
5 mother about taking him to Mr. Jackson's house, hadn't you?

6 A Yes. I was going to Delaware to visit my sister's in
7 Delaware.. And I called her and told her that I was going.
8 And I said are you going to leave -- let Child stay with
9 his daddy or do you want me to bring him home when I come
10 through to Spartanburg. I had to go to Spartanburg to pick
11 up another sister. And she said he could stay.

12 Q And you were leaving for Delaware the next day?

13 A I was leaving for Delaware that Thursday, yes.

14 Q All right. Well, going to that Thursday. Would that
15 have been January 20, 2011?

16 A Yes.

17 Q All right. Obviously, you somehow found out that
18 Child had been injured. Can you tell me a little bit about
19 that?

20 A I was called by my son. He was kind of upset. He
21 said, mama, I need you to get here. And I said what's
22 wrong. He said I just need you to get here. So I told my
23 daughter I'll be right back, something's wrong. It took me
24 about two to three minutes because I was just on the other
25 side of the track from him.

- 1 Q Where did your son live?
- 2 A On Walker.
- 3 Q And that's in Greenwood County?
- 4 A Yes.
- 5 Q So you left your house and went to --
- 6 A My son's.
- 7 Q -- your son's house?
- 8 A His house.
- 9 Q What happened after that?
- 10 A When I walked into the door there was a girl sort of a
- 11 couple of feet inside the door down on her knees. And when
- 12 I looked around her she was kind of pressing down on
- 13 Child's chest. And I was like, "You don't know what you're
- 14 doing, stop doing that." And when Child heard me he lifted
- 15 his arm up. And he laid his arm back down. And I said,
- 16 Child, baby talk to grandma. It's grandma." And every
- 17 time I said it he would lift his arm up and lay his arm back
- 18 down. About that time I think I had said it twice, maybe
- 19 three times, EMS was coming in.
- 20 Q Now, did you notice -- well, back up a little bit.
- 21 What is your profession? What do you do for a living?
- 22 A Right now I'm a mixer at a bakery, but for sixteen
- 23 years I was -- I had been a CNA.
- 24 Q When you got there did you notice anything around about
- 25 Child other than just that he would lift his arm up? Did

1 you notice any vomiting or any other --

2 A No, he was not vomiting. Just his eyes was rolling.

3 And he kept lifting his arm like he wanted to respond and
4 couldn't.

5 Q Did -- what happened after that?

6 A When I got -- when EMS came in I just moved out the
7 way. They started working with him and talking back and
8 forth to each other. And then the guy told the female we
9 got to go. So they grabbed his legs and lifted him up,
10 grabbed his head and they went out the door. So we went out
11 the door. I told my son let's go. The ambulance pulled
12 off. The fire truck pulled off and I backed out the yard
13 and I followed the fire truck.

14 Q And y'all were at the hospital until Child was put on
15 the helicopter?

16 A Yes.

17 Q And was your son with you at the hospital the entire
18 time?

19 A The officers kept taking him outside and bringing him
20 back in and taking him out and bringing him back in. And at
21 that time something had happened to a guy and the Emergency
22 Room was filling up, so they were making us stay in because
23 they were locking the doors.

24 Q Did you go to Greenville?

25 A Yes.

1 Q Who went with you?

2 A My son and his current girlfriend.

3 Q And when did y'all go to Greenville?

4 A It had to be three or four because the officers said
5 they wanted to talk to him back at the house. So I took
6 them -- took him back to the house. That's when Tish pulled
7 up from getting off of work.

8 Q Okay. And, I'm sorry, but who is Tish?

9 A His girlfriend. She was pulling up and I was -- I
10 walked over to her and they were talking to him to tell her
11 that Child had fell and it knocked him out. And I said
12 they're going to talk to y'all. I'm going to go to my
13 house. And when they finish, so I won't be in the way,
14 y'all call me and we'll go to Greenville. So when they
15 called that's what we did.

16 Q Now, backing up. When you took Child to Mr. Jackson's
17 house did he have any bruising on him before you dropped him
18 off?

19 A I didn't notice any bruising as far, but butt-wise he
20 had marks because he kept diaper rash. His butt -- he
21 always had red splotches, and a green one above his crack.
22 All of them are born like that.

23 Q But just something that you would have characterized as
24 a diaper rash?

25 A Yeah. And most of the time I checked his butt because

1 he kept diaper rash.

2 Q And y'all just put cream on it or something like that?

3 A I saw a red spot, I put cream on it.

4 MS. WHITE: Begging the court's indulgence.

5 THE COURT: Yes, ma'am.

6 MS. WHITE: Thank you, Ms. Segar. Please answer any
7 questions Ms. Flannery has.

8 THE COURT: Ms. Flannery.

9 **CROSS EXAMINATION BY MS. FLANNERY**

10 Q Ms. Segar, you said that when you got there Child was
11 -- every time you spoke Child raised his hand to respond --

12 A He raised his arm --

13 Q -- to your voice?

14 A -- like he was trying to respond to me and he let his
15 arm back down.

16 Q So your voice came out and then he responded by lifting
17 his hands up?

18 A Yes.

19 Q Okay. Have you had the opportunity to keep visiting
20 with Child --

21 A Yes.

22 Q -- since this happened? How many times do you think
23 you've see him?

24 A For a while we didn't. We were told by DSS not - well,
25 my son was told not to, so we didn't. But since we've had

1 him Thanksgiving. We had him Christmas was after that. He
2 spent Easter with us. We just had him Fourth of July.

3 Q And you say we, you mean you and Matthew?

4 A Yeah.

5 Q Okay. And he's a normal four-year-old child?

6 A Yes. Who loves his daddy. And all he wants to do --
7 he tells me I want to play video, Grandma. I want daddy.

8 MS. WHITE: Objection, Your Honor, hearsay.

9 THE COURT: Sustained as to hearsay, but you can get to
10 that another way, probably.

11 Q So he visits with his father?

12 A Yes.

13 Q They interact?

14 A Yes.

15 Q Play?

16 A Yes.

17 Q Child walks, runs?

18 A Yes.

19 Q Eats like a normal child?

20 A Eats like a twenty-year-old.

21 Q Eats like a twenty-year-old, okay. If you'll hold on
22 just one moment, okay.

23 MS. FLANNERY: Thank you, Your Honor. No further
24 questions.

25 MS. WHITE: No further questions, Your Honor

1 THE COURT: Thank you, ma'am, you can step. Call your
2 next witness, please, solicitor.

3 MS. WHITE: The state calls Rodney Free.

4 RODNEY FREE, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION BY MS. WHITE

7 Q And if you could just give us your name for the record.

8 A Rodney Free.

9 Q I see you're wearing an EMS shirt. Are you employed
10 with Greenwood County EMS?

11 A Yes, ma'am.

12 Q How long have you worked there?

13 A Since November 2007.

14 Q Were you working on January 20, 2011?

15 A Yes, ma'am.

16 Q Did you have occasion to respond to a call at
17 Avenue?

18 A Yes, ma'am.

19 Q What type of call was that?

20 A We got a call down for a fall, a pediatric fall.

21 Q Do you remember what -- describe the scene when you got
22 there.

23 A We showed up and entered the house and found the child
24 laying behind a couch. It was an adult female there tending
25 to the child. He was laying there unresponsive with his

1 eyes open, not breathing the best at the time, but . . .

2 Q When you say not breathing the best, what do you mean
3 by that?

4 A His respiratory rate was low and shallow.

5 Q When you say his eyes were open, was he looking around
6 or was he --

7 A Not really. Not gazing around looking at certain
8 people. He just -- his eyes were open.

9 Q Did anyone tell you what had happened?

10 A We were told that a child had fell off the back of a
11 couch and landed on the floor.

12 Q Do you recall if it was a male or a female who told you
13 that?

14 A I want to say the female that was there with the child
15 told us he fell from the couch.

16 Q Was there a male in the house when y'all got there?

17 A I'm not sure if he was in the house. I believe he was
18 outside when we pulled up to the residence.

19 Q What -- you got to the scene. Y'all assessed his
20 condition. What did y'all do from there?

21 A We carried him to the ambulance. Applied a pediatric
22 c-collar to stabilize his neck. Put him on a non
23 re-breather. It gives him a continuous flow of oxygen to
24 help him breathe. Assessed his vitals, and we transported
25 him to the hospital.

1 Q Now, from my understanding, there was a fire truck kind
2 of going with y'all.

3 A Yes, ma'am.

4 Q Would you classify this as an emergency transport?

5 A Yes, ma'am. Yes, ma'am.

6 Q How long, start to finish, was the call?

7 A I want to say -- looking at the report. It was -- we
8 got the call at 21:37 and arrived at the hospital at 21:51,
9 so a total of -- excuse me, fourteen minutes.

10 Q So from someone calling 911 to dropping the child off
11 at the Emergency Room took fourteen minutes?

12 A Roughly, fourteen.

13 Q So y'all were hurrying?

14 A Yes, ma'am.

15 Q Was the child vomiting at all?

16 A None before we left. I don't -- I think the vomiting
17 started after we started transporting him to the hospital.

18 Q What kind of -- do you respond to head injuries on a
19 frequent basis?

20 A Not too frequent, but somewhat.

21 Q What types of symptoms do you see with a head injury?

22 A Depending on the severity of it, nausea is a key sign.
23 Of course, any obvious contusions or laceration to the head
24 would indicate, how alert the patient is, what they respond
25 to, what they don't respond to. It gives us key signs.

1 Q An altered mental status would be a --

2 A Would definitely be, yes, ma'am.

3 Q And would you say that Child had an altered mental
4 status?

5 A Yes, ma'am.

6 Q With the respiration rate being as low as it was, you
7 said that y'all put him on a re-breather. Why did y'all do
8 that?

9 A Well, with the low respiratory rate, the child being
10 his size, his normal rate, at a minimum would be 20, 24. So
11 he's definitely not getting the oxygen supplied to his body
12 like he needs it to.

13 Q Did y'all note any other injuries to Child ?

14 A There were bruises noted in the report. Bruises noted
15 to his legs, yes, ma'am.

16 Q When y'all got to the hospital you just -- you turned
17 him over to the people in the Emergency Room?

18 A Yes, ma'am.

19 Q And there's another report. Can you kind of, I guess,
20 where y'all accompanied him to the helicopter?

21 A Yes, ma'am. What we do is once we drop him off and
22 they made determination that he needed to be taken to a
23 level one trauma center they decided to fly him out via
24 helicopter. And we responded to the hospital. Picked the
25 flight crew up, take them to the Emergency Room. They

1 gained control of the patient from the hospital and we
2 transport them back to the helicopter where they finish out
3 their flight.

4 Q So are you literally taking -- driving the ambulance
5 from the big, grassy area --

6 A From the --

7 Q -- in front of Self to the door --

8 A Yes, ma'am.

9 Q -- and then driving back out?

10 A Driving back with the flight crew, the patient. Yes,
11 ma'am.

12 Q And just out of curiosity, a level one trauma center
13 versus -- what is Self?

14 A There's been some question -- I want to say they are a
15 level three, close to a level two. A level one -- level one
16 would be considered Greenville Memorial, Spartanburg.
17 They're able to handle severe cases, do emergency surgeries
18 in the ER, stuff to that nature.

19 Q And they actually have a children's hospital?

20 A They do. They do.

21 MS. WHITE: Please answer any questions Ms. Flannery has
22 for you.

23 THE COURT: Ms. Flannery.

24 **CROSS EXAMINATION BY MS. FLANNERY**

25 Q Mr. Free, you said that you put Child on a

- 1 re-breather? Is that correct?
- 2 A It's called a non re-breather.
- 3 Q Non re-breather. I'm sorry.
- 4 A That's okay.
- 5 Q Okay. And that was supplying oxygen to him?
- 6 A Yes, ma'am.
- 7 Q Okay. So within the fourteen minutes that -- actually,
- 8 less than fourteen minutes from the time he was injured to
- 9 when you got there he was getting oxygen again?
- 10 A From the time -- from the time we -- I'm sorry.
- 11 Q Let me -- that wasn't very clear. Let me start over
- 12 again. So basically once you did the non re-breather he was
- 13 getting all the oxygen he needed?
- 14 A As far as we could tell, yes, ma'am.
- 15 Q Okay. And you mentioned there was a black male that
- 16 you thought might have been outside?
- 17 A From what I can remember, yes, ma'am.
- 18 Q Do you remember how he was acting?
- 19 A He was -- he was upset, and that's even documented in
- 20 the report that there was a black male standing out in the
- 21 yard with his hands on his head crying and screaming. So he
- 22 -- and I remember he was visibly upset, so.
- 23 Q Okay. Just one moment for me.
- 24 A Okay.
- 25 MS. FLANNERY: Thank you very much.

1 A Okay.

2 THE COURT: Thank you, sir, you can step down.

3 MS. WHITE: May we approach, Your Honor?

4 THE COURT: Please.

5 (Whereupon, a bench conference took place while the
6 jury was in the courtroom.)

7 THE COURT: Ladies and gentlemen of the jury, we've
8 moved a little faster than we were expecting this morning.
9 Normally we break around one o'clock, but it's about 12:20
10 and the lawyer's telling me this would probably be a good
11 opportunity to take a break while we wait on the arrival of
12 the next witness. So I'm going to ask that you be back in
13 the jury room, if you would, at 1:30, and we'll resume with
14 the trial at that time, okay.

15 Again, if you happen to go to lunch with a friend,
16 family member, fellow juror, something like that, don't talk
17 about the case. It's perfectly okay if y'all go to lunch
18 with a fellow juror, friend, family member, what have you.
19 But just don't discuss the case. And the reason for this
20 rule is simple, ladies and gentlemen.

21 This is your decision to make and I can't have your
22 decision altered or affected by something somebody else
23 tells you, no matter how well intentioned their comments
24 might be. So, with that, I hope you enjoy your lunch.
25 Please be back in the jury room at 1:30 and we'll resume

1 with the case at that point. Thank you much.

2 (Whereupon, the jury exited the courtroom at 12:31
3 p.m.)

4 THE COURT: While the jury is out may I take a quick
5 look at -- I think you said it was State's 20, State's 22.
6 State's 22. Thank you. Are y'all ready to argue this at
7 this point in time? I'm assuming that the next couple of
8 witnesses may address this.

9 MS. WHITE: That picture is probably coming in through
10 Detective Nichols. So it would be our next to the last
11 witness. But, I mean, we can go on and argue it if defense
12 is ready.

13 THE COURT: Are y'all ready to discuss this at this
14 point? Or you want to do it after lunch?

15 MS. FLANNERY: I'm fine with it, as long as you don't
16 mind if I stumble a little bit.

17 THE COURT: Not a problem. I've been handed what's been
18 marked as State's exhibit number 22 up for identification
19 purposes. It appears to be the photo of the child's
20 buttocks. Ms. White, the purpose of the state introducing
21 this photo or seeking introduction of this photo is what?

22 MS. WHITE: Your Honor, the photo shows injuries that
23 the victim had. And you can see in the picture it looks
24 like there's some scratching as well as bruising. There's
25 also an injury just beside his anus. And that picture

1 demonstrates all of those injuries. And Dr. Crosswell will
2 be talking about those injuries as part of her testimony.

3 THE COURT: Okay. All right. Relative to the other
4 exhibits, what other exhibits or what other photographs is
5 the state seeking to introduce? Is there anything that's --

6 MS. WHITE: There's other photographs. There's none
7 directly from the back, Your Honor.

8 THE COURT: None that depict the injuries that you say
9 occurred here?

10 MS. WHITE: No, sir. There are some from the side, some
11 of the upper thighs, but I'll double check real quick. I
12 don't believe there's any. That one -- the one that Ms.
13 Flannery is holding up is much darker, you can't really see
14 the injuries as well. And, to be honest, Your Honor, I --
15 that picture, if it didn't show those injuries obviously we
16 wouldn't be trying to introduce it due to what it's of. But
17 I just don't have any other way to show the jury what I'm
18 talking about.

19 THE COURT: All right. May I see the other photographs
20 of the child, please. Solicitor, when were these taken
21 relative to when the injuries were inflicted allegedly.

22 MS. WHITE: Most of them were taken the day after. So
23 in Greenville. One or two were taken -- taken the night
24 it happened as he was being prepared for transport.

25 THE COURT: All right. Ms. Flannery, let me hear from

1 you, please.

2 MS. FLANNERY: Thank you, Your Honor. I argue that
3 other pictures do show the bruising. And Ms. White said
4 that she wants to have from this photograph. And that the
5 doctor, Dr. Crosswell, can describe anything in probably
6 great detail. When Child was first in the Self ER there
7 was some talk about there could possibly sexual abuse. And
8 it would be my -- this is a guess, but my guess is that is
9 why that picture was taken as it was -- there were possible
10 allegations of sexual abuse that were later ruled out by
11 testing and consultation with other doctors.

12 I think that that picture could provide an inference
13 that there is some sort of sexual situation going on. It's
14 not within the frame of the indictment. I mean, the rule
15 403, I mean, I think it's very -- it looks like it is very
16 specifically trying to look about some -- I would say it
17 looks like it's trying to look towards some sort of sign of
18 penetration.

19 THE COURT: All right. Solicitor, what's the testimony
20 that's going to be elicited about this particular injury?
21 And I'm assuming that you're referring to the lump in the
22 photo that's just to the rt of the anal opening. Is that
23 correct?

24 MS. WHITE: That's correct. The doctor will testify
25 that that injury was there. She's not sure what caused it.

1 The defendant's mother, I think, tried to characterize this
2 all as a diaper rash. It's going to be the expert's
3 testimony that there's no way that's diaper rash. She is --
4 we are in way, shape or form going anywhere close to
5 testimony regarding sexual abuse. There's also -- and,
6 again, you can see on the picture, and I don't have a copy
7 right in front of me, you can see, for lack of a better
8 word, it looks like scratches on the picture. Those are not
9 depicted in any other photograph.

10 THE COURT: Okay. And you're talking about what looked
11 like vertical linear scratches that, I guess, are parallel
12 to his spinal cord or coccyx?

13 MS. WHITE: Yes, sir.

14 THE COURT: Okay.

15 MS. FLANNERY: Your Honor, just to respond. I just want
16 to make clear Ms. White did make assure me that she wasn't
17 going to elicit any testimony. I wasn't trying to imply that
18 she would in any way.

19 THE COURT: Right.

20 MS. FLANNERY: I would just say again that Dr. Crosswell
21 can describe any of that. And that the element of the crime
22 is seriously related to death. This diaper rash, or not
23 diaper rash, this is not something that could cause death.

24 MS. WHITE: And, Your Honor, taking -- the defendant's
25 story is that this victim was dropped or fell. And I think

1 that the level of injuries, the multiple injuries on the
2 body that we need to demonstrate for the jury show that
3 there is no way that that is what actually happened, that he
4 would not have received those scratches from falling on the
5 floor.

6 THE COURT: All right.

7 MS. FLANNERY: I would just say that the jury could draw
8 an inference that something sexual occurred based on the way
9 that picture was taken.

10 THE COURT: All right. Well, the lump that you're
11 talking about, solicitor, what's the testimony do you
12 anticipate -- what do you anticipate being about that
13 particular lump? I hear you on those scratches. I
14 understand the part about the scratches.

15 MS. WHITE: I was just going to get she was going to say
16 it was there and that was pretty much it. She can't give a
17 cause for it. And I wasn't going to ask her for one.

18 THE COURT: Well, the photo does depict the scratches
19 and the bruises. My initial reaction is that the probative
20 value of the photo would outweigh any prejudicial affect.
21 I've certainly seen a lot worse photos. And, clearly, the
22 state's theory is that the child was abused and that was --
23 the head injury was kind of the last and most serious abuse
24 that occurred to the child before he was hospitalized. So
25 I'll allow -- my initial reaction is to allow State's 22 in

1 evidence. And I understand the defense is taking the
2 position that that - I'm happy to negate any possibility of
3 the jury considering that. I don't want sexual abuse -- the
4 allegation of sexual abuse. But you obviously don't want to
5 interject that, so if you need a curative instruction or
6 what have, that's fine. Try and work up something for me.
7 So that's where we are, I think, on 22. I'm leaning towards
8 letting it in. Anything else before we break?

9 MS. WHITE: No, sir.

10 THE COURT: We'll be at ease for a little bit.

11 MS. WHITE: Your Honor, there actually was one matter
12 regarding the defendant's bond.

13 THE COURT: He's out on bond?

14 MS. FLANNERY: Yes, sir, Your Honor. He's been out on
15 bond for I think two years now.

16 THE COURT: Has the state had any issues or are y'all
17 aware of any issues of him being out on bond, any trouble
18 that he's caused, any problems?

19 MS. WHITE: Your Honor, I had to get a bondsman and
20 bring him in before he had an attorney. I had to send a
21 bondsman to bring him to court one time to be admonished.
22 Other -- that's the only issue I've ever had.

23 THE COURT: Ms. Flannery, y'all have had no problems
24 getting him into court?

25 MS. FLANNERY: No, sir, Your Honor. I haven't.

1 to enter State's Exhibit 30 into evidence.

2 THE COURT: Without objection?

3 MS. FLANNERY: No.

4 THE COURT: State's 30 is in evidence without objection.

5 (Whereupon, marked as State's Exhibit 30 was placed
6 into evidence.)

7 MS. WHITE: Thank you, Ms. Hauptfear.

8 THE COURT: No questions?

9 MS. NELSON: No, sir.

10 THE COURT: Thank you, ma'am. You may step down.

11 (Whereupon, the witness exited the witness stand.)

12 THE COURT: Call your next witness, please.

13 MR. TAYLOR: The state calls Martin Haralson.

14 **MARTIN HARALSON**, duly sworn testifies

15 DIRECT EXAMINATION BY MR. TAYLOR

16 Q. Good afternoon. Could you tell us your name, please?

17 A. Martin Haralson.

18 Q. It looks like you work for the city police department.

19 How long have you worked there?

20 A. Seven years.

21 Q. So you were working back in January of 2011?

22 A. I was.

23 Q. Okay. What have you done for the city police
24 department? What type of roll have you had?

25 A. I worked for uniform patrol for about five years and I

1 was in the warrant office for about two.

2 Q. What department are you in now?

3 A. I'm in uniform patrol.

4 Q. Is that the same department you were in in 2011?

5 A. It was.

6 Q. Could you tell us kind of what that means? What
7 uniform patrol does.

8 A. We generally just patrol, answer calls, and try to
9 deter crime, things of that nature. Just active patrol
10 throughout.

11 Q. So if someone calls 911 - -

12 A. I'd be the one to show up.

13 Q. Were you working - were you on duty the night of
14 January 20, 2011?

15 A. I was.

16 Q. Do you remember that night at all?

17 A. I do.

18 Q. Did you happen to be called to Self Regional?

19 A. I was.

20 Q. Who called you to come there?

21 A. I don't know the exact caller, but I was called in by
22 the hospital by the orders of Dr. Kirby.

23 Q. When you were traveling to the hospital, what was your
24 understanding of what was going on?

25 A. I was responding to a possible child abuse case.

1 Q. When you got to the hospital, what did you begin doing?

2 A. As soon as I entered the Emergency Room I was directed
3 towards Dr. Curry where I spoke with her.

4 Q. Who was that?

5 A. She was the doctor who was seeing the patient.

6 Q. What part of the hospital were they in at this point?

7 A. The child, I'm unsure. I believe he was being tested.
8 I'm not sure where he was at. We were in the Emergency Room
9 area in the main lobby.

10 Q. After you spoke with the doctor, what did you find out
11 from her? What was your understanding at that point?

12 A. From my understanding there was a two-year-old who had
13 severe head trauma that she felt was due to some child
14 abuse. She felt it was not from the story she had been
15 given. She felt like there was criminal activity involved.
16 At that time I took that to my Captain.

17 Q. Did you get a chance to see the child that night?

18 A. Later. Probably 15 or 20 minutes later after I spoke
19 to the doctor.

20 Q. Did you observe any injuries on the child?

21 A. I could. I could see bruising on his body.

22 Q. Like where on his body?

23 A. The leg was the main one I could see at that time. I
24 was told of others, but the leg was the actual one I could
25 see.

1 Q. Did you notice anything about him? I mean, was he able
2 to look around or respond?

3 A. At the time I seen him his eyes were open but he was
4 unresponsive. He wasn't moving his eyes at all. He just
5 kind of had a blank stare.

6 MR. TAYLOR: Judge, may I approach the witness?

7 THE COURT: Yes.

8 Q. I'm going to hand you what's been marked as State's
9 Exhibits 1-4 if you could take a look at those and tell us
10 what's in those pictures.

11 (Witness complied.)

12 A. These are pictures of the patient. Pictures of the
13 bruising and marks that was pointed out to me by the doctor
14 at the time that she felt like was - -

15 MS. FLANNERY: Objection. Hearsay.

16 THE COURT: Sustained.

17 Q. So injuries that were observed on the child by you?

18 A. Yes.

19 Q. So who took those pictures?

20 A. I took these.

21 Q. After looking at those, have they been altered at all
22 or are they accurate to what you took pictures of that day?

23 A. Yes.

24 MR. TAYLOR: Judge, at this time the state moves to
25 admit Exhibits 1,2,3,and 4 into evidence.

1 THE COURT: Y'all have seen these?

2 MS. FLANNERY: I have seen them.

3 THE COURT: Any objection?

4 MS. FLANNERY: No.

5 THE COURT: Without objection State's 1,2,3, and 4 are
6 in evidence.

7 MR. TAYLOR: I'm going to take those back from you.

8 Thank you. Judge, if I could publish State's Exhibit 4 for
9 the jury.

10 THE COURT: Go ahead.

11 Q. Can you see that picture well, Officer Haralson?

12 THE COURT: If you need to step down feel free.

13 MR. TAYLOR: Could you just step down and tell us what's
14 going on in that picture.

15 (Whereupon, the witness exited the witness stand and
16 approached the exhibit.)

17 A. Those are just marks that I observed that I felt were
18 due to possible child abuse.

19 MS. FLANNERY: Objection. Speculation. Move to strike.

20 THE COURT: Sustained. He can testify as to the
21 injuries that he observed, but that's it.

22 Q. Can you tell us what you observed and what you took in
23 this picture. Not what anybody else told you.

24 A. Just bruising and scratches.

25 Q. Okay. Stay there and I'm going to put one more picture

1 up for you. What is this picture of?

2 A. That is a picture of - it's a little mark on the side
3 of his face. It's really hard so see, but it's what I had
4 seen at the time.

5 Q. Is this the boy you were talking about?

6 A. Yes.

7 Q. That had been injured?

8 A. Yes.

9 Q. You can have a seat again, Officer Haralson.

10 (Witness complied.)

11 Okay. We'll jump forward a little bit. After you
12 spoke to the doctor, did you speak to anybody else?

13 A. The only other person I spoke with was Mr. Jackson.

14 Q. Okay. What did he have to say at the hospital?

15 A. He told me that he was at home with the child. The
16 child was laying on the couch on his back. He said he
17 always laid on his back with his arm laying on the side of
18 the couch. He said he had just cleaned the bathtub getting
19 ready to give him a bath. He said he had just come back
20 into the livingroom while he was letting the tub fill up
21 with water. He said he sat back down next to a child where
22 he was playing a video game. He said shortly thereafter he
23 observed his child begin to fall. He said he fell from the
24 couch onto the top of his head. He said as the child fell
25 he looked at him. He said he reached down, grabbed the

1 child up, and picked him up. He said the back of his head
2 fell backwards as he had no control of his head. He said he
3 began rubbing on his chest to try to get some response from
4 him. He appeared not to be breathing. He was unresponsive
5 to any touch. He said he ran outside. He didn't have a
6 phone so he just started screaming. He was running next
7 door where he knew they had a phone. At that time an
8 unknown person called 911 for EMS.

9 Q. You said his name was Mr. Jackson. Would you recognize
10 him if you saw him? Would you recognize him?

11 A. I just only spoke to him briefly.

12 Q. Do you see him in the courtroom at all here today?

13 A. I really could not tell you one way or the other on
14 that.

15 Q. What county did this occur in?

16 A. Greenwood.

17 Q. Okay. So after all this happened, do you know what
18 happened to the boy on that night?

19 A. I just know that he was flown to Greenville.

20 Q. Did you - were you done at that point?

21 A. I was done.

22 Q. Did you ever record anything or whether on video or
23 audio?

24 A. I was - when I made contact with my Captain I advised
25 him that I needed detectives brought in on this. I was then

1 told to take him outside and get a statement for a consent
2 to search his house on video. I then took him outside to my
3 patrol vehicle, using my body mic to get consent to search
4 his house.

5 MR. TAYLOR: Judge, may I approach the witness?

6 THE COURT: Yes.

7 Q. I have what's been marked as State's Exhibit 5. Can you
8 tell us what that is, please.

9 A. This would be a disk from my in-car camera. After
10 getting the statement and after taking my VHS tape out I
11 placed it into evidence where our evidence technician will
12 take it and make it into a disc.

13 Q. Have you had a chance to watch that?

14 A. I have seen it.

15 Q. When did you watch that?

16 A. About an hour ago.

17 Q. How do you know that's the same disc?

18 A. I initialed it.

19 Q. What?

20 A. I put my initials on it.

21 Q. Had it been changed or altered in any way?

22 A. No.

23 MR. TAYLOR: Judge, at this time the state moves to put
24 what's been marked as State's Exhibit 5 into evidence.

25 THE COURT: Any objection?

1 MS. FLANNERY: No objection.

2 THE COURT: Without objection, 5 is in evidence.

3 Q. Before we listen to this, Officer Haralson, you said
4 the detectives were called in?

5 A. Yes, sir.

6 Q. Does that happen in every case?

7 A. Only if it's severe.

8 Q. Once you turn it over to detectives, did you do
9 anything else?

10 A. No, sir. I was done at that time.

11 Q. Okay.

12 MR. TAYLOR: Judge, at this time the state moves to
13 publish Exhibit 5 to the jury.

14 THE COURT: You can proceed.

15 (Whereupon, audio CD, Exhibit number 5, was published
16 to the jury.)

17 Q. Just a couple of follow up questions after that. And
18 that was what you just talked about? That was the audio?

19 A. Yes, sir.

20 Q. Were you one of the ones that searched his house or
21 went inside the house at all?

22 A. No, sir. I was not.

23 Q. This was done where again? This recording.

24 A. The recording was done at the hospital.

25 Q. Okay. I just have a couple just to clarify. You

1 mentioned earlier when you were interviewing the defendant
2 he said something about running around outside screaming
3 with his kid.

4 A. That's right.

5 Q. Could you clarify what he was doing with the child at
6 that point?

7 A. He said he was carrying him in his arms.

8 Q. So he admitted he moved him from the house?

9 A. That's correct.

10 MR. TAYLOR: I have no further questions, Your Honor.
11 Please answer any questions Ms. Flannery may have.

12 **CROSS EXAMINATION BY MS. FLANNERY**

13 Q. You said the detectives were called in for this;
14 correct?

15 A. That's correct.

16 Q. Because detectives are used when there is further
17 investigation that needs to happen.

18 A. That's correct.

19 Q. It's more based on whether there needs to be further
20 questioning done in the future than the severity.

21 A. Not absolutely. That's incorrect. It depends on the
22 severity of the case usually whether detectives are called
23 in. If it's a minor crime a lot of times we in uniform
24 patrol follow up as we have time available.

25 Q. Matthew was cooperative in speaking to you; correct?

1 A. That's correct.

2 Q. He gave consent to search the house?

3 A. That's correct.

4 Q. He volunteered to come with you.

5 A. That's correct.

6 Q. He didn't try to stop you from going and seeing
7 anything.

8 A. He did not.

9 Q. He said I want to help in any way I can.

10 A. He did.

11 Q. Thank you. I have no further questions.

12 THE COURT: Thank you, sir. You can step down. Call
13 your next witness, please.

14 MS. WHITE: The state calls Detective Phillip Nichols.

15 **PHILLIP NICHOLS**, being duly sworn testifies
16 as follows:

17 **DIRECT EXAMINATION BY MS. WHITE**

18 Q. If you could, just give us your name and spell it for
19 the court reporter.

20 A. Phillip Nichols. P-H-I-L-L-I-P. Last name is spelled
21 N-I-C-H-O-L-S.

22 Q. You're employed with the Greenwood Police Department?

23 A. Yes, ma'am.

24 Q. How long have you been with the police department?

25 A. Five years this August.

1 Q. I keep calling you Detective Nichols, because that's
2 how I met you, but are you a detective now or in uniform
3 patrol?

4 A. Currently I'm in uniform patrol.

5 Q. When were you in detectives?

6 A. From December 27, 2010 until just a couple of months
7 ago.

8 Q. Why did you leave detectives?

9 A. I was ready to come back for a change and to be on
10 shift.

11 Q. Did you have occasion to become involved in a case on
12 January 20, 2011?

13 A. Yes, ma'am.

14 Q. Involving suspected child abuse?

15 A. Yes, ma'am.

16 Q. How did you get that call?

17 A. Vernon Peppers contacted my Lieutenant at the time,
18 Nick Futch, who in turn contacted me.

19 Q. About what time of day was this?

20 A. Let me review and I can give you a time. Between 9:30
21 and 9:45. Thereabouts.

22 Q. Where did you respond to first?

23 A. A residence on Walker Avenue initially.

24 Q. What was your understanding of whose residence that
25 was?

1 A. The understanding was that it was Matthew Jackson's
2 residence. We were advised we were responding, of course,
3 for Child

4 Q. Mr. Jackson was Child's father?

5 A. Yes, ma'am.

6 Q. When you arrived at the residence, who was present?

7 A. There were several police officers who were assisting
8 to secure the scene, if I remember correctly. Captain
9 Peppers was present, Lieutenant Futch, and I.

10 Q. Now, what did you do - what, if anything, did you do at
11 the residence?

12 A. During that time, after Officer Haralson had asked Mr.
13 Jackson for permission to search his residence we did go
14 inside to photograph and collect evidence from inside the
15 residence.

16 MS. WHITE: May I approach the witness, Your Honor?

17 THE COURT: Please.

18 Q. I'm going to hand you what's been marked as State's
19 Exhibit number 6 through State's 21. Could you just glance
20 through those and then I'll have a couple of questions about
21 them.

22 (Whereupon, the witness complies.)

23 A. Okay.

24 Q. Did you take pictures at the house?

25 A. No, ma'am. I did not. Sergeant Griffin.

1 Q. But you were present at the house and observed?

2 A. Yes, ma'am.

3 Q. Are those photographs fair and accurate depictions of
4 what you saw in the house that night?

5 A. Yes, ma'am.

6 MS. WHITE: Your Honor, the State moves Exhibits 6
7 through 21 into evidence.

8 THE COURT: Have you seen these, Ms. Flannery?

9 MS. FLANNERY: I have, Your Honor.

10 THE COURT: Any objections?

11 MS. FLANNERY: No objections.

12 THE COURT: Without objection, 6 through 21 are in
13 evidence.

14 Q. Was Mr. Jackson present while you were taking these
15 pictures?

16 A. I don't remember if he was present.

17 Q. Did you have an occasion to speak with him that
18 evening?

19 A. I believe I may have shortly.

20 Q. Did you have a basic understanding of what Mr. Jackson
21 was claiming happened?

22 A. Yes, ma'am. I did.

23 Q. What was your understanding of what his story was?

24 A. My understanding upon arrival at the scene initially
25 was that a young child, Child , had fallen off the couch and

1 gotten injured.

2 Q. Now, I'm going to show you - We'll start with - this is
3 State's 21.

4 THE COURT: You may step down to see.

5 (Whereupon, the witness steps down from the stand and
6 approaches the exhibit.)

7 Q. Now, is that the couch in question?

8 A. Yes, ma'am.

9 Q. I guess in the picture we see some video game
10 controllers and a coffee table.

11 A. That's correct.

12 Q. Did y'all take any measurements?

13 A. We sure did.

14 Q. This is State's Exhibit 7. What are y'all measuring
15 there?

16 A. That is the height of the couch.

17 Q. So about 19 inches?

18 A. Yes, ma'am.

19 Q. Going back to State's 21. It looks like carpet and
20 then a rug on top of the carpet?

21 A. Yes, ma'am.

22 Q. Again, this is State's 18. Just a different view of
23 the couch? Now when you came in the front door at this
24 house - we're looking at State's 16 now. Where was the
25 front door in relation to the couch? If you remember.

1 A. I can't say I remember exactly. I feel like as we
2 entered the house the front door was on the left side -
3 excuse me, on the right side of what you're looking at here.

4 Q. Would the couch have been to your left as you were
5 coming in?

6 A. I believe that's correct. It's been going on three
7 years.

8 Q. You respond to a lot of cases, don't you?

9 A. Hundreds and hundreds a year.

10 Q. We're looking now at State's Exhibit 11. What is that a
11 measurement of?

12 A. That's the measurement of the distance between the
13 couch seat and the coffee table on the left side of the
14 picture there.

15 Q. All right. So about 15 to 16 inches between the coffee
16 table and the couch?

17 A. Yes, ma'am.

18 Q. Here this is State's Exhibit 6. What is that on the
19 t.v. screen?

20 A. A video game. It appears to be a football video game.

21 Q. Did someone take a closer picture of that?

22 A. They did.

23 Q. Is this it at State's 19?

24 A. Yes, ma'am.

25 Q. You said that appears to be a football video game?

1 A. It does.

2 Q. Somebody's third and goal score?

3 A. Yes, ma'am.

4 Q. All right. That's all the questions I have about the
5 pictures. Did you notice any water in the bathtub?

6 A. I did not.

7 Q. But y'all did photograph the bathtub in the state that
8 it was in that night?

9 A. Yes, ma'am.

10 Q. Did you notice did the house appear to be in disarray
11 as if people had been wrestling?

12 A. The house appeared neat and clean to me.

13 Q. After responding to the house that night and reviewing
14 the scene, did you go to Greenville?

15 A. Yes, I did. The next day.

16 Q. Did you see the victim while you were there?

17 A. I did.

18 Q. What did you notice, if anything, about the victim?

19 A. Child was having trouble sitting due to bruising all
20 over his body. On his buttocks, on his thighs.

21 MS. FLANNERY: Objection. Speculation.

22 THE COURT: All right. To the extent that it calls for
23 him to give a medical explanation, but if you want to lay a
24 foundation for that perhaps.

25 Q. Did the child appear to your eyes to be in pain?

1 A. Absolutely.

2 Q. What makes you think that he was in pain?

3 MS. FLANNERY: Objection. Speculation.

4 THE COURT: Overruled.

5 A. He couldn't sit. He could only lay on his side. He
6 couldn't roll over.

7 Q. Was he fussing when you were trying to move him?

8 A. Absolutely. The nurses had to assist me.

9 Q. Did you take any pictures of him at the hospital?

10 A. I did.

11 MS. WHITE: May I approach the witness, Your Honor?

12 THE COURT: Please.

13 Q. I'm approaching you with what's been previously marked
14 as State's 22 through 29.

15 (Whereupon, witness complied.)

16 Q. Can you look at those for me? Have you had an
17 opportunity to look at those pictures?

18 A. Yes, ma'am.

19 Q. Are those pictures a fair and accurate depiction of
20 Child on January 21st?

21 A. Absolutely.

22 MS. WHITE: Your Honor, the state moves Exhibits 22
23 through 29 into evidence at this time.

24 MS. FLANNERY: Your Honor, I have a matter of law.

25 THE COURT: Approach real quick.

1 (Whereupon, a bench conference was held in the presence
2 of the jury.)

3 THE COURT: Ladies and gentlemen of the jury, for the
4 record State's 22 through 29 are in evidence. State's 22 is
5 in evidence, subject to the earlier objection evidentiary
6 ruling that was made. With regard to one of the photos,
7 ladies and gentlemen, State's 22. State's 22 depicts the
8 child's buttocks. Understand that all parties concerned,
9 the state and the defense, agree that in this case there's
10 no allegation of sexual abuse. There's no belief by anyone
11 involved that the child was sexually abused. I mention that
12 because in State's 22 there is a small bruise next to the
13 anal region or a small injury of some kind next to the anal
14 region, but we wanted to assure you that at no time has
15 there been any allegation of any sexual abuse occurring with
16 regard to this child. We just did not want you view that
17 picture and think that perhaps that was the case, so that's
18 the reason for that instruction at this point in time. Is
19 that sufficient?

20 MS. NELSON: Yes, sir, Your Honor, and just so the
21 record is clear we do still want to preserve our objection
22 to that exhibit on the grounds of relevance.

23 THE COURT: Right. I noted the objection.

24 MS. NELSON: I appreciate it, Your Honor.

25 THE COURT: The objection is noted. Overruled. Ms.

1 White, you can proceed.

2 MS. WHITE: Your Honor, if I could have the witness step
3 down so he can view these.

4 THE COURT: Yes.

5 (Whereupon, the witness exited the witness stand and
6 approached the exhibit.)

7 **DIRECT EXAMINATION RESUMED BY MS. WHITE**

8 Q. We're going to turn first in order to State's 22. What
9 injuries were you photographing there?

10 A. The bruising on the child's buttocks. Very heavy
11 bruising on the top section.

12 Q. If you need to come over here.

13 THE COURT: Just let him point.

14 A. The very heavy bruising on these two sections here.

15 Q. Now, State's 23. What part of the child is that?

16 A. I believe that's one of his thighs. This is the
17 bruising here in this area. And here.

18 Q. State's 24. Can you tell me what you're documenting
19 here?

20 A. The child's upper thigh. You can see the very heavy
21 bruising here and along this section of the buttocks there.

22 Q. Did you notice any swelling along with that bruising?

23 A. Very heavy swelling.

24 Q. State's Exhibit 29. Is that the opposite leg?

25 A. It is. That's his right thigh. The rear section here.

1 You notice the bruising that we were documenting here. The
2 bruising that we documented here. And there was some
3 lighter bruising between the two.

4 Q. Those are all the questions I have from those pictures.

5 (Whereupon, the witness returned to the witness stand.)

6 Did you notice any injuries to the naked eye besides the
7 bruising on his legs and on his buttocks?

8 A. Yes. There was some bruising on his head. There was
9 bruising here as well, which was photographed.

10 THE COURT: The record should reflect that the witness
11 indicated - where again were you indicating?

12 WITNESS: Here. Right in front of the ear.

13 THE COURT: The temple down to the -

14 WITNESS: The temple to the jaw here.

15 THE COURT: Go ahead, Ms. White.

16 Q. Now, did you have an occasion to speak to Mr. Jackson
17 in person?

18 A. I did.

19 Q. What was Mr. Jackson's story to you?

20 A. I spoke with Mr. Jackson at his residence in reference
21 to this incident, naturally. He stated that at no other
22 time had anybody had any custody of Child except for him.

23 In the days leading up to the night in question. He stated
24 to me that he had not struck his child or participated in
25 any activities that would cause such grave injuries. He was

1 not able to explain whatsoever how these injuries appeared
2 on Child .

3 Q. How long did you investigate this case before you made
4 an arrest?

5 A. I believe it was a little over two weeks.

6 MS. WHITE: Begging the court's indulgence.

7 Q. Just so we're clear, Mr. Jackson, the person you spoke
8 with, Child s father, is he present in the courtroom today?

9 A. He is.

10 Q. Where is he?

11 A. The gentleman in the white shirt there.

12 THE COURT: The record will reflect that the witness has
13 identified Mr. Jackson.

14 Q. And Avenue is in Greenwood County?

15 A. It is in Greenwood County in the city limits.

16 MS. WHITE: Thank you. Please answer any questions Ms.
17 Flannery has.

18 THE COURT: Ms. Flannery.

19 **CROSS EXAMINATION BY MS. FLANNERY**

20 Q. Officer Nichols, you said that you spoke to Matthew
21 Jackson.

22 A. I did.

23 Q. And he was cooperative.

24 A. Yes.

25 Q. He answered your questions.

1 A. Yes.

2 Q. He didn't tell you that he wouldn't speak to you.

3 A. No.

4 Q. Or that you weren't allowed into his residence.

5 A. No, he did not.

6 Q. He stood by outside quietly and let you do whatever you
7 needed to do inside.

8 A. Yes, ma'am.

9 Q. He didn't attempt to obstruct anyone else from the
10 Police Department from going in.

11 A. No, ma'am.

12 Q. And anytime that you asked him a question he responded.

13 A. He responded. Yes, ma'am.

14 MS. FLANNERY: Thank you. No further questions.

15 THE COURT: Thank you, sir. You can step down.

16 MS. WHITE: May we approach, Your Honor?

17 (Whereupon, a bench conference was held in the presence
18 of, but out of the hearing of the jury.)

19 THE COURT: Ladies and gentlemen, again, we're making
20 better headway than we expected. We're going to take a
21 brief break. The next witness is due here in the next ten
22 minutes. While we wait for them to arrive, again don't
23 discuss the case. Feel free to take a break. Get something
24 to drink. Use the facilities. If you happen to smoke,
25 that's perfectly fine. Let the bailiff know. They'll take

1 you downstairs for a brief break outside. With that, don't
2 talk about the case, but adjourn to the jury room, please.

3 (Whereupon, the jury exited the courtroom at 2:18 p.m.)

4 THE COURT: The jury is out and we are at ease.

5 (Whereupon, the court was in recess until 2:30 p.m.)

6 THE COURT: Let's have the jury back in, please.

7 (Whereupon, the jury entered the courtroom at 2:35 p.m.)

8 THE COURT: The jury is back and seated. At this point,
9 Solicitor, please call your next witness.

10 MS. WHITE: Your Honor, the state calls Dr. Mary-Fran
11 Crosswell.

12 **MARY-FRAN CROSSWELL**, being first duly
13 sworn, testifies as follows:

14 **DIRECT EXAMINATION BY MS. WHITE**

15 Q. Good afternoon. If you could just spell your name for
16 the court reporter.

17 A. Mary-Fran Crosswell. M-A-R-Y dash F-R-A-N C-R-O-S-S-W-
18 E-L-L.

19 Q. You're a doctor?

20 A. Yes.

21 Q. Where are you employed?

22 A. I am employed by the Greenville Health System in
23 Greenville, South Carolina.

24 A. I am a child abuse pediatrician in the division forensic
25 pediatrics, child abuse, and neglect.

1 Q. Tell the jury a little bit about your education and
2 your training.

3 A. I received my undergraduate degree from Wake Forest
4 University. I received my medical degree from the
5 University of Louisville in Louisville, Kentucky. I
6 did my pediatric residency training at the Greenville
7 Hospital System in Greenville.

8 Q. Do you hold any special certifications?

9 A. Yes. I am Board Certified in general pediatrics and in
10 child abuse pediatrics.

11 Q. What do you have to do to become Board Certified in
12 child abuse pediatrics?

13 A. Up until a certain year you could be grand fathered in
14 based on your experience and taking a board
15 examination. Currently you have to do a fellowship,
16 which is an additional three year training in the
17 program. Based on my work experience, I was able to
18 sit for the board exam in 2011 and once passing that
19 exam I was board certified in child abuse pediatrics.

20 Q. How long have you been a practicing physician?

21 A. I have been practicing since 2003.

22 Q. How long in the field of child abuse pediatrics?

23 A. I've been practicing in this field since 2006.

24 Q. Have you ever been qualified as an expert in Circuit
25 Court before?

1 A. Yes. I have.

2 Q. About how many times?

3 A. At least eight in Circuit Court.

4 Q. What about in other courts?

5 A. I've been certified in Family Courts up to 20 to 25
6 times.

7 Q. What fields are you typically certified in?

8 A. I have been certified in both general pediatrics and in
9 child abuse pediatrics.

10 MS. WHITE: Your Honor, at this time the state offers
11 Dr. Crosswell as an expert in child abuse pediatrics.

12 THE COURT: Any objection or voir dire from the defense?

13 MS. FLANNERY: No objection..

14 THE COURT: Ladies and gentlemen, in this case the state
15 and the defense agree that Dr. Crosswell is an expert in the
16 field of child abuse pediatrics. Normally when a witness
17 testifies they have to testify as to something they've
18 observed with their senses. Something they saw, felt,
19 smelled, heard, et cetera. But an exception to this rule
20 exists for witnesses who are qualified as experts in some
21 particular area due to their expertise, training, or
22 education. In these cases we call these individuals expert
23 witnesses.

24 An expert can state opinion testimony and give the
25 grounds for their opinion, but of course it does not mean

1 that you necessarily have to accept their opinion. But it
2 is evidence that you can use in whatever way you deem is
3 appropriate. In this case, again, Dr. Crosswell has been
4 certified as an expert in the field of child abuse and
5 pediatrics, so she may state opinion testimony in that
6 particular area. You may continue Ms. White.

7 MS. WHITE: Thank you, Your Honor.

8 Q. Dr. Crosswell, were you involved in examining a child
9 named Child ?

10 A. Yes. I was.

11 Q. How did you come to be involved in that case?

12 A. Once he was admitted to the pediatric intensive care
13 unit at the children's hospital in Greenville, the
14 intensive care team consulted me because of their
15 concerns for non-accidental trauma.

16 Q. When you say non-accidental trauma, in laymen's terms
17 what are we talking about?

18 A. Inflicted injury on a child.

19 Q. When did you first examine Child ?

20 A. I examined him on January 21, 2011.

21 Q. What, if any, injuries did you note?

22 A. He had numerous bruises on his body. Would you like
23 for me to list those?

24 Q. Well, did you prepare any notes or records to reflect
25 all the injuries you observed?

1 A. Yes. I did.

2 MS. WHITE: Can I approach the witness, Your Honor?

3 THE COURT: Please.

4 MS. WHITE: I'm going to hand you what's been marked as
5 State's Exhibit 31. Can you identify that for me?

6 A. This was a body diagram that I used to document the
7 cutaneous or skin findings that I observed on Child .

8 MS. WHITE: Your Honor, if I could have the witness step
9 to the projector?

10 THE COURT: Please step down.

11 MS. WHITE: Your Honor, at this time the state offers
12 Exhibit 31 into evidence.

13 THE COURT: Any objection?

14 MS. NELSON: Your Honor, there is one portion.

15 THE COURT: The redaction?

16 MS. NELSON: Yes, sir. That we would feel would need to
17 be redacted because it's overly prejudicial and irrelevant.
18 Do you want us to come up?

19 THE COURT: Y'all approach and let me take a look at
20 what you're talking about.

21 (Whereupon, a bench conference took place in the
22 presence of the jury.)

23 THE COURT: Ladies and gentlemen of the jury, I do need
24 to take up an issue of law on the record. I'm going to ask
25 that you adjourn to the jury room, but don't talk about the

1 case. I'll have you back out here in five minutes. Thank
2 you.

3 (Whereupon, the jury exited the courtroom at 2:44 p.m.)

4 THE COURT: The jury is out. The attorneys and I had a
5 bench conference and this relates to State's Exhibit 31.
6 The diagram of the child's rectal area. On the exhibit,
7 State's 31, there is a note and this relates back to State's
8 22. There is a note on 31 that says, "Small patch of
9 denuded skin distal to rectum." The counsel for the defense
10 essentially stated that under a 403 analysis they felt that
11 information was unduly prejudicial and the state explained
12 to me at the bench that what the witness was going to
13 testify to. At this point in time, before I can rule on the
14 403, I'd kind of like a proffer of what she was going to
15 testify to regarding the overall diagram, so I'm going to
16 hand the diagram to her and you can take it from there, Ms.
17 White.

18 **IN-CAMERA EXAMINATION BY MS. WHITE**

19 Q. Regarding the injuries that you noted, what did you
20 notice?

21 A. There were numerous bruising on numerous locations of
22 his body. I can elaborate on that if you need be.
23 There was also some areas of abraded skin and denuded
24 skin on both his buttocks and around his rectum.

25 MS. WHITE: Your Honor, I was going to go more into the

1 injuries to his head and the injuries -- I guess I'm trying
2 to figure out how far you want me to go with the proffer.

3 THE COURT: I'm trying to get a full picture. I know
4 what you told me at the bench and we're only concerned with
5 the question of whether we redact that portion dealing with
6 the child's buttocks but how that relates into the overall
7 findings of the doctor is probably what I need to hear. Or
8 how that portion of the diagram that the defense is
9 objecting to, how that is relevant to any findings by this
10 physician.

11 BY MS. WHITE:

12 Q. Dr. Crosswell, taking these injuries as a whole, could
13 this have been caused by a one time fall?

14 A. No.

15 Q. What makes you say that?

16 A. Because there were multiple bruises on different plains
17 of the body that could not have been sustained from an
18 isolated fall.

19 Q. Does the size of the bruising cause you any concern?

20 A. Yes.

21 Q. How can you account for the sheer size of the bruising
22 that was on his thighs?

23 A. Repetitive blunt-force trauma to that area of his body.

24 Q. Is there any additional bruising on his body? About
25 his head or torso?

1 A. Yes. There was concerning bruises around his face and
2 his ear that were also concerning for non-accidental
3 trauma.

4 Q. I guess for the purposes of this hearing, regarding the
5 bruising, the denuded skin on his rectum specifically,
6 are you able to offer any sort of causation for that?

7 A. I am not.

8 Q. Is that something you would expect to see in a fall
9 from a couch?

10 A. No. It is not.

11 Q. Is it something you would expect to see from wrestling
12 around?

13 A. No. It is not.

14 Q. Is it something you would expect to see from a fall
15 from a parent's arms?

16 A. No. It is not.

17 MS. WHITE: Your Honor, just the totality of the
18 circumstance, the fact that he has all of these injuries,
19 that even taken in and of themselves could not have been
20 caused by what the defendant is claiming much less the
21 entire totality of the circumstances, I think it's an injury
22 she noted. It's part of the medical record. The state,
23 again without going anywhere close to any sort of sexual
24 abuse. The jury has already been instructed that there was
25 no allegation of that. The state would just offer it as

1 part of the diagram. Furthermore, if it's redacted I wonder
2 if the jury would wonder what we were hiding from them.

3 THE COURT: Let me do this. I'm going to give you a
4 chance. What's denuded skin?

5 MS. CROSSWELL: Just missing skin basically.

6 THE COURT: The injury on the child that's closest to
7 the rectum, what would cause an injury like that?

8 MS. CROSSWELL: There is a wide differential. I mean,
9 it could be traumatic. It could be infectious, though there
10 were no signs of infection surrounding it. I mean, there
11 could be a lot of reasons. There could be a lot of reasons.
12 It's a non-specific finding in and of itself.

13 THE COURT: Concerning the injury that you observed to
14 the rectum, how does that relate into the findings that you
15 make that the injuries were consistent with child abuse in
16 some way?

17 MS. CROSSWELL: I think taking that injury out
18 independently is difficult. If I were looking at just that
19 injury and nothing else I wouldn't be able to tell you
20 anything about it. It's looking at the whole picture of all
21 the injuries in the child.

22 THE COURT: I understand that your findings that child
23 abuse may have taken place in this instance -- I understand
24 that your findings are looking at the whole picture, the
25 whole child, as opposed to maybe one isolated bruise. The

1 injury to the rectum, in non-sexual child abuse cases where
2 a child is being assaulted have you typically or have you in
3 the past in your experience seen those kinds of injuries?

4 MS. CROSSWELL: No. Not in a non-sexual nature.

5 THE COURT: Was there any explanation given as to how
6 that particular injury may have taken place?

7 MS. CROSSWELL: No.

8 THE COURT: Your turn.

9 MS. NELSON: Your Honor, it sounds like the absence of
10 that doesn't change Dr. Crosswell's opinion in any way about
11 there being -- how the bruises occurred or that there was
12 abuse occurring. It sounds like her opinion that abuse
13 occurred is centered exclusively around all of the other
14 injuries and not that one at all since it's a non-specific
15 finding and does not really contribute in any way to the
16 opinion she's offering. Again, she hasn't -- she just
17 testified that this wasn't something she typically saw in
18 non-sex cases, which goes right toward our argument that
19 that is where the jury is going to go with this. I know
20 they've been warned, but it would be very simple to wipe
21 that part out and not talk about it. She's still got all of
22 the bruising to talk about, which she has said resulted from
23 repeated blunt-force trauma, which is where her opinion
24 about the abuse is coming from. This just isn't -- it's not
25 an element of the crime. It's not an injury to put the

1 child at substantial risk of death and it's not relevant to
2 the abuse based on what Dr. Crosswell just testified to. To
3 a finding of abuse.

4 THE COURT: I hear what you're saying. Here's kind of a
5 concern that I do have. The photo, and I do realize it was
6 introduced over objection of the defense. But photo 22 does
7 show the injury to that rectum. I understand that the photo
8 also depicts the injuries to the lower back, kind of around
9 the upper pelvis of the child. The scrapes and things like
10 that that Ms. White eluded to earlier today. I've already
11 instructed the jury that the injury that's next to the
12 rectum is not related to any sort of child sex abuse, but it
13 doesn't answer the question of okay, well, how did that get
14 there. I'm somewhat concerned that the jury --

15 MS. NELSON: This was the whole reason we didn't want 22
16 in to begin with.

17 THE COURT: I understand, but it's in. I stand by the
18 earlier ruling. I just --

19 MS. NELSON: I think Dr. Crosswell has also testified
20 that she -- beyond saying it's a denuded part of the skin,
21 she doesn't know how it got there or have any definitive
22 explanation for it. It could be all kinds of reasons.

23 THE COURT: Let me play with that a little bit then.

24 Q. You said you usually wouldn't see an injury like that
25 in a non-sexual context and that there are lots of

1 ways. Just give me some examples of the ways that a
2 person could sustain that type of injury.

3 A. Could it have been in isolation? Could it have been a
4 severe diaper rash that had resolved? He did not have
5 any evidence of any diaper rash. I don't know, because
6 I don't have any history of that. Some type of
7 infection in that area. I don't have any history of
8 that. There were no signs of infection at the time.
9 So because there were no other inflammatory signs or
10 infectious signs, trauma still remained within the
11 differential diagnosis that we were considering, but
12 without any history to explain I couldn't tell you
13 definitively how that was caused in this child.

14 Q. If you did have a history of diaper rash or infections,
15 things like that, would that have been a possible
16 explanation to how that denuded skin could appear?

17 A. Depending on the nature of what was described, yes.

18 THE COURT: Are y'all still objecting?

19 MS. NELSON: I think so, Your Honor.

20 THE COURT: I'll sustain the objection and we'll redact
21 that portion because it doesn't appear to be relevant. Do
22 you want to weigh in again, Ms. White?

23 MS. WHITE: No, Your Honor. I was just going to ask as
24 to what exactly we're redacting. Are we redacting just the
25 description or the entire --

1 THE COURT: I was just going to scratch through the
2 whole thing, including the diagram itself.

3 MR. TAYLOR: Judge, would you like me to white it out
4 and make another copy? Just so there's no sign of it?

5 THE COURT: That would probably be the cleaner way to do
6 it. Put a piece of paper over it. Let's do it that way.
7 Let's do this, though, before you white that out. I want,
8 at least for the purposes of the record, to have the true
9 diagram. So make a copy of that without the white out.

10 MR. TAYLOR: You want it as a Court's Exhibit?

11 THE COURT: I want an un-redacted portion as a Court's
12 Exhibit so that the appellate record knows we were talking
13 about.

14 (Whereupon, un-redacted diagram was marked as Court's
15 Exhibit 1 for identification, and the redacted portion was
16 marked as State's Exhibit 31 for identification.)

17 (PAUSE)

18 THE COURT: We have, I assumed, marked one of the
19 exhibits as Court's 1, the un-redacted exhibit of State's
20 31. Y'all have whited out the other portion that we
21 discussed. Let's have the jury in, please.

22 (Whereupon, the jury entered the courtroom at 3:02
23 p.m.)

24 THE COURT: The jury is back. Ms. White, we're still
25 in the direct of Ms. Crosswell. You may continue, ma'am.

1 **DIRECT EXAMINATION RESUMED BY MS. WHITE**

2 Q. I think where we left off, Dr. Crosswell, I had just
3 offered State's Exhibit 31 into evidence.

4 THE COURT: No objection to State's 31 at this point?

5 Ms. FLANNERY: No objection.

6 THE COURT: State's 31 is in evidence.

7 MS. WHITE: Your Honor, if I could have Dr. Crosswell
8 step down?

9 THE COURT: Certainly. Please.

10 (Witness complied.)

11 Q. Going off the diagram, what injuries did you note on
12 Child ?

13 A. Starting here it's a 1.7 centimeter circular
14 erythematous bruise, which means it has got a red color
15 and induration, which means that it's swollen in that
16 area. Here there as a linear irregular shape patch of
17 hyper pigmentation that looked like a bruise. In this
18 area here all the cross hatching marks represented a
19 large area of bruising that covered the entire buttocks
20 extending around to the front if you could tell that
21 the bruising continues here and here around the hips.
22 And extending down his thighs in the back. Within that
23 area of confluent bruising there were some darker areas
24 that did not represent a specific pattern. But did
25 indicate that there were different sources of impact to

1 that area. There were some areas of abraded skin on
2 either side of the buttocks. Very small. About half a
3 centimeter in diameter. Moving down to the face. He
4 had a bruise over his right temporal area and bruising
5 in his left, just on the outside of his eye as well as
6 his cheek. He also had three different bruises on his
7 ear.

8 Q. Turning specifically to the bruise on the ear. Is that
9 an area that it's common for a child to sustain a
10 bruise?

11 A. It's not a common sight for accidental injury. There
12 have been medical studies that looked at children who
13 come for their well child appointments. In documenting
14 the bruises that well children with low suspicions for
15 inflicted injuries sustain bruises. As you can
16 imagine, the most common place is the front of the
17 lower legs. In his age group, the second most common
18 site is the forehead. But it's very rare to see
19 bruising of the ear in accidental injuries.

20 Q. The areas of denuded skin, are you able to offer an
21 opinion as to what could've caused that?

22 A. Based on the fact that there were indications of
23 multiple blunt force trauma to that area, I suspected
24 that it was possibly friction of the skin from those
25 sources of trauma.

1 Q. When we say blunt force trauma, what are we talking
2 about?

3 A. Something hitting him in that area.

4 Q. Just the sheer size of the bruising on his buttocks and
5 thighs, do you have an opinion, based on your training
6 and experience, as to how that amount of bruising
7 occurred?

8 A. Again, he was also symptomatic from these bruises. He
9 was not able to sit down because of the tenderness in
10 that area. Based on the fact that there were different
11 shades within, darker purple within that confluent area
12 or that entire area of bruising, would suggest that he
13 experienced being hit multiple times in that area.

14 Q. Thank you, Doctor. Now, turning our attention to the
15 reason he was life flighted to Greenville, what is your
16 understanding of how he initially presented at the ER?

17 A. So in reviewing the Emergency Room records, which is
18 part of my assessment, 911 was contacted when he
19 appeared to have some changes in his mental status. He
20 didn't seem very responsive. He was having difficulty
21 breathing. Emergency personnel were concerned about
22 his respiratory or breathing status. They didn't feel
23 like he was breathing fast enough to maintain adequate
24 oxygen levels, and so they put a tube down his throat
25 to help him breathe during that time. There was also

1 concern about his neurologic status because his gaze
2 was deviated, which can imply a head or brain injury.

3 Q. Were there any - I know you haven't actually reviewed
4 the films at Self, but did you receive any reports from
5 any studies done at Self?

6 A. The reading from the radiologist at Self Memorial
7 showed on a CT scan of the head a right subdural
8 hemorrhage, which is a type of a bleeding around the
9 brain. And that he also had -- that his brain, because
10 of the bleeding, had shifted a little bit to one side.
11 So there was a displacement of the brain tissue.

12 Q. If you could, just explain a little more. When you say
13 a subdural hemorrhage, what do you mean by that?

14 A. So between the skull and the brain there is a thick
15 layer of connective tissue that we call the dura mater.
16 Between the dura matter and the brain there are tiny
17 little capillaries that provide the blood supply to the
18 dura matter. When there's some type of rotational
19 force that is applied to the head, the brain can move
20 at a different rate of speed than the other structures
21 in the brain, causing a shearing or cutting or breaking
22 of those capillaries. Those capillaries can leak blood
23 in that space between that connective tissue in the
24 brain, which results in what we call a subdural
25 hemorrhage.

1 Q. A subdural hemorrhage -- an injury that causes a
2 subdural hemorrhage, can that be a life-threatening
3 event?

4 A. Yes. It can.

5 Q. Regarding Child specifically, without emergency care
6 -- without medical care, was this a life-threatening
7 injury?

8 A. Yes, in that he was having trouble breathing. Had
9 there been a prolonged period of him not being able to
10 breathe normally, then there would be a secondary
11 injury to his brain from the lack of oxygen that would
12 be carried. So if there had not been any intervention
13 to help him breathe when he was having trouble that
14 could have potentially become a life-threatening
15 injury.

16 Q. Typically, would a fall from a 19 inch height cause a
17 subdural hematoma?

18 A. It is possible. It is not common, but it is possible.

19 Q. I guess the same thing with being dropped from a
20 caretaker's arms?

21 A. Correct.

22 Q. Now, based on your education, training, and experience,
23 would a one-time fall from a 19 inch height cause a
24 subdural hematoma and all of the bruising that we just
25 talked about on this diagram?

- 1 A. No. It would not. The fact that he had multiple
2 bruises on the soft tissues of his face, his ear, and
3 his buttocks show that there are multiple planes on his
4 body that were impacted that could not have resulted
5 from an isolated fall.
- 6 Q. When you talk about multiple planes of his body, are
7 you talking about his back and his side and his head?
- 8 A. Correct. On his head alone he had bruising on three
9 planes of his body. One on one side, one on the front,
10 and one on the other side. It would not be possible
11 for him to sustain all those injuries to three
12 different planes of his body from a single, simple fall
13 as described.
- 14 Q. What would cause an injury to three separate planes on
15 his face?
- 16 A. Multiple blunt force trauma to his head.
- 17 Q. So either multiple falls or multiple strikes?
18 Something along those lines?
- 19 A. Correct.
- 20 Q. Would wrestling around, in your opinion, cause this
21 degree of bruising?
- 22 A. No.
- 23 Q. Dr. Crosswell, taking all of these injuries into
24 account, in your opinion are Child s injuries due to
25 accidental trauma?

1 A. No, they are not.

2 Q. Thank you. Please answer any questions Ms. Flannery
3 has.

4 THE COURT: Ms. Flannery?

5 **CROSS EXAMINATION BY MS. FLANNERY**

6 Q. When Child got to the Emergency Room up in Greenville
7 he was extubated within 30 minutes; is that correct?

8 A. That is correct.

9 Q. And he showed continuing signs of improvement
10 throughout his stay?

11 A. Yes, he did.

12 Q. And the doctors indicated that some of his lethargy
13 could've been from the medications given to him in
14 Greenwood?

15 A. Yes, but he was lethargic before he came to the
16 hospital, so it wouldn't account for all of his
17 lethargy.

18 Q. But some of the medications he was given can cause it?

19 A. Yes.

20 Q. You noted that Child's father's side has a history of
21 seizures.

22 A. Correct.

23 Q. What are some possible things that happen to people
24 when they have seizures? Let me clarify. It could
25 result in falling? Convulsing? Losing consciousness?

1 A. Correct.

2 Q. Things of that nature? Okay. You reviewed all the
3 records from Greenville and Self; correct?

4 A. Yes. I did.

5 Q. You spoke before about the radiology in Self, that
6 there was a CT scan of the head.

7 A. Correct.

8 Q. That wasn't immediately redone. Originally, everything
9 was being based off of that report; correct?

10 A. Correct.

11 Q. And Self did not send along the actual scan of Child s
12 brain?

13 A. If they did I did not have access to it.

14 Q. So you were relying on the report that someone that you
15 didn't work with wrote?

16 A. Correct.

17 Q. Are there any ways that a scan can have an error in it?

18 A. Certainly.

19 Q. A child moving? Could that cause injuries to look
20 worse?

21 A. I don't think it would cause injuries to look worse,
22 but it could change the plane of the film and where it
23 goes through.

24 Q. Meaning that it could -- let me make sure I'm correct.
25 It could show whether things might be a deeper or kind

1 of injury type of situation?

2 A. Correct. Like, it may not be centered in the most
3 optimal view.

4 Q. The next day, I believe that was the 21st, Dr. Pardi,
5 who is the radiologist at Greenville, he did another
6 CT?

7 A. Correct.

8 Q. And he said that the findings were subtle?

9 A. Correct.

10 Q. No midline shift.

11 A. Correct.

12 Q. And minimal blood.

13 A. Correct.

14 Q. And he recommended an MRI.

15 A. Correct.

16 Q. Because an MRI is used to get a -- I've had it
17 described to me to get a clearer picture. The
18 difference between -- the CT can kind of give you the
19 whole image, but MRI can really clarify.

20 A. Correct.

21 Q. And it can actually help tell how long the blood has
22 been there.

23 A. Correct.

24 Q. But you did not do the MRI?

25 A. We did not. We have to make a decision about what a

1 study is going to tell us at that point. We have to
2 weigh the risks and the benefits of every study. To
3 obtain an MRI in a 23-month-old we would have to put
4 him to sleep to get that study. By the time he had --
5 this was 24 hours later. Clinically, he was improving.
6 He was doing much better. So we had to make a decision
7 was it worthwhile, the risks of putting him to sleep to
8 get that information, or was it enough that we had this
9 information. We knew that the blood was getting
10 better. It was resolving. Did we really need that.
11 And we made the decision that we did not.

12 Q. Dr. Troup is also a neurologist who did a consultation;
13 correct?

14 A. He is a neurosurgeon.

15 Q. He indicated that there was a full range of motion in
16 Child 1's eyes and that basically hild was responding
17 to him.

18 A. After he got to Greenville, yes.

19 Q. Yes. To clarify, this was in Greenville.

20 A. Correct.

21 Q. All these questions I'm asking about are now in
22 Greenville. He said his scan showed no significant
23 soft tissue swelling.

24 A. Correct.

25 Q. No skull fractures?

1 A. Correct.

2 Q. And no conclusive injuries to say that it was non-
3 accidental trauma.

4 A. I don't know about what his records said about that.

5 Q. I'll be glad to show it to you if you like.

6 A. I don't think I can testify to his record. I'd be
7 happy to review it if that would be helpful for you.

8 MS. WHITE: Your Honor, if Ms. Flannery is going to get
9 into another doctor's records, I think she needs to have
10 that witness.

11 THE COURT: I understand. We'll let her -- if she wants
12 Dr. Crosswell to review the other doctor's records that's
13 fine. There may be something significant in there that she
14 could help you define or something like that. But I'll have
15 to take the questions as they come.

16 MS. FLANNERY: I was just saying that Dr. Crosswell
17 reviewed all the records and made this determination, and
18 that this was one of those records that was given.

19 THE COURT: Okay. Fair enough.

20 MS. FLANNERY: I can move forward.

21 Q. He also had an opthamology consultation; correct?

22 A. Correct

23 Q. The doctor actually noted that Child was combative and
24 asked that he be sedated; correct?

25 A. Correct.

1 Q. And they found no evidence of eye hemorrhaging;
2 correct?

3 A. Correct.

4 Q. There's a lot of words that I can't pronounce there,
5 but basically all the different kinds of eye
6 hemorrhaging were not present.

7 A. Correct.

8 Q. Eye hemorrhaging is normally a sign of child abuse;
9 correct?

10 A. In infants who have been shaken, it's often associated
11 with that type of specific form of abusive head trauma.
12 It's not as common - retinal hemorrhages are not as
13 common in his age group.

14 Q. A skeletal survey was also done.

15 A. Correct.

16 Q. And that was normal?

17 A. Correct.

18 Q. Child was given Tylenol during the time that he was in
19 Greenville for pain.

20 A. Correct.

21 Q. And no follow up medications were ordered, that you
22 know of?

23 A. Not that I'm aware.

24 Q. I know I'm asking you a bunch of questions that might
25 not be on the top of your head. If I could just have

1 one more moment. You mentioned that the bleed was
2 healing quickly. I think you said that it was --

3 A. There was some resolution that had happened from what
4 was described as having been seen at Self and what was
5 seen on the follow up CT twenty-four hours later.

6 Q. So there was no need for surgery?

7 A. No. There was not.

8 Q. No invasive procedures in any way?

9 A. Besides the intubation just for the breathing.

10 Q. Let me clarify. On the brain.

11 A. Correct. No invasive.

12 Q. No shunts.. Nothing along --

13 A. No.

14 Q. Thank you very much.

15 THE COURT: Redirect?

16 MS. WHITE: Very briefly, Your Honor.

17 **REDIRECT EXAMINATION BY MS. WHITE**

18 Q. Since we just ended there, what is intubation?

19 A. Intubation is where they put the breathing tube down
20 the throat into the lungs so that oxygen can be
21 delivered to the lungs directly.

22 Q. So it's helping him to breathe?

23 A. Correct.

24 Q. Is it helping him to breathe, or is it breathing for
25 him?

1 A. Initially, it's breathing for him, making sure that
2 he's breathing enough.

3 Q. So initially Child was on a machine that was breathing
4 for him.

5 A. Correct.

6 Q. Initially, when a head trauma has been sustained, what
7 are the symptoms that you would expect to see?

8 A. There can be a wide range of symptoms from head trauma.
9 You could have nausea, vomiting. You can have lethargy
10 or fatigue or tiredness. You can have seizure
11 activity. You can have --

12 MS. FLANNERY: Objection. Outside the scope.

13 THE COURT: Over-ruled. Go ahead.

14 A. So there's a very wide spectrum of what those initial
15 symptoms can present.

16 Q. From your review of the records at Self, was Child
17 presenting with signs of head trauma?

18 A. Correct. The fact that he was unresponsive, which is
19 what prompted the caretaker to seek help. The fact
20 that the emergency personnel saw that he was having
21 difficulty breathing, and some of the physical signs
22 that the physician saw in the ER.

23 Q. Now, Ms. Flannery asked you something about a lot of
24 the records in Greenville. Did Child improve fairly
25 quickly?

1 A. He did. He improved very quickly.

2 Q. Is that something you would typically expect to see in
3 a child?

4 A. It really depends on a wide range of features. Every
5 head trauma is very different and it's not outside of
6 what we expect sometimes in children who may appear
7 very differently at an outlying facility and improve
8 upon arrival to the intensive care unit.

9 Q. Can a subdural hematoma or a midline shift resolve
10 itself with time?

11 A. Blood in the brain gets resolved. Like blood anywhere
12 else in the body, so the body does reabsorb the blood.
13 So, yes. You can see resolution of the blood within
14 the brain.

15 Q. Would you expect to see an improving status in the
16 patient as his neurological condition was improving?

17 A. As his -- the blood in and of itself doesn't cause the
18 symptoms that he was experiencing. The blood is a
19 marker of the forces that were applied to his head. So
20 you may or may not see improvement in relation to the
21 blood or not, but regardless of whatever trauma
22 impacted him at that moment, he was improving. The
23 blood was improving simultaneously.

24 Q. In your expert opinion, would you characterize this as
25 a life-threatening injury?

1 A. Yes.

2 Q. Ms. Flannery touched on possible seizure activity. In
3 your opinion, based on your education, training, and
4 experience, could a seizure have caused all of these
5 injuries?

6 A. The seizure would not be a cause of the blood or cause
7 of the bruising. In this particular situation
8 sometimes the blood can cause seizures because it's an
9 irritant to the brain. So I wouldn't expect it to be
10 caused by a seizure. I would expect it to cause a
11 seizure.

12 Q. If, for the sake of argument, a seizure had occurred
13 prior to a fall, would that change your opinion in any
14 way?

15 A. No, it would not.

16 Q. Thank you, Dr. Crosswell.

17 THE COURT: Re-cross?

18 MS. FLANNERY: No, Your Honor.

19 THE COURT: Thank you very much for coming, Doctor. You
20 are free to go. I hope you have a good day. Solicitor,
21 call your next witness.

22 MS. WHITE: If we could have just a moment, Your Honor?

23 THE COURT: Certainly.

24 MS. WHITE: The state rests, Your Honor.

25 THE COURT: At this point, ladies and gentlemen of the

1 jury, I know that one of the jurors has to be home by five
2 o'clock tonight and tomorrow night. We are going to go
3 ahead and break for the day. I've talked to the attorneys
4 involved regarding continuation of the case. What I would
5 like for you to do -- I've got hearings this afternoon at
6 4:00 that I have to address, so it's probably a good time to
7 break anyway. Then there are a few things in the morning
8 that I have to deal with.

9 I'm going to ask you if you could to be back in the
10 jury room at 11:30 at the latest, so you'll have the
11 morning. I need you back at 11:30 and we're going to resume
12 the trial at that particular point in time. Again, I wanted
13 to thank you for your patience here with us today. Now,
14 when you go home tonight I'm well aware that your husband,
15 wife, significant other, brother, sister, boyfriend,
16 girlfriend, whoever it is that you share a roof with; I'm
17 well aware that they know that you have jury duty.

18 If your life is anything like my life, when I get home
19 the first thing that my wife asks me is, "Well, Honey, how
20 was your day?" I usually tell her and I'll tell her what
21 was going on and things like that. It's perfectly fine if
22 you explain to whoever you share a roof with that you were
23 picked on a jury. That's perfectly okay. You can tell
24 them, "Yes, Honey, I did get selected today." But please
25 don't discuss the case with them. Don't give them any other

1 specifics. Again, the reason for this is obvious. I've
2 explained it to you before. The same reason goes for
3 tonight. Hopefully your lives are more interesting than
4 this case and you can find something to talk about other
5 than this case, because you really cannot discuss this case
6 with anyone this evening.

7 Additionally, I don't believe that this would happen,
8 but should anyone attempt to contact you about this case
9 tonight in any way, shape, or form, just pick up the phone
10 and dial 911. The police will be there promptly. They'll
11 bring it to my attention. I don't think that's going to
12 happen, but obviously that's what you need to do if anybody
13 were to try to contact you over the evening. With that,
14 have a good night. Take those juror badges with you and
15 wear them back in the morning, please. It will help the
16 bailiffs and the court personnel downstairs to identify you
17 as jurors and get you back in here tomorrow morning at
18 11:30. So I will see you at 11:30. I hope you have a great
19 night. Thank you.

20 (Whereupon, the jury exited the courtroom for the day
21 at 3:29 p.m.)

22 THE COURT: At this point we'll go ahead and address
23 motions. Motions from the defense? Would you rather do
24 that in the morning?

25 MS. NELSON: We can do it right now.

1 THE COURT: Go ahead, Ms. Nelson.

2 MS. NELSON: We do make a motion for a directed verdict
3 at this time, Your Honor. The statute requires infliction
4 of great bodily injury and I think that where the state is
5 going, under that definition, in part C of the statute, it's
6 bodily injury which creates a substantial risk of death.
7 There are some other "or"s in there, but I don't think those
8 apply in this case. Serious or permanent disfigurement is
9 not present. Protracted loss or impairment of the function
10 of any bodily member or organ is also, I don't believe,
11 present in this case. So we would be looking at substantial
12 risk of death. I'd ask the court to note the word
13 substantial in the statute.

14 Dr. Crosswell was asked if the injury was life
15 threatening and she said that it -- my understanding of her
16 testimony was that she said that it was under certain
17 circumstances. That his trouble breathing, if untreated or
18 if continued for a prolonged time period, that that would
19 have been a life threatening situation. There has not been
20 any testimony that there was a substantial risk of death in
21 this case. While there is testimony that from the record
22 she interpreted the CT scan from Self to show a subdural
23 hematoma, she's testified about the trouble breathing that
24 the child had. She didn't really -- I didn't ever really
25 hear her say that the hematoma itself was life threatening.

1 What I heard her talking about was the trouble breathing on
2 presentation when the EMS came and arrived at the house. I
3 assume that's related to the fact that he was intubated for
4 a time period at Self.

5 Your Honor, we would submit that that element has not
6 been proven. I believe that taking the case in the light
7 most favorable to the state that would leave us with a
8 lesser included of unlawful conduct toward a child under
9 code section 63-5-70. I think we would have to concede that
10 there's enough evidence here, based on her testimony about
11 the bruising, that the state could go forward on that
12 charge, which I also believe under the elements test is a
13 lesser included.

14 We would ask for a directed verdict as to the offense
15 charged in the indictment. I would just add that the
16 injuries I heard her talk about were the bruising and the
17 hematoma. I certainly didn't ever hear her testify that the
18 bruises would be life threatening. I understood her to say
19 they were consistent with abuse, but I never heard her asked
20 the question of them being life threatening and I don't
21 think anybody would think that bruises would be. What I
22 heard her commenting about was the trouble breathing.

23 THE COURT: Ms. White, would you care to respond?

24 MS. WHITE: Your Honor, again, the child presented with
25 an extremely reduced respiration rate, had to be intubated,

1 was life flighted to Greenville. All of that testimony is
2 in the record. The doctor did testify that had he not
3 received treatment this very well could have been life
4 threatening. Substantial risk of death, I think a fourteen
5 minute call from start to finish, getting him to the
6 hospital, being intubated, being put on a helicopter, flown
7 to Greenville. All of the numerous doctors he saw that Ms.
8 Flannery elicited testimony about. The subdural hematoma.
9 Possible complications from that. Reduced respiration. I
10 think there's enough evidence that the jury can find that
11 there's a substantial risk of death.

12 THE COURT: Yes, Ms. Nelson.

13 MS. NELSON: The only thing I'd add, Your Honor, is that
14 my understanding of the reason for the life flight is that
15 Greenwood is not a level one trauma center. I think that
16 there are all kinds of trauma that aren't necessarily life
17 threatening, that you would need to go to a level one center
18 for.

19 THE COURT: I was actually waiting for someone to
20 clarify that for the jury. It's not a level one pediatric
21 trauma center. It's level one in other respects, or at
22 least that's its rating. It's not a level one pediatric
23 trauma center because you have to have a pediatric
24 cardiologist and a pediatric every other speciality under
25 the sun to be able to qualify for that. They're simply not

1 rated to treat this level of injury for a child is what it
2 boils down to.

3 MS. NELSON: I don't think that necessarily means that
4 it is a substantial risk of death. Also, the ambulance
5 time. The ambulance is always going to be in a hurry if the
6 person is still viable, and this little boy certainly was.
7 Ms. White mentioned if it had not been treated. It was
8 treated immediately. Mr. Jackson sought help right away as
9 soon as he saw how the child was responding. So it was
10 treated immediately. It was not prolonged.

11 MS. WHITE: Your Honor, the statute doesn't say a
12 substantial risk of death, unless you receive prompt medical
13 treatment. It says a substantial risk of death. If someone
14 is shot, regardless of whether they receive medical
15 attention and make it or they pass away on the scene has
16 nothing to do with the crime.

17 THE COURT: I appreciate everyone's position. Ms.
18 Nelson, I do think in the light most favorable to the state
19 there is evidence from which the jury may reasonably
20 conclude that there has been evidence presented concerning
21 the substantial risk of death and great bodily injury being
22 inflicted. So I would deny your motion at this point in
23 time.

24 MS. NELSON: Yes, Your Honor. Thank you.

25 THE COURT: Anything else concerning motions?

1 MS. NELSON: I don't think so, Your Honor.

2 THE COURT: I think you were discussing with your client
3 that he is going to testify or you did tell me he was going
4 to testify. Is that right, Ms. Flannery?

5 MS. FLANNERY: Your Honor, as of right now Mr. Jackson
6 will be testifying.

7 THE COURT: Will be?

8 MS. FLANNERY: Will be. Affirmatively.

9 THE COURT: I know that you've already gone over this
10 stuff with him, but would you like for me to review his
11 rights as well?

12 MS. FLANNERY: Yes, please, Your Honor.

13 THE COURT: Mr. Jackson, you can stay seated but just
14 raise your right hand for me, please, sir. Do you swear or
15 affirm the testimony you're about to give is the truth?

16 MR. JACKSON: Yes, sir.

17 Q. You are Matthew Jackson?

18 A. Yes, sir.

19 Q. Mr. Jackson, we've come to the portion in the trial or
20 at least we'll start that part of the trial where you
21 can present a defense. You understand that I'm being
22 told by your attorneys that you intend to testify in
23 this particular case. Do you understand that?

24 A. Yes, sir.

25 Q. Mr. Jackson, under that laws of our state and our

1 country, the fifth amendment to the U.S. Constitution
2 basically says that no person can be compelled to be a
3 witness against himself in a criminal case. Do you
4 understand that?

5 A. Yes, sir.

6 Q. That's your fifth amendment right. What that means is
7 that you cannot be required to testify in this
8 particular case. Do you understand that?

9 A. Yes, sir.

10 Q. The state cannot make you testify. Your attorneys
11 cannot make you testify. I cannot make you testify.
12 Do you understand?

13 A. Yes, sir..

14 Q. If you decide to testify, Mr. Jackson, you'll be
15 subject to the same rights or the same rules of cross
16 examination as any other witness in a case. I assume
17 he does not have any prior criminal convictions that
18 would be impeachable.

19 MS. WHITE: I was just looking at that, Your Honor. If
20 I remember right there may be a simple possession. A simple
21 possession from 2010.

22 THE COURT: That would not be.

23 MS. NELSON: That's all we see as well, Your Honor.

24 BY THE COURT:

25 Q. So Mr. Jackson, you understand that of course if you

1 choose to testify you'll be subject to the same rules
2 of cross examination that apply to any other witness,
3 but I'm being told that you have no crimes that could
4 be used to impeach you or impeach your credibility if
5 you were to testify. Do you understand that, sir?

6 A. Yes, sir.

7 Q. Mr. Jackson, if you decide to testify this decision has
8 to be yours. It has to be made freely, voluntarily,
9 and with full knowledge of the protections given to you
10 under the fifth amendment. This is a personal decision
11 and it belongs to you. It doesn't belong to anybody
12 else. If you decide that you don't want to testify,
13 and of course you've got the evening to think about
14 this or reconsider it, but if you decide not to testify
15 I'll instruct the jurors that they cannot give the fact
16 that you didn't testify any consideration whatsoever.
17 They can't even discuss it in the jury room in deciding
18 whether you're guilty of this, okay? So if you choose
19 not to testify, if you choose to assert your fifth
20 amendment rights, that's how I would instruct the jury.
21 Mr. Jackson, whether or not you decide to testify is up
22 to you. You can talk to your attorneys. I would
23 encourage you to talk to your attorneys, but certainly
24 you could also discuss this with your family members or
25 anyone else that you want to talk to about it. In the

1 end though the decision has to be yours to make. Do
2 you understand that?

3 A. Yes, sir.

4 Q. I'm hearing that you do intend to testify. Is that
5 correct?

6 A. Yes, sir.

7 Q. Very good. The way I usually handle this, Mr. Jackson,
8 is if your attorneys call you as a witness in the case
9 I'll simply assume that you've automatically waived
10 your fifth amendment rights, okay?

11 A. Okay.

12 Q. Is that acceptable to you?

13 A. Yes, sir.

14 Q. Very good. All right. Anything else that we need to
15 deal with on this case this evening then?

16 MS. WHITE: 'Not that I'm aware of, Judge.

17 MS. FLANNERY: Not that I'm aware of.

18 THE COURT: We'll be at ease. He'll stay out on bond.

19 (Whereupon, the court was in recess at 4:00 p.m.)

20 DAY 2: 8/08/13

21 THE COURT: The State v. Mr. Jackson, case 11-GS-24-
22 1328. Mr. Jackson, of course, is present with counsel. The
23 State is present. I'm informed that all jurors are here.
24 The record should reflect that last night I did email the
25 proposed instructions to the jury, to counsel for the State

1 and the defense. I've made some typographical corrections
2 in those charges. I had -- I inserted the defendant's
3 correct name and indictment number. Aside from that,
4 they're pretty much substantially the same as what I had
5 sent last night. Are there any problems from the State with
6 what you saw?

7 MS. WHITE: No, sir, none.

8 THE COURT: From the defense?

9 MS. NELSON: No problems, Your Honor. We'd also ask
10 that you charge the lesser included A&B second. I think
11 there's evidence there to support a jury finding that it
12 could be moderate injury, moderate bodily injury, Your
13 Honor.

14 MS. WHITE: Your Honor, my only comment on that, I'm not
15 certain that assault and battery second is a lesser included
16 of unlawful conduct toward child. I think that there's a
17 lot of elements in unlawful conduct that are not included in
18 the assault and battery second degree such as placing child
19 at unreasonable risk of harm.

20 MS. NELSON: Well, Your Honor, I think what part of the
21 unlawful conduct statute that I thought applied was
22 subsection 2, which is the language about doing or causing
23 to be done unlawfully or maliciously, any bodily harm to the
24 child so the life or health was in danger. And I think a
25 person causing a bodily injury to another person would be

1 encompassed in that subsection of the statute.

2 MS. WHITE: Your Honor, I just don't think there's been
3 any testimony that would substantiate assault and battery
4 second degree as opposed to unlawful conduct towards a
5 child. It's undisputed that Mr. Jackson is this child's
6 father. It's undisputed that he had custody, care and
7 control of the child. I just don't think, even assuming
8 assault and battery second degree is a lesser included, I
9 don't think that the facts are there that would support a
10 conviction on assault and battery second degree. Causing
11 harm to a child as the parent is an unlawful conduct.
12 Additionally, Your Honor, I'm looking at State v. Northcutt,
13 372 South Carolina 207. If the lesser offense contains an
14 element not included in the greater offense it is not a
15 lesser included offense. The moderate bodily injury is
16 state nowhere in the unlawful conduct statute or the
17 infliction of great bodily injury statute.

18 MS. NELSON: Well, Your Honor, I think the argument on
19 that is that the way the assault and battery statutes work
20 is that each one below is a lesser included of the one
21 above, just like ABHAN includes great bodily injury and all
22 of the other ones below that that go to moderate bodily
23 injury and then just injury are all considered lesser
24 includeds of that.

25 THE COURT: And, Ms. Nelson, perhaps you would care to

1 address this because when I was preparing the charges last
2 night this is what hung me up. And I realize that the
3 assault and battery second statute is relatively new, and I
4 know that when they wrote it they had the physician from
5 Florence, who's a member of the House, write this. But the
6 definition that the House and the Senate agreed to, and
7 that's now the law of the case, is that "moderate bodily
8 injury means physical injuries requiring treatment to an
9 organ system of the body other than the skin, muscle and
10 connective tissues of the body, except when there is
11 penetration of the skin, muscles and connective tissues that
12 require surgical repair of a complex nature or when the
13 treatment of the injury requires the use of regional or
14 general anesthesia."

15 MS. NELSON: Yes, sir. I understand what you're saying
16 about it doesn't seem like any of that's present. My take
17 on that was that in looking at the -- I understand that's
18 the definition of moderate bodily injury, but when you look
19 at the A&B third statute it says that -- let me get down
20 there. A&B second, I mean.

21 THE COURT: Right.

22 MS. NELSON: That if a person unlawfully injures another
23 person and moderate bodily injury results, or could have
24 resulted, and what I was thinking was that when you have a
25 brain bleed there can be a required intervention like the

1 placing of a shunt that would have -- I think that would
2 have made it fall into that definition. It would have also
3 required anaesthesia. There was also testimony from Dr.
4 Crosswell that if they had done the followup MRI that the
5 radiologist at Greenville recommended that would have
6 required anesthesia to make the child be still. So I was
7 relying on the could have resulted in the language of A&B
8 second.

9 MS. WHITE: And, Your Honor --

10 MS. NELSON: I guess if it doesn't apply it would leave
11 us with A&B third.

12 MS. WHITE: I don't know that assault and battery is a
13 lesser included. Again, even assuming the defense's theory
14 is correct and this isn't a serious bodily injury, causing
15 physical harm to a child, to your own child, is an unlawful
16 conduct. I don't see how the jury could find that Mr.
17 Jackson wasn't Child s father. And, Your Honor, again, I
18 don't think assaults are lesser included under the child
19 abuse framework. And I don't have a case to specifically
20 point to. I don't know if that's been answered or not.

21 THE COURT: Well, I know. And this is somewhat of a
22 problem with the way that the assault statutes were written,
23 because I am well aware of circumstances where you have a
24 parent who unlawfully strikes a child, hits a child, but it
25 doesn't rise to the level of great bodily injury. And it

1 doesn't fall under unlawful conduct towards a child because
2 the bodily harm is not so severe that the life or health of
3 the child is endangered or is likely to be endangered. But
4 because the injuries were not moderate in nature it can't be
5 an assault and battery second degree.

6 MS. WHITE: Your Honor, under -- in that case, the
7 State would suggest assault and battery first degree, could
8 have caused serious bodily injury.

9 MS. NELSON: I don't necessary dispute that it carries
10 the same --

11 THE COURT: Same penalty as the other. And --

12 MS. NELSON: So it doesn't really --

13 MS. WHITE: And, Your Honor, again, under the scenario
14 you're describing where a parent hits a child and it doesn't
15 rise to the level of an unlawful conduct, usually that
16 parent pleads to cruelty to children in magistrate's court.

17 THE COURT: Which would be a 30 day offense under the
18 next section for the unlawful conduct, I think in -

19 MS. WHITE: Yes. Which would be the lesser included.

20 THE COURT: -- Title 63. Right.

21 MS. NELSON: That, I suppose, would be an alternative to
22 charge that, Your Honor.

23 THE COURT: I understand.

24 MS. NELSON: Or in lieu of.

25 THE COURT: What's the State's position on that?

1 MS. WHITE: Your Honor, again, I just don't think the
2 evidence that's been presented thus far supports that.

3 THE COURT: In my mind, the legislature could have
4 reasonably concluded that a parent who causes moderate or
5 serious bodily injury to their helpless child, that that
6 needs to be punished to a greater degree than to individuals
7 who are unrelated who get into a fight and moderate bodily
8 injury is inflicted. That may very well be the reason for
9 the way that the law is written and the difference in
10 penalties between 16-3-600 and the statutes that we're
11 dealing with today, or the other two statutes involving Mr.
12 Jackson as a parent. If Mr. Jackson, if there was some
13 dispute as to paternity of the child then, clearly, I think
14 that assault and battery second degree should be charged.
15 But in this case the statutes listed in Title 63 and 16-395
16 are more specific and, I think in my mind, adequately cover
17 the crimes charged. Ms. Nelson?

18 MS. NELSON: In that case, Your Honor, then we would
19 modify the argument to ask that you charge 63-580, which is
20 cruelty to children which says whoever cruelly ill treats,
21 etc., etc., or inflicts unnecessary pain or suffering upon a
22 child, whether the person is the parent or guardian or has
23 charge or custody. And I think that is supported by the
24 evidence.

25 THE COURT: And while I'm looking at that, may I

1 strongly suggest we go ahead and bring the jury out and we
2 can resume with the trial. Is that acceptable?

3 MS. WHITE: Yes, sir.

4 THE COURT: Let's have the jury out, please.

5 MS. NELSON: Your Honor, I do have this one other
6 motion, but I can certainly address that --

7 THE COURT: We'll deal with that after.

8 (Whereupon, the jury entered the courtroom at 11:50 a.m.)

9 THE COURT: Let the record reflect that the jury is back
10 and seated. Ladies and gentlemen of the jury, I trust
11 that y'all had a pleasant evening last night. We are
12 resuming with the trial of the case of The State v. Mr.
13 Jackson. At this point, Ms. Flannery, your defense,
14 ma'am.

15 MS. FLANNERY: Thank you, Your Honor. The defense
16 calls Matthew Jackson to the stand.

17 THE COURT: Sir, if you'll come up, please.

18 **MATTHEW JACKSON**, having been first duly
19 sworn, testified as follows:

20 **DIRECT EXAMINATION BY MS. FLANNERY**

21 Q Could you state your name for the court, please?

22 A Matthew Antwain Jackson.

23 Q And you go by?

24 A Antwain.

25 Q How old are you, Antwain?

1 A Twenty-four.

2 Q And what do you do for work?

3 A I work at C.E. Bourne as a roofer.

4 Q What's your relationship to Child ?

5 A He's my son.

6 Q I'm going to take you back to the week leading up to

7 January 20th, okay. What was going on that week?

8 A It was just another typical day, me having fun with my

9 son. We woke up that morning. Fixed him breakfast. And

10 then a couple hours later we just walked through the

11 neighborhood and walked to the store. We didn't take but

12 ten steps. It would be five feet for him, so we were moving

13 pretty slow. So sometimes I did have to pick him up for us

14 to pick up speed. But got back home and chilled. Played

15 the game later on the afternoon. Then a friend came knocked

16 on the door, so I went across the street to his house.

17 Sitting over there chilling. Then my son -- well, my friend

18 fixed some bacon so my son kept pointing like I want some, I

19 want some, smell good. So I'm like you hungry? He said

20 yes. So I went to the house and fixed him some spaghetti --

21 Q Sorry. To be clear, we're talking about January 20th,
22 right?

23 A Yes, ma'am.

24 Q 2011?

25 A Yes, ma'am.

1 Q Okay.

2 A And --

3 Q So you fixed him some spaghetti. I interrupted you.

4 A Yes, ma'am. Fixed him something to eat. We ate. And
5 then I noticed that it was around about eight, 8:30. So I
6 said we're going to go ahead and give you a bath since we
7 ain't going back outside, because at that time it was cold.
8 So I didn't want him to go back outside at night. So as I
9 turned on the bath water, I went into the room and got his
10 clothes out and checked back on the water and noticed that
11 the water was still in the same level that it had been in.
12 So I went and looked at him. He was chilling on the couch.
13 So I walked back into the room, pulled out his Pamper and
14 his rash cream and when I went back into the bathroom I
15 noticed that the water was still in the same spot. So I
16 went and examined the tub and noticed that my stopper was
17 broken. So I had to turn off the water because by then the
18 water had got a little cool. So I had to let the water
19 build back up. So I went back into the living room --

20 Q So, to clarify, just make sure I'm understanding, you
21 turned the water off because you felt like the water heater
22 was -- not needed -- needed to go back up again?

23 A Yes, ma'am. Water had gotten cooler than I had
24 expected to.

25 Q So everything drained out of the tub?

1 A Yeah. And it was steady draining as I was running the
2 water, so.

3 Q And you headed back into the living room?

4 A To the living room where Child was at on the couch,
5 so.

6 Q Okay.

7 A As I walked back in there I seen him laying there like
8 he was fixing to go to sleep. And before at around about
9 that time for him to take a bath, so I said you ain't fixing
10 to go to sleep yet because I don't want to wake you up to
11 give you a bath and then you have to sit up one, two o'clock
12 morning with me because you fresh. So I say I'm going to go
13 ahead and play with you until this water get back warm. So
14 I was just sitting there having a good time with him.

15 Q What were you doing?

16 A I was -- I had him like rocking him, you know, making
17 noises and blowing on him, making farting noises on his
18 belly. He was laughing. I was picking him up and laying
19 him across my shoulder and spinning around with him. He
20 loving it. I put him on my knee, ready to ride the horsey?
21 Yes. So I had him going. He was loving that. He was
22 smiling having a good time. And a couple minutes went by,
23 about five, six minutes went by so I'm thinking check on the
24 water. But at the same time I'm still holding him. So as I
25 stood up I started -- before I stood up I started pushing

1 him in the air but not letting him go, holding him up like I
2 was lifting weights because he was a hefty baby and he was
3 heavy. So basically I was --

4 Q And you were doing that to do what?

5 A To Child

6 Q Why were you doing that?

7 A Just to have -- just to keep a smile on his face.

8 Q So you were playing?

9 A Playing with him. Yes, ma'am.

10 Q So you were lifting him above your head?

11 A Above my head. Yes, ma'am.

12 Q And back down?

13 A And back down.

14 Q Is that correct? That's what you're saying?

15 A Back down, back up, back down. But I never did release
16 him.

17 Q Okay.

18 A So as I was standing up and I was still pushing him --
19 pushing pressure on him and what not, I felt a sharp pain to
20 my wrist, because I used to lift weights back in high
21 school, played football and track -- ran track and what not.
22 I had a problem with my left wrist. And once I got out of
23 high school a cyst popped up in it. But after I got out of
24 high school my medication got disqualified because I had
25 graduated. So I didn't -- I was scared to go to the doctor

1 with no money.

2 Q Right.

3 A They said you need money to go to the doctor, and I
4 didn't have no job. So I just ignored it.

5 Q Right.

6 A It went away. It comes and goes. And like now if I go
7 to pick up a five gallon bucket this way, it gives me so
8 much pain to where I have to drop back down and pick it up
9 like this.

10 Q Okay.

11 A So, therefore, as I was doing that, that sharp pain
12 caused me to release him with my left hand. But as he was
13 right here his booty was the highest point up. His face was
14 right here where my face was. And my reaction was --
15 anybody reaction if something come at their face they're
16 going to turn their head. So once I turned my head he
17 started going down the front of my body. He dropped so
18 quickly by the time I caught him he still hit the floor. So
19 and when I picked him up I seen that his head -- his neck
20 just -- and it scared me like woah, what's wrong with you.
21 So I picked him up. His head was in my left arm. I wrapped
22 -- my arm was long enough to go -- my arm to go up under
23 there and give him back support and I grabbed his leg so I
24 could have full -- whole contact - fully -- holding him
25 without having to drop him again. So I had to open the door

1 with my right hand. I opened it, pulled it back, pushed out
2 the screen door and shot out of there as quick as I could.

3 Q Okay. Let me stop you there for a second. So when you
4 were holding him above your head and you said that you had
5 -- your arm --

6 A Wrist.

7 Q Sorry, that's a wrist.

8 A Yes, ma'am.

9 Q Thank you. Your wrist started hurting and you had to
10 let him go. You weren't meaning that you --

11 A It wasn't no intentional letting him go --

12 Q -- was it intentional?

13 A -- No, ma'am. It was just a sharp pain like. It was
14 just like released my hand for a quick second and in a quick
15 second he was coming back down already so much that it like
16 -- it was like perfect timing without me having the perfect
17 timing. The pain came to my wrist as he was coming back
18 down to my face so --

19 Q You tried to grab him?

20 A I tried to grab him. I caught him, but he had already
21 hit the floor. His whole body didn't hit the floor. His
22 head hit the floor. So when I snatched -- I grabbed him --

23 Q And where did you catch him on his body?

24 A Around his thighs and his knee. Around like the knee
25 part, low. Cause my hands so big, so it's the knee, the

1 shin and the thigh all at one time. When I picked him up I
2 seen where his head was just dropping back and his eyes was
3 rolling. He scared the living daylights out of me. So I
4 shot out the door. When I shot out the door --

5 Q Why did you run out the door?

6 A Because I didn't have a cell phone to call for help.

7 Q So you shot out the door with Child in your arms?

8 A Child in my arms, holding onto him --

9 Q Where were you going?

10 A I was going to my friend's house who lived at an angle
11 across from me. It's two houses. That was right -- that
12 was living in a duplex. Nobody stayed in the duplex at the
13 time, but I did have a friend that I'd sit with everyday who
14 house he smelled the bacon at. And it was -- I ran back to
15 his house. I was bawling on the door screaming for help.
16 "Somebody help me. Somebody help me." Didn't nobody come
17 to the door. But it's a house that stay -- it's directly in
18 front of us. As I was standing in the road screaming for
19 help, I noticed that the lady, she came outside. She's like
20 what's wrong. I said call 911, my son. She said let me go
21 get my phone. So she had to run back in her house. By that
22 time my friend opened his door --

23 Q So she said I'm calling 911?

24 A Calling 911. She said she had to get her cell phone.

25 Q And you saw her go -

1 A I seen her turn around and take out running back in her
2 house because she seen me standing in the middle of the road
3 with my son in my hand screaming for help.

4 Q Okay.

5 A So by that time I heard my friend's door open because
6 he got a screen door, too. So when I turned around he was
7 like, bro, what's wrong. So I said I need a phone. So I
8 ran in his house. Instead of me calling 911, because I
9 already know 911 had been called, I called my mother who was
10 a certified CNA.

11 Q And why did you call your mom?

12 A Because I knew that she knew what she doing. And I
13 didn't think at that time that his injuries were that
14 serious. But I knew that since 911 was on the way my mama
15 was closer than the paramedics. She stayed within two
16 minutes from me. I was there on Walker. She stayed at
17 Boles.

18 Q So she lives about two minutes away from you?

19 A It wasn't even two minutes.

20 Q And you know that she had medical experience?

21 A Yes, ma'am.

22 Q And she's -- is she a person that you normally call if
23 you have problems?

24 A Yes, ma'am. Call her about anything. Anything health
25 related, I call my mother.

- 1 Q You get advice from her?
- 2 A Yes, ma'am.
- 3 Q She's the person you rely on?
- 4 A Yes, ma'am.
- 5 Q You trust her?
- 6 A She's the only one that been in my life because my
7 father, when I was like in the fifth he caught 999 years in
8 prison. And I don't want to see that. I don't want to see
9 that. I want to be in my son's life. I don't -- it's just
10 something I can't see myself doing, being behind bars.
- 11 Q So you called your mom --
- 12 A Called my mom.
- 13 Q -- and she heads over?
- 14 A Heads over right away. She beat --
- 15 Q How long do you --
- 16 A -- the paramedics.
- 17 Q -- think it take her to get there?
- 18 A It wasn't even two minutes cause she got a foot. So it
19 wasn't even two minutes.
- 20 Q What's happening as she's getting there?
- 21 A I was standing in a -- in fact, I used the phone
22 because I had about dropped my son again trying to call my
23 momma on my friend's phone. So by then I told her, mama,
24 get here, Child . I hung the phone. Went outside. When I
25 went back outside I was just standing in the middle of the

1 road. I felt -- it seemed like ten to 20 minutes went by,
2 but it wasn't that long because it was just how scared I was
3 and how shocked I was that not me, not me and my son.
4 That's somebody that I love is now in my arms looking like
5 they fixing me to leave me. I was telling him don't leave
6 me, son. I love you, don't leave your father. I was
7 holding on to him squeezing him, but -- I was holding on to
8 him for dear life, but not trying to squeeze the life out of
9 him.

10 Q Right.

11 A So I was just scared and shocked at that time.

12 Q And the lady, your neighbor --

13 A The neighbor.

14 Q -- was on the phone with 911?

15 A Yes, ma'am. So --

16 Q Did she give any instructions or anything?

17 A She was talking to the dispatcher. And the dispatcher
18 say what's wrong. She was like -- I could hear her saying I
19 don't know what's wrong, there's just a man walking around
20 with his son, a child, in his arms. She was like, well, --
21 she was like -- I guess, she was like approach him and see
22 what's wrong because she ran up to me, she said what's
23 wrong. I said my son, my son, he hit his head. She's like
24 the dispatcher told her to lay him flat on his back. So I
25 had to walk back into the home and lay him on his back. As

1 I did that, I heard her say something about I don't know
2 nothing about no CPR. And so by that time I just seen my
3 mama. Boom. She bust up in the door, "What's wrong, what's
4 wrong". I said Child She was like get out of here with
5 all that crying so I can hear the dispatcher and let them
6 know what's going on. So I stepped outside and was steady
7 crying and shouting, screaming for the Lord help me because
8 my son he was injured.

9 Q And the paramedics get there?

10 A Yes, ma'am. The fire trucks and the paramedics pulled
11 up.

12 Q They start treating him?

13 A Yes, ma'am. They noticed -- I guess, they -- I was
14 outside. I guess they noticed that he was hurt badly and so
15 they had to get him to the ambulance and they rushed him to
16 the hospital.

17 Q And did you go to the hospital?

18 A Yes, ma'am.

19 Q Okay. And while you were at the hospital did you speak
20 to anyone?

21 A Besides the police officer, I was outside smoking a
22 cigarette because I was trying to calm my nerves down.

23 Q So you spoke to a police officer?

24 A I spoke to a police officer.

25 Q And this police officer, did he ask you questions about

1 this?

2 A He asked me what happened. And I told him that he fell
3 out of the couch because I was scared. And at the time I
4 had long hair, long dreads, and I didn't nobody to judge me
5 because you're a young, black man with dreads, you easily
6 get judged by anybody. Anybody. It's hard to find jobs
7 when you just look a certain way. So -- and I knew that for
8 a fact because my boss man told me out of his own mouth when
9 I cut my hair.

10 MS. FLANNERY: Objection, Your Honor. Hearsay.

11 THE COURT: Sustained.

12 Q Okay. We can move forward. So law enforcement asked
13 you if they could search your house?

14 A Yes, ma'am.

15 Q And what did you -- how did you respond?

16 A I told them that they could and I will be able to help
17 them anyway possible.

18 Q All right. So you tried to be helpful?

19 A Yes, ma'am. I was helpful.

20 Q Did you ever tell law enforcement you wouldn't speak to
21 them?

22 A No, ma'am.

23 Q So, Child , we know, was transferred up to Greenville?

24 A Yes, ma'am.

25 Q Did you go to Greenville?

1 A Yes, ma'am. Me and mother, my girlfriend. Because I
2 had to go back to the house with her. I went back to the
3 house with the detectives. And they took pictures and
4 whatnot. And my mama was getting ready for a trip to
5 Delaware, so by the time the detectives left and I locked up
6 the house we had went on ahead and went to Greenville.

7 Q And how were -- what did you do when you got there?

8 A I was sitting in the waiting room. And then my mama
9 went to see him. And then his grandmama went to see him
10 because they didn't want him to have two people in the room
11 the whole time. My mother, she was already in there. So
12 after his grandmama and my mama came out, I went into there.

13 Q So you got to see him?

14 A Yes, ma'am. I kissed him. Told him I loved him. But
15 at the same time I just don't like needles. Any IV needles
16 and anything. I don't like them. They get me lightheaded.

17 Q Have you seen Child since --

18 A Yes, ma'am.

19 Q -- that day?

20 A Yes, ma'am. I done spent time with him. He been back
21 to Greenwood. Spent time with me. From Thanksgiving, to a
22 day after his birthday, to after -- during father's day,
23 week before Father's Day and around the Fourth of July this
24 year.

25 Q This year?

- 1 A Yes, ma'am.
- 2 Q Okay. Were those visits supervised?
- 3 A No, ma'am.
- 4 Q So you had him by yourself?
- 5 A Basically me and my girlfriend.
- 6 Q Did his mother know that he was there?
- 7 A Yes, ma'am.
- 8 Q Did you ever speak to his mother about this?
- 9 A It was back when we had to go to court for DSS back in
- 10 January. She just asked me what was happening -- what
- 11 happened. She just wanted to know what happened. She
- 12 wasn't mad at me or anything. She just wanted to know how
- 13 he got hurt. So I told her I was playing with him and what
- 14 not. Then dropped him by accident.
- 15 Q Did you tell her the truth?
- 16 A Yes, ma'am. I didn't want to lie to her, but at the
- 17 same time I hated that I did lie to law enforcement because
- 18 that made their job harder.
- 19 Q So you regret?
- 20 A I surely do regret it. I hate that I did it. That's
- 21 the only thing I did regret that I told the law enforcement
- 22 what actually happened to my child because I was scared.
- 23 Q So you get to see Child a decent amount?
- 24 A Yes, ma'am.
- 25 Q How he's doing?

1 A He's doing lovely. Lovely.

2 Q What's lovely?

3 A Lovely. We play together. We go outside and kick the
4 basketball or the soccer ball. I got little blue and red
5 football. He loves to play. We go back and forth, run
6 across the yard, tackle each other. And we play the video
7 game now, Play Station 3, Grand Theft Auto for me to get him
8 a motorcycle so he just ride around. Ride around on the
9 motorcycle. That's all he wants. Wants nothing but a
10 motorcycle.

11 Q He can walk around?

12 A Walk around.

13 Q Talk?

14 A Talk around. Eat like a champ, so.

15 Q And how would you classify your relationship with him?

16 A It's sweet. It's lovely. I'm glad that the Lord
17 blessed him to let him see another day. And glad and
18 blessed that I'm back into his life again.

19 Q And how would you define your feelings for Child ?

20 A I describe my feeling as out of this world. My main
21 priority, my first priority, my only priority for now until
22 he gets more -- but that's my main priority now, my son.

23 Q Thank you, Matthew. Hold on just one moment for me,
24 okay?

25 A Yes, ma'am.

1 Q Please answer any questions Ms. White or Mr. Taylor
2 has, okay.

3 A Okay.

4 THE COURT: Ms. White?

5 CROSS EXAMINATION BY MS. WHITE

6 Q Mr. Jackson, you just said that your son is your main
7 priority, didn't you?

8 A Yes, ma'am.

9 Q Is that why you immediately started to lying to EMS on
10 the day he was hurt?

11 A No, ma'am.

12 Q Now, Mr. Jackson, by my count, there have been five
13 different theories now as to how your son was injured that
14 day. The first lie you told was to EMS, right?

15 A I didn't talk to EMS, ma'am. I talked to the police
16 officer at the hospital.

17 Q Well, someone at EMS had this story that your son had
18 fallen off the couch, didn't they?

19 A Yes, ma'am. I guess so.

20 Q And there were no police officers on scene when that
21 first lie was told, correct?

22 A No. It was the police officer. That's the one I was
23 talking to at the hospital. He was a uniformed --

24 Q No, at your house when EMS first arrived --

25 A I didn't tell --

1 Q -- there were no police officers?

2 A No, ma'am. I didn't talk to nobody at that time
3 because I was outside crying for help for dear life for my
4 son. Praying for my son.

5 Q So you hadn't told anybody that he fell off the couch?

6 A No, ma'am. Until I got to the hospital.

7 Q EMS just made that part up?

8 A They had to hear it from another police officer, ma'am.
9 I didn't talk to EMS.

10 Q From a police officer who wasn't even at the scene?

11 A The police officer that questioned me at the hospital.
12 Wasn't no police officer come -- the only people that
13 arrived at the scene of the crime was my mother, a fire
14 truck and an ambulance. There's no police, no detective, no
15 nothing showed up.

16 Q That's right.

17 A Yes, ma'am.

18 Q And EMS was told at that point that Child had fallen
19 off the couch?

20 A I didn't tell them.

21 MS. FLANNERY: Objection. This has been asked and
22 answered.

23 MS. WHITE: I'll move on.

24 Q All right. So the second lie you told was to Martin
25 Haralson at the hospital, right?

1 A Basically, it should have been the first one. That he
2 come out -- he was the first person that talked to him about
3 what happened. So that would be the first lie. Yes, ma'am.

4 Q Okay. And you told him that Child was laying on his
5 back and just rolled off this 19 inch high couch?

6 A Yes, ma'am.

7 Q All right. And then you talked to Detective Nichols?

8 A Yes, ma'am.

9 Q And, again, same story, fell off a couch?

10 A Yes, ma'am.

11 Q And you kept talking to Detective Nichols over the next
12 two weeks, correct, just off and on?

13 A No. He had asked me to follow up with him one Monday.
14 And then the next Monday I got locked up.

15 Q And you had the opportunity to tell him then that what
16 you're saying really happened?

17 A I did. But, at the same time, I didn't have anybody
18 behind me as a lawyer or attorney or something. So I know
19 then that if I switch my story up by talking to them that I
20 was going to get locked and wouldn't be able to see my son
21 or hear nothing about my son at that time, because you
22 cannot hear anything behind these walls.

23 Q And now at some point the story changes from the front
24 of the couch to the back of the couch, correct?

25 A No, ma'am.

1 Q Well, wouldn't you agree with me that someone says he
2 fell off the back of the couch?

3 A No, ma'am. I stated that he fell out the front of the
4 couch, so I don't know how somebody else stated that he fell
5 out the back when I said he fell out the front.

6 Q Okay. Then at some point you talked to Child mother
7 and you tell her that y'all were wrestling.

8 A That was, like, the next - basically, a year after
9 that. We had to go up to Spartanburg and I told her then,
10 yes, ma'am. I told her that I was wrestling with him.
11 Wasn't no wrestle wrestle to make it seem like that's all I
12 was doing, wrestling with a child, no. It was play
13 wrestling. It was like I would lay him cross my knee. I'm
14 going to just go drop him from my knee say back breaker. I
15 was boy, back breaker, stuff like that, you know, just to
16 make him laugh. I didn't -- wrestling, I know not to
17 wrestle with a child, ma'am.

18 Q Okay. But all you told her was wrestling?

19 A Yes. And she --

20 Q And now you're telling this jury that you were holding
21 him up in the air and blowing kisses on his belly and that's
22 how he got all of these injuries. That's what you're
23 telling this jury?

24 A But if I'm playing with him everyday and didn't that I
25 was bruising my son, how could I know that I was bruising my

1 son when I didn't know and failed to realize it.

2 Q Well, you mentioned that you hurt your wrist playing
3 sports in high school.

4 A Yes, ma'am.

5 Q And that's been bothering you ever since you graduated?

6 A Yes, ma'am.

7 Q And you know that you have that injury?

8 A Yes, ma'am.

9 Q And you're still lifting him way up in the air?

10 A It wasn't that far up.

11 Q Oh, it wasn't that far up?

12 A It's just arm extension, but you're making it seem like
13 he was twelve feet in the air.

14 Q Okay. Well, you've got him up in the air. And then
15 your left wrist, you said it was?

16 A Yes, ma'am.

17 Q Hurts? Did your right arm not work?

18 A As far as a healthy baby, ma'am, my right arm did work.
19 Because if I'm holding on to one side with right arm and my
20 left arm felt a shock how can I grab him like this and he's
21 falling straight towards my face and I had to move my head
22 in order to catch him.

23 Q So your left arm's in pain. You've got him up like
24 this.

25 A My arm was in pain while he was dropping.

1 Q And he doesn't fall onto you?

2 A No, ma'am. Went straight down.

3 Q Okay.

4 A Because I was pushing him up. He fell straight down.

5 Why would he -- I don't see that he would fall on me and

6 he's pushing straight up off -- not right here, but right

7 here. But his face was still closer to mine.

8 Q Now, you said that you were just trying to be helpful

9 to law enforcement.

10 A I was helpful by allowing them to do anything that they

11 needed to do to get their job done.

12 Q Was it being helpful when you lied to everybody?

13 A No, ma'am. I noticed that I made a big mistake.

14 Q Now, you've been to the doctor, haven't you, Mr.

15 Jackson?

16 A Yes, ma'am.

17 Q And you know when you go in they ask you what happened.

18 A Yes, ma'am.

19 Q How did you get hurt?

20 A My wrist? My wrist?

21 Q No, just in general. If you go to the doctor with a

22 problem they ask you how it happened.

23 A Uh-huh. Yes, ma'am.

24 Q Or how long has this been going on.

25 A Yes, ma'am.

1 Q You would agree with me that it's important to tell the
2 doctor who is treating you the truth, correct?

3 A Yes, ma'am.

4 Q Now, you lived with your girlfriend at the time, right?

5 A Yes, ma'am.

6 Q And she was working that night?

7 A Yes, ma'am.

8 Q What time does she get off?

9 A She normally get home between 12:30 and one because she
10 work in Clinton at Renfro.

11 Q And this would be about the time that y'all were at the
12 hospital still waiting for Child to go to Greenville?

13 A No. Child was shipped out probably about ten.

14 Probably wasn't even that, ten, 10:30. So by me helping
15 with the detectives I rode back to my house. Child was
16 being shipped out as I was in the backseat of the car with
17 the detectives, because I had to sit outside waiting on them
18 about ten minutes before they pulled up.

19 Q They gave you the opportunity to go to Greenville,
20 didn't they?

21 A How could I have got there with no vehicle?

22 Q Your mom had a vehicle.

23 A I know.

24 Q Mr. Jackson, you said earlier how would you know you
25 were bruising your son. Did you say that, by playing with

1 him?

2 A Uh-huh.

3 Q Now, you gave him a bath every night, didn't you?

4 A Yes, ma'am.

5 Q Did you play with him every day?

6 A Yes, ma'am. Brought joy to him. Brought joy to him.

7 He smiled every time I played with him. That's why I played
8 with him. If he didn't like me playing with him I wouldn't
9 have played him. We just sit there and played the game all
10 night.

11 Q But you never put those kind of bruises on him playing
12 with him before?

13 A Like I say, I didn't pay attention to if I was bruising
14 him or not. I did not pay that no attention.

15 Q So you weren't paying attention when you were bathing
16 him?

17 A Not to look for any bruises. Only thing I was
18 concerned about was the diaper rash he had. He had bad
19 diaper rash, so I wasn't looking for no bruises, something
20 that I didn't that I was doing to him. I didn't know to
21 look for that.

22 MS. WHITE: No further questions, Your Honor.

23 THE COURT: Re-Direct?

24 **RE-DIRECT EXAMINATION BY MS. FLANNERY**

25 Q Antwain, just to be clear, you did go to Greenville?

- 1 A Yes, ma'am.
- 2 Q To see Child ?
- 3 A Yes, ma'am.
- 4 Q Okay. And you went for the purpose to see him?
- 5 A Yes, ma'am.
- 6 Q After you went to your house with law enforcement?
- 7 A Yes, ma'am.
- 8 Q And how did you get to your house when law enforcement
- 9
- 10 A Detective Nichols and Detective Futch. I was in the
- 11 back seat. As my son was riding out, I was -- rode to my
- 12 house with detectives.
- 13 Q So you rode to the house with the detectives then
- 14 headed to Greenville?
- 15 A Yes, ma'am. After they finished their job, my mama --
- 16 me and my mama and my girlfriend went to Greenville
- 17 Hospital.
- 18 Q Did you mean to hurt Child ?
- 19 A No, ma'am.
- 20 Q Did you make a mistake lying to law enforcement?
- 21 A Yes, ma'am. I made a terrible mistake.
- 22 MS. FLANNERY: Thank you very much.
- 23 MS. WHITE: No Re-Cross.
- 24 THE COURT: Thank you, sir, you can step down. Call
- 25 your next witness, please, Ms. Flannery.

1 MS. FLANNERY: Your Honor, the defense rests at this
2 time.

3 THE COURT: All right. Anything in reply from the
4 State?

5 MS. WHITE: No, sir, Your Honor.

6 THE COURT: Ladies and gentlemen, if you would adjourn
7 to the jury room for a few moments. I'll have you back out
8 here shortly. I want to discuss with the attorneys
9 scheduling and moving forward. I don't think I'll be
10 keeping you for very long, but don't talk about the case
11 yet. I'll let you know when you can. Thank you.

12 (Whereupon the jury exited the courtroom at 12:17 p.m.)

13 THE COURT: The jury is out. How long does the State
14 anticipate their closing taking, would you estimate? I'm
15 not going to hold you to it.

16 MS. WHITE: I'd say no more than 20 minutes.

17 THE COURT: Would y'all -- about the --

18 MS. FLANNERY: I think probably 15ish. I don't
19 anticipate a long closing.

20 THE COURT: Okay. I'm going to go ahead and let the
21 jury go to lunch then. And I'm going to have them back here
22 at about 1:30. That should give us enough time to talk
23 about what we need to discuss. And then grab a bite for
24 ourselves. So let's go ahead and have the jury back out,
25 please.

1 (Whereupon, the jury entered the courtroom at 12:19 p.m.)

2 THE COURT: Ladies and gentlemen, I talked to the
3 lawyers about the logistics of this. And I think that the
4 best thing to do at this point in time, I've got some
5 matters that I have to discuss with them concerning this
6 case. The law requires me to talk to them a little bit
7 about the law that I'm going to instruct you on before I
8 actually give you those instructions. So we're going to
9 have that conversation while y'all are getting lunch. I'm
10 going to ask that you be back in the jury room, if you
11 would, at 1:30. At that point in time we'll resume with the
12 trial of this case. You'll hear the closing arguments of
13 the attorneys, and you'll get my charge on the law. So
14 please don't discuss this case yet because, obviously,
15 you've not heard everything you need to hear to make a
16 decision. With that, I hope you have a great lunch. If
17 you'll be back in the jury room at 1:30, we will start at
18 1:30. Thank you very much.

19 (Whereupon, the jury exited the courtroom at 12:20
20 p.m.)

21 THE COURT: Ms. Nelson, will y'all be requesting any
22 specific charges other than the ones you've talked about
23 already?

24 MS. NELSON: Other than the lesser included we've talked
25 about? No, sir, not.

1 THE COURT: You didn't want to charge on accident or
2 anything like that?

3 MS. NELSON: Oh, Your Honor, I guess we do.

4 THE COURT: Okay.

5 MS. NELSON: Yes, sir. Thank you.

6 THE COURT: It occurred to me that by the defendant's
7 testimony that probably would be proper to charge.

8 MS. NELSON: You're right, Your Honor. I'm sorry. I
9 missed that.

10 THE COURT: The charge that I worked up so far basically
11 states the defendant has raised the defense of accident. An
12 act may be executed -- sorry. And act may be excused on the
13 ground of accident if it shown that the act was
14 unintentional, that the defendant was acting lawfully, and
15 that reasonable care was used by the defendant with regard
16 to and I then I inserted attending to the needs of his child
17 because the accident -- the stock charge that I usually have
18 involves the deadly -- a deadly weapon or some other serious
19 unlawful conduct that I'm trying to -- so I'm trying to sort
20 of squeeze this in. I then put the burden is on the State
21 to prove beyond a reasonable doubt that the act was not an
22 accident, but was knowing, intentional, and malicious or
23 unlawful activity by the defendant. I can print this off
24 real quick if you want to look at a hard copy.

25 MS. NELSON: It sounded good, Your Honor.

1 MS. WHITE: No.

2 THE COURT: Now, if the State was citing Northcutt for
3 the proposition that I should not be including -- you're
4 talking about the Northcutt decision from Lexington 2007,
5 the death penalty thing?

6 MS. WHITE: Yes, sir.

7 THE COURT: Okay. It's ironic that you cite that case.
8 The rehearing on that has actually be reassigned to me. So
9 I am familiar with that case. And it's the first portion of
10 that opinion that you're discussing lesser included
11 offenses. Explain to me, again, solicitor, how you feel
12 that the 63-5-80 cruelty to children, how is that not a
13 lesser included, in your opinion?

14 MS. WHITE: Your Honor, I actually do believe it is a
15 lesser included. However, I don't think there's any
16 testimony that can substantiate that this isn't at least
17 placing the child at risk of harm or -- and I don't have the
18 exact language. Placing the -- "cause to be done unlawfully
19 or maliciously any bodily harm to the child so that his life
20 or health is in danger." That testimony, that's -- I'm
21 quoting from unlawful conduct toward a child. I don't see
22 how the jury could find anything less than that, based on
23 testimony that's been presented. I mean, no one is saying
24 this has been a simple punch with just a black eye or
25 depriving a child of food, anything like that. I think the

1 testimony is uncontroverted that this child spent four days
2 in the hospital and was in critical condition.

3 MS. NELSON: Your Honor, I would just respond that the
4 lesser included provides for pain and suffering. And I
5 think the evidence could be interpreted to substantiate
6 that, based on exactly what Ms. White just said.

7 THE COURT: And somewhat of the issue that I have with
8 that, Ms. Nelson, is that your client's testimony isn't that
9 this was a slap or something like that. It's that the
10 injuries were completely accidental. And, certainly, if the
11 jury believes him he's entitled to acquittal on all charges.
12 The way that it's -- the way that the law has it set up,
13 cruelty to children seems to apply to either passive conduct
14 depriving a child of necessary sustenance, for example, or
15 inflicting unnecessary pain or suffering upon a child which,
16 in this case, it's clear that the injuries that the child
17 sustained, I mean, your client is -- the jury is either
18 going to decide your client is telling the truth or he is
19 not. And that --

20 MS. NELSON: Yes, sir. And I think if they decide
21 that he's not that this would be one of the -- that the
22 cruelty to children would be something they could convict on
23 because it does provide for inflicting unnecessary pain or
24 suffering upon a child.

25 MS. WHITE: Your Honor, first of all, I think that

1 they would have to admit it was an intentional act, and they
2 haven't done that. Second of all, I think that it creates
3 -- the jury would get confused, well, he did cause pain and
4 suffering even under the infliction of great bodily injury.
5 So being charged on all three charges, the pain and
6 suffering is assumed in the other two charges, Your Honor.
7 And I think the jury can get confused and tied up on where
8 it falls on that spectrum. If they're saying it wasn't a
9 serious bodily injury then it was unlawful conduct placing
10 him at, again, unreasonable risk of harm.

11 THE COURT: All right. Well, we were all educated under
12 the old ABWIK, ABHAN, assault and battery law. And,
13 typically, under that theory, and I don't know that the law
14 has substantively changed, but if you had someone charged
15 with assault and battery with intent to kill, typically
16 ABHAN is simply a lesser -- it's clearly a lesser included
17 of ABWIK. And there might be a question of with malice was
18 present on an ABHAN or whether there was the intent to kill
19 present or something to that effect. It does not
20 necessarily follow, though, because you charge ABHAN that it
21 would be appropriate to charge simple assault and battery.
22 I see the same sort of thinking here. And based upon the
23 law or based upon the evidence that's been presented today,
24 I'm inclined not to charge 63-5-80.

25 MS. WHITE: I understand. Thank you, Your Honor.

1 THE COURT: Thank you. Let's go ahead and touch on your
2 motion, Ms. Nelson. This relates to opening on the law and
3 the facts by the State and the State having the last
4 argument whenever you have presented a defense. And I have
5 read the motion and the authority cited in the motion. I've
6 also reviewed on break the Atterberry case.
7 A-t-t-e-r-b-e-r-r-y. That's reported at 129 South Carolina
8 464. Let me hear you on that. Of course, this same issue
9 of -- it's my understanding this same issue, I believe, is
10 being appealed by Frank Epps on that homicide case, Ms.
11 White, that you tried with Mr. Hodges. And the defendant's
12 name I cannot remember. But I think it was Elmore, maybe?

13 MS. WHITE: Freddy Edwards.

14 THE COURT: Edwards. I'm sorry. And apparently we
15 haven't had a decision on that case yet. So go ahead, Ms.
16 Nelson.

17 MS. NELSON: Your Honor, I think everything that I would
18 say is included in the motion, essentially that this has
19 become a practice that does not have really any authority
20 for it and when a civil case provides for this procedure,
21 and many other states and jurisdictions do as well, we just
22 argue that it protects due process to require the State to
23 open fully. And then just use their final argument as
24 rebuttal. That still let's them have the last word when we
25 have presented evidence. And would ask the court to use the

1 procedure we've outlined in the motion.

2 THE COURT: So, just so that I'm clear, are you simply
3 asking that they be allowed to only argue one time, and
4 that's after you? Or you're wanting last argument, right?

5 MS. NELSON: No, sir. I'm asking that they open in full
6 on --

7 THE COURT: On the law and facts?

8 MS. NELSON: -- the law and facts, that we respond to
9 that in our closing, and that if they have anything to rebut
10 that they did not already address in their first argument
11 that that would be the purpose of any final word is
12 rebuttal.

13 THE COURT: Okay. Well, this is a different argument,
14 then, that was made in the earlier case. Ms. White, how
15 would you care to address that?

16 MS. WHITE: Your Honor, this motion has been made
17 multiple times. And I think pretty much every case we try
18 with the public defender's office as well as Mr. Wise. I
19 don't know if it was his brain child or he picked it up
20 somewhere else.

21 MS. NELSON: It is.

22 MS. WHITE: Your Honor, again, this is the way it's
23 done in all the general sessions courts in the state. We do
24 not have any precedent for overturning it, and don't see any
25 reason to change that now, Your Honor.

1 And, again, it's, like I said, the motion has been made
2 multiple times. I'm assuming it's been appealed multiple
3 times. So the court has had an opportunity to address it.

4 THE COURT: The last time the Supreme Court had an
5 opportunity to address it they refused to address it because
6 there was no record made at the time of trial of what the
7 defense or how they would have responded. But I'll be
8 denying your motion, Ms. Nelson. I appreciate you making
9 it, as always. The portion of the opinion that you site the
10 descent -- or, sorry, maybe it's the concurring opinion by
11 Justice Aycock, A-y-c-o-c-k. Basically, he states this
12 court is unequivocally -- this court says unequivocally that
13 the trial judge has "no right to suspend or change rule 59
14 of the Circuit Court having no authority to suspend or
15 change the rule that lies within the discretion of the
16 presiding judge to determine whether the requirements of the
17 rule have been met. When a rule so made is not repugnant to
18 or in conflict with the law it has all the force of law and
19 must be complied with. And I understand your position with
20 regard to Rule 59, but even the descent that you site, or
21 the concurring and descending opinion, agrees that I need to
22 follow the rule until somebody tells me different. I'll
23 follow tradition.

24 MS. NELSON: I don't think there is one, Your Honor.

25 THE COURT: I understand. To the extent that it is the

1 way that the courts have always operated. It is no
2 different than the fact that people stand when I walk in. I
3 don't know that there is any rule saying that people have to
4 stand up when a judge walks in. But it is, of course,
5 practice of the court. It is the tradition. The tradition
6 has become a rule, to an extent.

7 MS. NELSON: May I just add, for the record, that I --
8 just because something is a practice -- I do think you do
9 deserve our respect to the standing, but I think this is
10 more what we're asking for has more to do with due process
11 and that there really is no good reason for allowing
12 something to happen in a civil case that a defendant in a
13 criminal case doesn't get the same benefit from. And I'll
14 stop talking. Thank you, Your Honor.

15 THE COURT: I appreciate your position. I really do. I
16 don't see where this is raising such a substantial due
17 process right that substantive due process is implicated.
18 This is a procedural issue. That may change. Thank you.
19 We'll be at ease until around 1:30. And I'll print you out
20 the modified instructions.

21 (Whereupon, the court was in recess until 1:30 p.m.)

22 THE COURT: I'm told that all jurors are present.
23 Before the jury comes out, do you insist upon them opening
24 on the law or would you -- do you intend to force them, Ms.
25 Nelson, to open on the law or are you okay to let them do it

1 all in one summation?

2 MS. NELSON: I don't see any reason to do that.

3 THE COURT: Y'all okay with that?

4 MS. WHITE: I'll just do it all at once.

5 THE COURT: Very good. I'll bring the jury out and
6 we'll proceed from there.

7 (Whereupon, the jury entered the courtroom at 1:37 p.m.)

8 THE COURT: Okay. Let the record reflect that the jury
9 is back and seated. I trust y'all had a pleasant lunch.
10 Ladies and gentlemen, we've reached that portion of the
11 trial where the attorneys will give you their closing
12 summation or their closing arguments, and I'll remind you
13 that what the attorneys say during their closing arguments,
14 of course, is not evidence in this case. You judge the
15 evidence based on the testimony that you've heard and the
16 exhibits which have been introduced. Normally, it's
17 customary for the lawyers to refer to what evidence has been
18 presented, what testimony has been given. However, if your
19 recollection of the testimony differs from what the lawyers
20 say the testimony is, you, of course, should go with your
21 recollection as opposed to what they say the evidence is
22 because you are the judges of the fact or the facts in this
23 case. For example, if the lawyers say that yesterday the
24 sky was blue and it was beautiful and it was nice
25 comfortable 70 degrees and your recollection is that it was

1 rainy and stormy and raining really hard, you should go with
2 your recollection of what the weather was as opposed to them
3 saying what it was. And the way we'll proceed is that the
4 defense will go first and to be followed by the attorney for
5 the state. With that, Ms. Flannery, Ms. Nelson, you are
6 recognized for your closing argument now.

7 MS. FLANNERY: Thank you, Your Honor. May it please the
8 Court?

9 THE COURT: Yes, ma'am.

10 **CLOSING ARGUMENT BY THE DEFENSE**

11 MS. FLANNERY: I just want to thank you all for being
12 here today. Being a juror is very important and it's a very
13 hard job. There's no doubt about it. You had to listen to
14 a lot of facts, a lot of information. You had to listen to
15 complex medical information, conflicting information and
16 information if you believe to be true can make you sad or
17 angry. And that's a very difficult job. And, honestly,
18 it's supposed to be difficult because what we're talking
19 about here today is depriving a man of his liberty, and that
20 is not something that we can do easily. You need to be
21 assessing everything that you hear in making a decision
22 after hearing everything and contemplating it. Each of you
23 gets to do that. You all have a voice that's equal to
24 everyone else. And you get to decide whether or not the
25 state has reached its burden beyond a reasonable doubt.

1 Reasonable doubt, you're going to hear the judge say, means
2 that a person -- a reasonable person would hesitate to act.
3 That's what you're looking for here. And in every case the
4 state has to meet every element of the crime in order to
5 find someone guilty of a crime. In this case, Antwain is
6 charged with child abuse great bodily injury. What that
7 means, basically, is there are two elements. One,
8 intentional harm to a child, in this case, Child , and two,
9 that that that harm rises to substantial risk of death. As
10 you heard Matthew testify he said this was an accident. You
11 heard him say that. You heard him talk about how he was
12 lifting Child over his head and playing and things along --
13 and all of those things. You heard about his attempts to
14 get help. You heard him say. Talked about how he's
15 screaming in the streets asking for help. You heard EMS say
16 that when they got there there was a man matching Antwain's
17 description, holding his hands in his head crying asking for
18 help. You heard on the video with, I believe, officer
19 Haralson he's saying I'll do anything I can to help you. I
20 want to help with this situation.

21 Mr. Free from EMS, he described that situation, too.
22 Dr. Crosswell testified that Matthew's injuries could
23 possibly have come from a 19 inch fall. So if that's
24 possible then it could also be possible that if Child was
25 falling from over six feet that these -- this could have

1 been accident. That's where these injuries could have come
2 from. She confirmed that there were no broken bones, no eye
3 hemorrhaging. No signs that are common to abuse. She
4 didn't follow up on the MRI that was suggested that could
5 have given better indications of how old the bruising was,
6 how old the blood in the subdural hematoma was.

7 Let's talk about the bruising for a second. As I
8 talked about a minute ago, your first step is determining
9 whether or not you believe that Matthew intentionally harmed
10 a child, whether he intentionally harmed Child So you
11 have to decide whether Dr. Crosswell's testimony regarding
12 how the bruises could have gotten there as being credible.
13 The next thing is we talk about is even if you believe that,
14 does that rise to substantial risk of death. Bruises, no
15 matter how horrible, don't cause death. Like I said, I'm
16 talking about substantial risk of death because that's the
17 standard of the law here. That is what our legislature has
18 written that is the law. It's what we all follow. And it's
19 what Matthew is charged with. It's not possible risk. It's
20 not likely risk. It's substantial risk of death.

21 Dr. Crosswell talked about how the head injury itself,
22 the subdural hematoma, how that was not life threatening.
23 She did say that the breathing associated with it could have
24 been life threatening if Child didn't receive prompt
25 treatment and if it was prolonged and untreated. Child did

1 receive treatment. Matthew made sure that happened. He
2 called for help and he got help immediately.

3 You also have the option to consider unlawful conduct
4 towards a child. The standard there is any bodily harm to a
5 child that could have put the life or health at risk.
6 That's slightly lower -- that's lower than substantial risk
7 of death. That's something that you the jury get to make
8 the decision on. I don't get to tell you what it is. Ms.
9 White or Mr. Taylor don't. You all get to make that
10 decision because that's a question of fact for you.

11 We're all here today about Child . He is the most
12 important part of this whole thing. And I think everyone in
13 this courtroom can agree with me that we are so happy that
14 he is okay. This is what he is. He's okay. He's a happy,
15 healthy four-year-old child. You heard how he runs and
16 plays and eats just like any other four-year-old child.
17 Talks, probably gets in little spats with people. What a
18 four-year-old you would expect to do. He recovered quickly.
19 He was extubated within 30 minutes of going to DER in
20 Greenville. They said that there was less than twelve hours
21 later there were subtle signs on the CT. That's all there
22 was. There wasn't some massive situation. It was subtle.
23 He was only given Tylenol the entire time he was there. And
24 he barely had any follow-ups. I'm not trying to say that
25 Child wasn't hurt. He was. And I'm not trying to say that

1 he wasn't. But we're very glad that he's safe. And we're
2 glad that he gets to have a continued relationship with
3 everyone.

4 Antwain made some mistakes in this situation. There's
5 no doubt about it. He shouldn't have lied to law
6 enforcement. He should have been up front right from the
7 start. You can't go back and change what happened. He was
8 a scared 22 year old who called his mom for help because he
9 didn't know how to deal with it by himself. But now he's
10 grown up. He's a man. He's a good father with a good
11 relationship. Think very hard as you're making these
12 decisions, as I know you will, because this is about his
13 liberty, his freedom, and whether or not he's going to be
14 involved in his son's life. Thank you.

15 THE COURT: Thank you, Ms. Flannery. Ms. White, you are
16 recognized for your closing, ma'am.

17 MS. WHITE: May it please the Court?

18 THE COURT: Yes, ma'am.

19 **CLOSING ARGUMENT BY THE STATE**

20 MS. WHITE: There's one thing Ms. Flannery said that I
21 absolutely 100 percent agree with. Just about everyone in
22 this courtroom agrees that Child is the most important
23 thing. The only person who doesn't agree is sitting right
24 here. Child was not the most important thing to him that
25 night, ladies and gentlemen. He was the most important

190

1 thing. Now, I'm going to start by talking about what didn't
2 happen. What didn't happen is Child falling off a couch,
3 either the front or the back, Child wrestling around with
4 his dad, Child having a seizure. Dr. Crosswell was asked
5 about a possible seizure. Or Mr. Jackson holding Child up
6 like this and having him fall. Those things didn't happen.
7 How do we know that they didn't happen? Well, Dr. Crosswell
8 came in here and she told you. There's no way any of that
9 could have happened. The 19 inch fall from the couch Ms.
10 Flannery just stated could cause a subdural hematoma.
11 Doctor said unlikely, but, yeah, sure, maybe it could cause
12 it. What it couldn't cause was all of the other bruising
13 that Child had on his body.

14 Now, like I said, the defendant gave, by my count, five
15 or six different stories. He was lying before law
16 enforcement ever even showed up. Y'all heard Martin
17 Harrelson testify he got the call to go straight to the
18 hospital. No one was there. No one from law enforcement
19 was there at the house when EMS was called. But Rodney Free
20 testified we were told he fell off a couch. So he's lying
21 before law enforcement is ever even called. And what did he
22 do? You know, supposedly drops him, falls, hits his head,
23 picks him up -- picks him up. Ladies and gentlemen,
24 somebody's just hit their head and you're going to pick them
25 up and run screaming around the neighborhood. That just

1 doesn't make any sense, ladies and gentlemen. You don't
2 pick someone up who's just sustained a head injury and run
3 around with them. You leave them there on the ground. Mr.
4 Jackson's mother was upset with the way she felt EMS handled
5 him just by scooping him up. And she's had medical
6 training. But, all right, he scoops him up. They're
7 running around the neighborhood trying to get help. Well,
8 someone else is calling 911, supposedly, so who does he
9 call? He calls his mother. And what did he tell y'all on
10 the stand a few minutes ago? Well, I'm looking at going to
11 prison, so I'm calling my mom. It's already in his head,
12 ladies and gentlemen, that he knows he has done something
13 terribly, terribly wrong. So he calls his mom. And we
14 don't really know which phone call was made first. Mom
15 lives about three minutes away, two to three minutes away.
16 The entire EMS call from getting the 911 call to showing up
17 at the ER door was fourteen minutes. So -- and mom
18 testified that EMS got there after her. So EMS got there
19 pretty fast. But mom was there first. And mommy comes in
20 and she immediately sees, you know, falling off the front of
21 the couch. She's got medical training. So she tells EMS
22 fell off the back of the couch. That will add up a little
23 bit more. That's more likely to cause a head injury. And
24 it's obvious that that's what Child has. He's
25 unresponsive, he's throwing up. He -- his eyes are rolling

1 in his head. He's barely lifting his arm up. He's barely
2 breathing. That's obvious. She has medical training. She
3 knows he's got a head injury. So that explains that. Well,
4 then they go to the hospital and that's where law
5 enforcement has been called in by the doctors. And they get
6 there and they talk to the defendant and he gives them the
7 story about falling off the front of the couch. And it
8 just's not adding up.

9 And this is very interesting. He's trying to be
10 helpful by lying. And you heard me ask him, you know, when
11 you go to the doctor you want to tell the doctor exactly
12 what's going on because that's how they know to treat you.
13 If you go in and you lie to your doctor then they don't know
14 what they're looking for. So he's lying to the doctors.
15 He's lying to EMS. He's lying to the police with his son's
16 life hanging in the balance. He's not worried about Child
17 Not at all. So he's lying to Martin Haralson.

18 And then he gives them consent to go to his house, and
19 on the video you saw Martin Harrelson said I am not trying
20 to hold you up. If somebody else can let us in, give me a
21 key, you know, just go to Greenville. We know you want to
22 be with your son. He doesn't want to go to Greenville. He
23 wants to go back to that house and make sure he hasn't left
24 any evidence. He wants to see what law enforcement is doing
25 at that house.

1 So they go back to the house. And, again, you know, he
2 sees everybody measuring the couch, measuring the tub, just
3 everything they can to try to explain. Because this wasn't
4 a rush to judgement. Y'all heard from Detective Nichols.
5 It was two weeks that they were looking at this and thinking
6 it through and talking to the experts. That wasn't a rush
7 of judgment at all. And they're asking how did this happen.
8 Well, maybe he fell in the tub, maybe he fell off the couch,
9 maybe he hit his head on his coffee table. Because law
10 enforcement, prosecutors, we're just like y'all. We don't
11 want to think that somebody can do this to their child. So
12 they're looking for alternative explanations, what else
13 happened. So he goes to Greenville and, you know, again,
14 helicopter. Life flight him to Greenville.

15 Dr. Crosswell is called in in Greenville. Ladies and
16 gentlemen, she's the expert. She's the one who has been
17 doing this for over ten years. And y'all heard her on the
18 stand. This was caused by repeated blunt force trauma.
19 What that means is someone over and over again hitting this
20 child. Hitting him or spanking him or throwing him.
21 Something hitting his body over and over again. Now, let's
22 talk about the defendant's most recent story a little bit.
23 This is my buddy we got from EMS just a little while ago.
24 It's a CPR doll. He says he's holding him up like this and
25 there's a pain in his left wrist so he drops him. Well,

1 automatically my hand grabs this arm. There's no hand print
2 here on Child s body. So, all right, we've got him up like
3 this and he falls. See where he's going? The top of the
4 head. I'll back up a little bit so everybody can see him.
5 Right there on the top of his head. That's not where his
6 injuries are. They're on the sides. And this doesn't
7 explain bruising on the sides of his body. He would have
8 had to hit like this and like this and like this and like
9 this over and over and over again. Just doesn't add up,
10 ladies and gentlemen. That's not what happened.

11 So let's talk a little bit about what probably did
12 happen. You'll see in the pictures -- And I thought about
13 putting them up on this screen, but y'all will have them
14 back there and y'all can see them for yourselves. You can
15 see the depth of the bruising. You can see how big they
16 are. They stretch literally from his knees to his waist.
17 Both sides, down his buttocks, his knees to his waist. An
18 injury here, injuries here, inside his ear. What would
19 cause that? If you fall, the side of your head hits, it
20 would hit here, it would hit here. Inside your ear? Could
21 a knuckle cause that? I think so.

22 So what did happen? We don't really know. And the
23 judge is going to tell y'all about circumstantial evidence.
24 And what that means is you don't -- direct evidence is
25 something that you see. You have an eye witness who says,

1 yeah, the defendant, I saw him hitting this kid.
2 Circumstantial evidence is what we have in this case. We
3 don't have someone who can directly say yes, we saw him
4 hitting his kid, because the two witnesses are Mr. Jackson
5 and Child , who was too little to remember. But we can
6 infer from all of the evidence that we have what did happen.
7 You'll see in the pictures there's a video game paused. And
8 it's a football game and it's third and goal. And maybe the
9 defendant was playing that video game. Maybe Child was
10 bothering him and maybe he just snapped and he started
11 beating him and it got out of hand. Maybe Child wanted to
12 go back to his mom or to his grandma and he snapped and he
13 started beating him over and over and over. But you heard
14 Dr. Crosswell, this was not an accident. There is no way
15 this was an accident.

16 And, you know, the defendant, even in his own
17 testimony, he said we went back to the scene of the crime.
18 Isn't that interesting that in his own mind he called it the
19 scene of the crime? Another thing Dr. Crosswell talked
20 about, and I've already mentioned this a little bit, was the
21 different planes of the body, that he had injuries not just
22 in one -- you know, if you fall on your side you would
23 expect bruising on one side. If you fall on your back you
24 would expect bruising down the back. He had it on all
25 sides: front, back, head. Now, the defense, you know, they

1 kind of have a twofold argument. They want to have it both
2 ways. Oh, he didn't do it, ladies and gentlemen, it was an
3 accident that he just dropped him accidentally and he didn't
4 mean to do it. But if y'all don't buy that then he wasn't
5 really hurt all that badly. Ladies and gentlemen, you heard
6 the medical testimony. He had a machine breathing for him.
7 His respiration rate was eight. When he got to Self he was
8 in critical condition. Y'all will have the medical record
9 from Self back there. You can look through them yourself.
10 He was in critical condition. He had a subdural hematoma.
11 Medical records from Self show he had a midline shift
12 swelling in his brain. He was unresponsive. He was
13 vomiting. This little boy was in serious condition. You
14 heard the EMS driver testify they took him in the ambulance
15 from the door of the ER, drove him out into the grassy area
16 to put him on the helicopter. They didn't just roll him;
17 they drove him. This entire call to EMS took fourteen
18 minutes. They had a fire truck clearing traffic leading the
19 way taking him to the ER. Put him on the helicopter to take
20 him to Greenville. Ladies and gentlemen, that doesn't
21 happen everyday. And then four days, three-and-a-half to
22 four days in the pediatric intensive care unit. But they
23 are going to say it's not a substantial -- it's not a
24 serious bodily injury. There wasn't a substantial risk of
25 death. Again, you heard Dr. Crosswell testify. If he

1 hadn't received prompt medical attention he could have died.
2 Or been paralyzed and blind, sustained brain damage. And
3 the defendant, on the stand, admitted that he knew how
4 serious this was, that his little boy had been hurt very
5 badly. And he didn't go -- again, didn't go to Greenville
6 immediately. Went to the house first.

7 Now, the judge is going to talk to y'all about the
8 burden of proof and proof beyond a reasonable doubt. And
9 Mr. Taylor hit on this in open. It's not beyond all doubt.
10 What reasonable doubt means is that you are firmly convinced
11 that the defendant inflicted a serious bodily injury on his
12 son. That's all that it means, firmly convinced. The gut
13 feeling when you go back there that this is the right
14 answer.

15 Ladies and gentlemen, the most important thing you are
16 taking back there is your common sense. We're all parents,
17 grandparents, aunts and uncles. We've all been around kids.
18 We know they get hurt. We know they fall down. We know
19 they get bruised. This doesn't happen. And y'all know
20 that. This wasn't spanking. This wasn't discipline. This
21 was someone, a man, who snapped and beat his son almost to
22 death. And thank God that's he's all right. Ms. Flannery
23 called this every parent's worst nightmare. She was right.
24 Not for Matthew Jackson. For Lashondra Warden-Fair who got
25 the phone call your son is not breathing, he's not moving,

1 you got to get down there. How long must that drive have
2 been from Spartanburg?

3 Ladies and gentlemen, it's a simple case. The doctor,
4 she told y'all, this was repeated blunt force trauma. And
5 we know that when you go back there you're going to do the
6 right thing and find him guilty. Thank you.

7 **JURY CHARGE**

8 THE COURT: Thank you, Ms. White. Now, ladies and
9 gentlemen of the jury, it becomes my obligation at this
10 point in time to instruct you on the law that applies in
11 this particular case. And the way that this has
12 traditionally been done, or at least the way it was done
13 when I started practicing 20 years ago, is that the judge
14 would simply sit up here and he'd read you the law from the
15 law books and you're supposed to sit there and get it all in
16 the first go around after he reads you about fifteen pages
17 of what the law is. I always found that a little
18 unreasonable, because I went to law school for three years
19 to learn this stuff. And so what I'm telling you is that
20 you'll have a copy of these instructions in the jury room
21 that you can refer to if you need to. Of course, don't
22 follow some part of the instructions and not follow the
23 others. But follow them as a whole.

24 At this stage of the trial, ladies and gentlemen, it's
25 not possible to introduce any additional evidence or to

1 answer any additional factual questions that you might have
2 about this case.. However, if you have any questions about
3 what the law is or you have any questions about these
4 instructions, simply write them on a note, send them out and
5 I'll try and answer them as best I can, okay.

6 Ladies and gentlemen, in this case the indictment
7 charges Mr. Jackson with the offense of inflicting great
8 bodily injury upon child. And I remind you the fact that
9 Mr. Jackson was arrested and charged and indicted in this
10 case is not evidence and it cannot be considered by you as
11 evidence as guilt in this case, nor does it create any
12 presumption or inference of guilt. The indictment is simply
13 the formal written instrument which contains the charge made
14 against the defendant. It's the formal document by which
15 this case is brought into court.

16 Now, Mr. Jackson has pled not guilty to this indictment
17 and that plea puts the burden of proof on the state to prove
18 the defendant guilty. A person charged with committing a
19 criminal offense in this state is never required to prove
20 himself innocent. I instruct you that it is important rule
21 of law that the defendant in a criminal trial, no matter
22 what the seriousness of the charge may be, will always be
23 presumed to be innocent of the crime for which the
24 indictment was issued unless guilt has been proven by
25 evidence satisfying you of his guilt beyond a reasonable

1 doubt. This presumption of innocence does not end when you
2 being your deliberations, but it accompanies the defendant
3 throughout the trial until you reach a verdict of guilt
4 based on evidence satisfying you of that guilt beyond a
5 reasonable doubt.

6 Now, ladies and gentlemen, the presumption of innocence
7 is like a robe of righteous placed about the shoulders of
8 the defendant. It remains with him until it has been
9 stripped from him by evidence satisfying you of his guilt
10 beyond a reasonable doubt. The presumption of innocence,
11 ladies and gentlemen, is not merely a legal theory. It's
12 not just a legal phrase. It is a substantial right to which
13 every citizen is entitled unless you, the jury, are
14 satisfied from the evidence of the defendant's guilt beyond
15 a reasonable doubt.

16 Well, what is a reasonable doubt in the eyes of the
17 law. Reasonable doubt is the kind of doubt that would make
18 a reasonable person or cause a reasonable person to hesitate
19 to act. Now, the state has the burden of proving the
20 defendant guilty beyond a reasonable doubt. And some of you
21 may have served as jurors in civil cases where you were told
22 that it's only necessary to prove that a fact is more likely
23 true than not true such as by the preponderance of the
24 evidence or the greater weight of the evidence. In criminal
25 cases the state's proof must be more powerful than that. It

1 must be beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is proof that leaves you firmly convinced
3 of the defendant's guilt. Now, there are very few things in
4 this world that we know with absolute certainty. And in
5 criminal cases the law does not require proof that overcomes
6 every possible doubt. If based on your consideration of the
7 evidence you are firmly convinced that the defendant is
8 guilty of the crime charged you must find the defendant
9 guilty. If, on the other hand, you think there is real
10 possibility that the defendant is not guilty, you must give
11 the defendant the benefit of the doubt and find him not
12 guilty.

13 Now, during this trial, ladies and gentlemen, I remind
14 you that you and I have certain duties to perform. As the
15 trial judge it's my responsibility to preside over the trial
16 of this case, and I also have the duty to rule on the
17 admissibility of evidence offered during the trial. You are to
18 consider only the competent evidence before you. So if
19 there was any testimony order stricken from the record, you
20 must disregard that testimony because you're to consider
21 only the testimony which has been presented from the witness
22 as stand, as well as any exhibits which have been introduced
23 into the record in this case.

24 I have the additional duty to charge you the law
25 applicable in this case, and as the presiding judge, I'm the

1 sole judge of the law. It's your duty as jurors to accept
2 and apply the law as I know state it to you. If you have
3 any ideas to what the law is or what the law ought to be and
4 it doesn't agree with what I now tell you the law is, you
5 must abandon this idea because you're sworn to accept the
6 law and apply the law exactly as I've state to you now. And
7 every case tried in this court before a jury, the jury
8 becomes the sole and exclusive judge of the facts in a case.
9 A trial judge cannot intimate, state, comment on or make any
10 statement to a trial jury about the facts in this -- in the
11 case.

12 Since you, the jury, are the sole judge of the facts in
13 this case, you're not to infer from what I have said during
14 the progress of trial in ruling upon the admissibility of
15 evidence or otherwise or anything that I say to you now
16 during these instructions that I have any opinion about the
17 facts in this case. Ladies and gentlemen, the law does not
18 permit me to have an opinion about the facts in this case
19 because this is matter solely for you the jury to determine.
20 As jurors, it's your duty to determine the affect, value,
21 weight and truth of the evidence presented during the trial.

22 Now, there are two types of evidence which are
23 generally presented during the course of a trial: direct
24 evidence and circumstantial evidence. Direct evidence is
25 the testimony of a person who claims to have actual

1 knowledge of a fact such as an eye witness. It's testimony
2 or evidence which immediately established the main fact to
3 be proven. Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of a fact.
5 It is evidence which immediately establishes collateral
6 facts from which the main fact may be inferred.
7 Circumstantial evidence is based on inference and not on
8 personal knowledge or observation.

9 Now, the law makes absolutely no distinction between
10 the weight or value to be given to either direct or
11 circumstantial evidence. Nor is a greater degree of
12 certainty required of circumstantial evidence than of direct
13 evidence. You should weigh all the evidence in this case.
14 And after weighing all the evidence, if you're not convinced
15 of the guilt of the defendant beyond a reasonable doubt, you
16 must find him not guilty. And, necessarily, you must
17 determine the credibility of witnesses who have testified in
18 this case. Credibility simply means believability.

19 It becomes your duty as jurors to analyze and
20 evaluation the evidence and determine which evidence
21 convinces you of its truth. In determining the
22 believability of witnesses who have testified, you may
23 believe one witness over several witnesses or several
24 witnesses over one witness. You may believe a part of the
25 testimony of a witness and reject the remaining part of the

1 testimony of that same witness. You may believe the
2 testimony of a witness in its entirety or reject the
3 testimony of a witness in its entirety. You may consider
4 whether the witness has exhibited to you any interest, bias,
5 prejudice or other motive in this case. And you may also
6 consider the appearance and manner of a witness while on the
7 witness stand.

8 Now, ladies and gentlemen, as I informed you yesterday,
9 the rules of evidence usually don't permit witnesses to
10 testify as to opinions or conclusions. But an exception to
11 this rule exists for witnesses who are qualified as expert
12 witnesses. A witness who, by education and experience, has
13 become expert in some art, science, profession or calling
14 may state an opinion as to relevant and material matters in
15 which the witness claims to be an expert, and may also state
16 the reasons for that opinion. You should consider any
17 expert opinion received in evidence in this case and, like
18 any other evidence, give it the weight that you feel it
19 deserves. If you decide that the opinion of an expert is not
20 based on sufficient education and experience, or if you
21 conclude that the reasons given in support of that opinion
22 are not sound, or that the opinion is outweighed by other
23 evidence, you may disregard the opinion entirely. And
24 expert witness's testimony is to be given no greater weight
25 than that of other witnesses simply because the witness is

1 an expert. Further, you're not required to accept an
2 expert's opinion even though it's not contradicted.

3 Now, ladies and gentlemen, in order to determine -- or
4 in order to establish, rather, criminal liability criminal
5 intent is required. For example, the mental state required
6 to be proven by the state for a particular crime might be
7 purpose, intent, knowledge, recklessness or criminal
8 negligence. Criminal intent must be proven by the state
9 beyond a reasonable doubt. Criminal intent is always a
10 matter that must be determined by the jury from the
11 circumstances surrounding the situation.

12 Now, there is no way to improve intent to a
13 mathematical certainty. There's no way medical science can
14 dissect a person's brain and determine what that person had
15 in mind. So the law says that criminal intent may be
16 inferred from the circumstances shown to have existed. This
17 is how you make a determination of whether or not the
18 element requiring intent is present. It's not necessary to
19 establish intent by direct and positive evidence, but intent
20 may be established by inference in the same way as any other
21 fact by taking into consideration the acts of the parties
22 and all the facts and circumstances of the case. Criminal
23 intent is a mental state, conscious wrongdoing. It's up to
24 you to determine what the defendant intended to do based on
25 the circumstances shown to have existed.

1 Now, ladies and gentlemen, the defendant is charged
2 with the offense of intentional infliction of great bodily
3 injury upon a child. To be convicted of intentional
4 infliction of great bodily injury upon a child the state
5 must prove beyond a reasonable doubt that the child's parent
6 or guardian knowingly inflicted great bodily injury upon a
7 child. Great bodily injury means bodily injury which
8 creates a substantial risk of death or which causes serious
9 or permanent disfigurement or protracted loss or impairment
10 of the function of any bodily member or organ.

11 Now, ladies and gentlemen, included within the offense
12 of intentional infliction of great bodily injury upon a
13 child is the offense of unlawful conduct toward a child. If
14 you find that the state has failed to prove all the elements
15 of intentional infliction of great bodily injury upon a
16 child, you may then consider whether the state has proven
17 that the defendant is guilty of unlawful conduct toward a
18 child. In order to prove this offense, the state must prove
19 beyond a reasonable doubt for the person who is the parent
20 or guardian of a child did or caused to be done unlawfully
21 or maliciously any bodily harm to the child so that the life
22 or health of the child is endangered or is likely to be
23 endangered.

24 I instruct you that malice is defined as hatred, ill
25 will or hostility towards another person. It's the

1 intentional doing of a wrongful act without just cause or
2 excuse and with an intent to inflict an injury or under
3 circumstances that the law will infer an evil intent.

4 In this case, ladies and gentlemen, the defendant has
5 raised the defense of accident. I instruct that you an act
6 may be excused on the ground of accident if it is shown that
7 the act was unintentional, that the defendant was acting
8 lawfully and that reasonable care was used by the defendant
9 with regard to intending to the needs of the child. The
10 burden is on the state to prove beyond a reasonable doubt
11 that the act was not an accident but knowing, intentional,
12 malicious or unlawful activity by the defendant.

13 Now, ladies and gentlemen, there are two possible
14 verdicts which you may find in this case. Mr. Foreman, I've
15 prepared this verdict form to try and help guide y'all's
16 deliberations, okay. You can find guilty or not guilty of
17 the offense of intentional infliction of great bodily injury
18 upon a child, or you could find guilty or not guilty of
19 unlawful conduct towards a child. Now, there's no
20 significance whatsoever to the order that I state these
21 verdicts. It's simply that one has to be stated first. And
22 the way this reads, Mr. Foreman, is the first question,
23 basically, has a statement. And you'll have this back
24 there, obviously. But it says, "We the jury in the above
25 captioned case on the charge of infliction of great bodily

1 injury upon a child unanimously find Matthew Jackson," and
2 then it has a place here for you to initial either not
3 guilty or guilty, where you would initial one of those. If,
4 based upon the consideration of evidence, you find that the
5 state has met its burden of proving his guilt beyond a
6 reasonable doubt you would initial guilty. If, however, you
7 find that the state has not met its burden of proving his
8 guilt beyond a reasonable doubt, then you would initial not
9 guilty and proceed to the next question, okay. You only go
10 to the next question if you find him not guilty of the first
11 question, all right.

12 The second question essentially asks the same or gives
13 the same sort of statement for the lesser included offense
14 of unlawful conduct towards a child. It gives you the
15 option of not guilty and guilty. Again, your verdict has to
16 be unanimous. That means all twelve of you have to agree on
17 the ultimate verdict that's rendered in this case. We do
18 not have majority verdicts in South Carolina. I pray that
19 we never do.

20 Now, ladies and gentlemen, I'll remind you that you
21 have no enemies to punish, you have no friends to reward.
22 You've been selected as impartial citizens who have no
23 interest in the outcome of this case and whose duty it is to
24 determine the true facts in this case and apply those facts
25 to the laws I have now given it to you. Once you have

1 reached your verdict, Mr. Foreman, if you'll just sign right
2 down there after following the instructions on this verdict
3 form. Sign, knock on the door, let Mr. Willingham know that
4 you've reached your verdict. We'll receive you back into
5 the courtroom shortly, okay.

6 Now, I need you to return to the jury room one last
7 time, but don't start talking about the case yet. Your cue
8 to begin deliberations on the case will be my asking the
9 alternate to step out and sending the evidence in, okay. I
10 need to go over with the attorneys, make sure I've covered
11 every base that I need to cover. So, again, you can start
12 talking about the case when you get the verdict form, the
13 evidence, these instructions and when I ask the thirteenth
14 juror over there to step out. So, with that, adjourn to the
15 jury room and I hope to have this case to you in a few
16 moments. Thank you.

17 (Whereupon, the jury exited the courtroom at 2:17 p.m.)

18 THE COURT: The jury is out. Exceptions, additions from
19 the state?

20 MS. WHITE: No, sir, Your Honor.

21 THE COURT: Defense?

22 MS. FLANNERY: Nothing.

23 THE COURT: Very good. If y'all want to look at the
24 verdict form before we send that back there, it's here on
25 top of my instructions. And just make sure that we have all

1 the exhibits that were introduced going back there, please.

2 (Whereupon, jury deliberations began at 2:20 p.m.)

3 THE COURT: If we may, we'll go back on the record on
4 11-GS-24-1328 State v. Mr. Jackson. Mr. Jackson is present
5 with counsel. I've been told that the jury has reached a
6 verdict. Anything before we receive the jury into the
7 courtroom for the state?

8 MS. WHITE: No, sir, Your Honor.

9 THE COURT: Defense?

10 MS. FLANNERY: None from defense.

11 THE COURT: All right. Very good. Let's have them,
12 please.

13 (Whereupon, the jury entered the courtroom at 3:31)

14 **VERDICT**

15 THE COURT: Let the record reflect the jury is back and
16 seated. Mr. Foreman, I'm told that the jury has reached a
17 verdict in this case. Is that correct?

18 MR. FOREMAN: Yes, sir.

19 THE COURT: All right. And all twelve jurors agree on
20 the verdict?

21 MR. FOREMAN: Yes.

22 THE COURT: If you would, hand the verdict form, please,
23 to Mr. Willingham.

24 MR. FOREMAN: (Complied.)

25 THE COURT: Okay. Are these your initials right here?

1 , Right there?

2 MR. FOREMAN: Yes.

3 THE COURT: That's your initial. Okay.

4 MR. FOREMAN: The pen did not write at first.

5 THE COURT: Okay. Very good. Madame clerk, if you'll
6 publish, please.

7 CLERK OF COURT: The state of South Carolina, county of
8 Greenwood, Court of General Sessions, case number
9 11-GS-24-1328 *State of South Carolina v. Matthew Antwain*
10 *Jackson*. We the jury in the above captioned case on the
11 charge of infliction of great bodily injury upon a child
12 unanimously find Matthew Antwain Jackson guilty.

13 THE COURT: Ladies and gentlemen, if this is your
14 verdict, please indicate by raising your right hand.

15 (Whereupon, all jurors raised their right hands.)

16 THE COURT: Let the record reflect that all twelve
17 jurors did raise their right hand. Thank you. Anything
18 before the jury is discharged from the state?

19 MS. WHITE: No, sir, Your Honor.

20 THE COURT: From the defense?

21 MS. FLANNERY: Just ask the jury pooled.

22 THE COURT: All right. Ladies and gentlemen, the clerk
23 is going to, in a moment, call your names individually and
24 ask you a question. She'll ask you if this is your verdict
25 and is it still your verdict. Simply reply as appropriate,

1 okay. But she will be asking you each individually if this
2 is your verdict and if it's still your verdict. Madame
3 Clerk, you may proceed.

4 CLERK OF COURT: Ms. Watkins, can you stand.

5 THE COURT: You can stay seated, ma'am, if you want to.

6 CLERK OF COURT: Was this your verdict?

7 JUROR: Uh-huh.

8 CLERK OF COURT: Is it still your verdict?

9 JUROR: Yes.

10 CLERK OF COURT: Thank you, ma'am. Ms. Shalinda Hill.

11 JUROR: Yes.

12 CLERK OF COURT: Was this your verdict?

13 JUROR: Yes.

14 CLERK OF COURT: Is it still your verdict?

15 JUROR: Yes.

16 CLERK OF COURT: Thank you, ma'am. Mr. Ginn, is this
17 your verdict?

18 JUROR: Yes.

19 CLERK OF COURT: Is it still your verdict?

20 JUROR: Yes.

21 CLERK OF COURT: Ms. Joyce White.

22 JUROR: Yes.

23 CLERK OF COURT: Was this your verdict?

24 JUROR: Yes.

25 CLERK OF COURT: Is it still your verdict?

1 JUROR: Yes.

2 CLERK OF COURT: Ms. Archie. Was this your verdict?

3 JUROR: Yes.

4 CLERK OF COURT: Is it still your verdict?

5 JUROR: Yes.

6 CLERK OF COURT: Mr. Johnson. Was this your verdict?

7 JUROR: Yes.

8 CLERK OF COURT: Is it still your verdict?

9 JUROR: Yes.

10 CLERK OF COURT: Ms. Medlock. Was this your verdict?

11 JUROR: Yes.

12 CLERK OF COURT: Is it still your verdict?

13 JUROR: Yes.

14 CLERK OF COURT: Mr. Gettsinger.

15 JUROR: Yes.

16 CLERK OF COURT: Was this your verdict?

17 JUROR: Yes.

18 CLERK OF COURT: Is it still your verdict?

19 JUROR: Yes.

20 CLERK OF COURT: Ms. Strickland. Was this your verdict?

21 JUROR: Yes.

22 CLERK OF COURT: Is it still your verdict?

23 JUROR: Yes.

24 CLERK OF COURT: Mr. Cody Turner.

25 JUROR: Yes.

1 CLERK OF COURT: Was this your verdict?
2 JUROR: Yes.
3 CLERK OF COURT: Is it still your verdict?
4 JUROR: Yes.
5 CLERK OF COURT: Ms. Yates.
6 JUROR: Yes.
7 CLERK OF COURT: Was this your verdict?
8 JUROR: Yes.
9 CLERK OF COURT: Is it still your verdict?
10 JUROR: Yes.
11 CLERK OF COURT: Thank you. Ms. Hazell.
12 JUROR: Yes.
13 CLERK OF COURT: Was this your verdict?
14 JUROR: Yes.
15 CLERK OF COURT: Is it still your verdict?
16 JUROR: Yes.
17 CLERK OF COURT: Thank you, ma'am.
18 THE COURT: The jury has polled. The verdict stands.
19 Anything further from the defense before discharge?
20 MS. FLANNERY: No, Your Honor.
21 THE COURT: Ladies and gentlemen of the jury, I want to
22 thank you for your patience here with us this week. I will
23 tell you that you do get paid for jury service. Your
24 checks, I do not believe, are ready yet, are they?
25 CLERK OF COURT: No.

1 THE COURT: They're not ready. They will be in the
2 mail. Also in the mail will be a letter from me that you'll
3 receive either tomorrow or the next day. It thanks you for
4 your jury service here this week and I cannot tell you how
5 valuable your service has been in his particular case. It's
6 very necessary that we have people willing to come in here
7 to do what they have to do as citizens in order for this
8 court to function. So the purpose of the letter is to first
9 thank you, but more importantly to also solicit feedback
10 from you.

11 If there is anything that you liked, let me know. If
12 there's anything you did not like, definitely let me know.
13 If there's anything you think I can do better, don't
14 hesitate to tell me, okay, because this court doesn't belong
15 to me. It belongs to the people of the state of South
16 Carolina. It's your court. You can tell me as much as
17 anyone else can how you think it should be run, what could
18 be done better, and I've received suggestions in the past
19 from jurors.

20 Now, at this point there is nothing left to be done in
21 this case with the exception of sentencing, so you are free
22 to go. You are free to stay if you chose to. If you
23 decided to stay, I'm going to need to ask that you, if you
24 could, just take one of the rows on that back side of the
25 courtroom if you chose to stay. But if you want to go,

1 that's perfectly fine. I'm not going to keep you any longer
2 except to say, again, thank you. You are discharged and
3 just be sure to leave us those buttons on the way out.
4 Again, thank you so much for y'all's service and I hope I
5 see y'all around.

6 At this point, Ms. Flannery, Ms. Nelson, I'm happy to
7 entertain any post trial motions.

8 MS. NELSON: Your Honor, we just move for a judgement
9 not withstanding verdict at this point.

10 THE COURT: Very good. Your motion is noted. It is
11 denied. Solicitor, do you have sentencing sheets prepared?

12 MS. WHITE: I do, Your Honor.

13 THE COURT: If you'll pass those up, please. Ms.
14 Flannery, if you'd care to present your client for
15 sentencing, please. Or do you need a moment?

16 MS. FLANNERY: If we could have a moment..

17 THE COURT: Very good. I'll give you about five minutes
18 or so.

19 MS. FLANNERY: Thank you.

20 THE COURT: I want to thank everyone, first of all, for
21 their restraint when the verdict was read. Usually, I
22 caution people ahead of time. But I did find it impressive
23 that everyone was able to maintain their calm. We're going
24 to keep that decorum. If you find it impossible or
25 difficult to control yourself while these proceedings

1 occasion, sir. Any occasion. I love him. I miss him
2 already. That's why I had to see him during this time that
3 they told me not to see -- I couldn't see my son. I wanted
4 to see my son and I did see my son, sir, because that's how
5 much I love my son, sir. I would never harm him, sir. It
6 was just a freak accident. And I'm sorry that if the
7 bruises came like that. I didn't mean for it to happen that
8 way. It was no intention, nothing the way the solicitor say
9 I beat him. No, sir, that's not me. I don't do kids -- I
10 don't do nobody like that. I don't want nobody to see harm
11 to nobody. It's just me. I just apologize and want to say
12 I love my son to the bottom.

13 THE COURT: I do understand, Mr. Jackson. Thank you,
14 sir. All right. Anything else from the defense?

15 MS. NELSON: I don't, Your Honor -- we don't know how
16 many days he served. We need that from the clerk.

17 CLERK OF COURT: Fifty-two.

18 MR. JACKSON: Fifty-two.

19 MS. FLANNERY: Other than that, I don't have anything
20 else, Your Honor.

21 **SENTENCE OF THE COURT**

22 THE COURT: I've taken into account many things in
23 arriving at the sentence that I've decided on. And I hear
24 the state's desire for a 20 year sentence. The provisions
25 of law that relate to this particular offense give the court

1 a great deal of discretion, a great deal of latitude. And
2 certainly I believe that there are circumstances or times
3 when a 20 year offense would be warranted, in all candor.
4 In the opinion of this court, such sentences on the maximum
5 end of the scale would be warranted in situations where an
6 individual has inflicted permanent injuries upon a child
7 where there's permanent damage to the child's brain, ability
8 to function, what have you. Thank God that's not the
9 situation in this particular case. I'm glad that the child
10 has made a full recovery. And, Mr. Jackson, in all candor,
11 I have no doubt that you love your son. And I have no doubt
12 that in many respects you are a good parent. And
13 understand, Mr. Jackson, that this is not the first time
14 that I've had to deal with this kind of a crime. All right,
15 sir?

16 MR. JACKSON: Yes, sir.

17 THE COURT: And if you came into this court with a
18 substantial criminal history you would be receiving a great
19 deal more time than you are receiving today? You understand
20 that?

21 MR. JACKSON: Yes, sir.

22 THE COURT: All right. So I do have to take that into
23 account in trying to arrive at an appropriate sentence or
24 something that I think speaks justice to what has happened
25 in this particular case. Now, Mr. Jackson, I do not relish

1 having to impose this sentence, but please understand a
2 couple of things. First of all, child abuse is one of those
3 crimes that's almost impossible to prevent. If a child is
4 injured at the hands of their parent, often, like in this
5 case, they don't have the ability to say my dad hurt me, my
6 mom hurt me, somebody hurt me. They don't have that ability
7 to communicate. And the first obligation of the law is to
8 help protect people who cannot protect themselves: infants,
9 children, the old, the infirmed. That's the first
10 obligation of the law. And that's the primary reason that
11 we have a system of laws. And because it's almost
12 impossible to predict or to prevent child abuse like this,
13 the only option that the court has in an effort to prevent
14 these kinds of things from happening in the future is the
15 hope of deterrence. And I hear you when you say that you
16 love your son. But understand, Mr. Jackson, I sat here for
17 two days. I heard the testimony. I understand that you are
18 maintaining your innocence. I understand that you are
19 telling me that this did not happen the way the state
20 maintains it did. Mr. Jackson, if I had any problem
21 whatsoever with the finding of that jury, with the finding
22 of twelve people, and it's hard to get an agreement among
23 two people, much less twelve, but if I had any problem with
24 the sentence that they or the verdict that they delivered, I
25 would be giving you a new trial in five seconds. So I

1 firmly believe, and I firmly know, and I am convinced beyond
2 a reasonable doubt that you did harm your child, sir. And I
3 think that when you took the stand, sir, in all candor you
4 lied. So, for those reasons, Mr. Jackson, it's the sentence
5 of the court that you are committed to the Department of
6 Corrections for twenty years provided upon the service of
7 twelve years. The balance is suspended and you're placed on
8 probation for five years. So you have twelve years active
9 to serve under 85 percent. The main reason that I am
10 splitting sentence, solicitor, in all candor, is that I want
11 him supervised when he is released. And there are some
12 things that I want him to do when he gets out of prison.
13 Even if I were to give him the full 20, as it is now, he'll
14 serve 85 percent of the twelve. If I were to give him the
15 full 20, he'd come out a free man probably more dangerous
16 than when he goes in. So I want supervision so that we can
17 try and prevent this kind of thing from happening again.
18 He'll receive credit for the 52 days in jail. Of course, by
19 law, he'll be placed on the central registry of child abuse
20 and neglect. On probation he'll have to cooperate to any
21 referrals to Voc Rehab. He'll be subject to random drug
22 testing. By law he's prohibited from possessing a firearm
23 at any point in the future. And he's to complete anger
24 management classes upon being released from the Department
25 of Corrections. Your probation can end early after three

1 years if you've otherwise done what you're supposed to do,
2 Mr. Jackson. Mr. Jackson, I believe you love your son. I
3 believe that he loves you. In my experience, there are many
4 people who are guilty of child abuse who express the same
5 feeling towards their children as you expressed toward your
6 son. And I think that their children love them just as
7 much. We can't have this kind of thing around here. Good
8 luck to you, sir.

9 MS. NELSON: Thank you, Your Honor.

10 MS. WHITE: Thank you, Your Honor.

11 THE COURT: Mr. Jackson, you've got ten days to appeal.
12 Your lawyers know that. I'm sure they'll be filing an
13 appeal for you. You also have one year to file for post
14 conviction relief. Good luck to you, sir. We will be at
15 ease.

16 (Whereupon, the hearing was concluded at 4:21 p.m.)

17 (End of requested transcript of record)

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FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2013 AUG 16 AM 10 21

STATE OF SOUTH CAROLINA)
)
v.)
)
MATTHEW ANTWAIN JACKSON,)
Defendant.)
)
)

IN THE COURT OF GENERAL SESSIONS
FOR GREENWOOD COUNTY

INDICTMENT NOS. 11GS24-1328

MOTION FOR NEW TRIAL

Pursuant to Rule 29, SCRCrimP the Defendant, MATTHEW ANTWAIN JACKSON, moves for a new trial. "A trial judge has the discretion to grant or deny a motion for a new trial, and his decision will not be reversed absent a clear abuse of discretion." State v. Johnson, 376 S.C. 8, 654 S.E.2d 835 (2007) (trial judge properly granted new trial when witness improperly testified about polygraph, thereby improperly bolstering his credibility to the jury). The new trial motion is based on the following errors of law:

1. The Court admitted State's Exhibit 22 over objection of Defendant under Rules 401 and 403. The exhibit is a photograph showing the child's buttocks spread to show his anus. A curative instruction was given to inform the jury that there was no allegation of sexual abuse and that they were not to construe the photograph as being indicative of any sexual abuse. Despite the instruction, Defendant maintains that the overly prejudicial nature of the photograph outweighed any probative value, and that there were other photographs showing the bruising that the State alleged was inflicted by the Defendant on the child. Furthermore, when Dr. Croswell testified, she used a diagram of the bruising which would have sufficed to demonstrate the areas of bruising to the jury just as adequately, or perhaps even more adequately, than did State's Exhibit 22.
2. The Court refused to give instructions on the lesser included offenses of Assault and Battery in the 2nd Degree and Cruelty to Children, both of which were supported by the evidence.
3. The Court denied Defendant's motion to require the State to open fully on the law and the facts and use any final argument strictly as rebuttal. Defendant's written motion on this issue is a part of the record. As a result of the denial of that motion, Defendant did not have the opportunity to

respond to several issues raised by the State in its closing argument. The things the Defendant was denied the opportunity to address are as follows:

(a) The State argued that the jury could render a verdict based on a "gut feeling." This is obviously telling the jury they could reach a verdict based simply on emotion and is not anywhere closed to the true standard of a finding of guilty beyond a reasonable doubt based on the evidence presented;

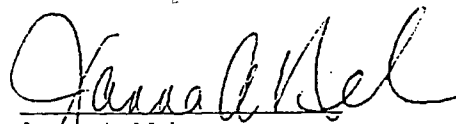
(b) The prosecutor commented that by her count, Mr. Jackson had told five or six different stories about what happened. In fact, the evidence showed that Mr. Jackson has only given one version of what happened prior to the trial, which was that the child had fallen off the couch;

(c) The state used an infant CPR doll to demonstrate the child's fall as described by Defendant in his testimony. Defendant did not have an opportunity to inform the jury of any height or weight difference that existed between the infant CPR doll and the 23-month old child victim. The doll used was obviously much smaller and lighter than the 23-month old child who was the alleged victim in this case. Defendant should have had an opportunity to explain to the jury that the State's demonstration was unreliable.

4. The Court should grant a new trial based on the cumulative error doctrine which requires a new trial when a combination of errors prevents a party from receiving a fair trial. E.g., State v. Blurton, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000) reversed on other grounds 352 S.C. 203, 573 S.E.2d 803 (2002).

For the foregoing reasons, this Court should grant Defendant's motion for new trial.

IT IS SO MOVED.



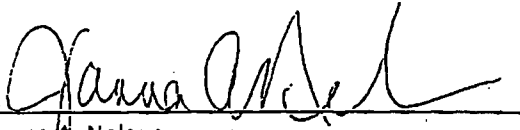
Janna A. Nelson
Circuit Defender
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646

(864) 229-9505

August 16, 2013
Greenwood, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that she has served this Motion for New Trial by hand on both opposing counsel and The Honorable Frank R. Addy, Jr., at 528 Monument St., Suite 210, Greenwood, SC, on August 16, 2013.



Janna A. Nelson
Attorney for Defendant Matthew Antwain Jackson

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

) THE COURT OF GENERAL SESSIONS
)
) CASE NO. 11-GS-24-1328

STATE OF SOUTH CAROLINA,

vs.

MATTHEW ANTWAIN JACKSON,

Defendant.

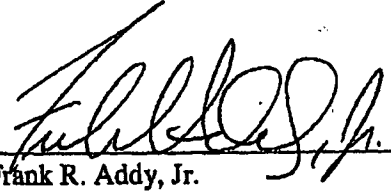
) ORDER DENYING MOTION FOR NEW
) TRIAL
)
)
)
)
)
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)

HAVING CONSIDERED THE ARGUMENT OF COUNEL in Mr. Jackson's motion for a new trial and pursuant to Rule 29 (a) SCRCrimP, the court finds that the motion may be determined based upon the written motion and without the need for oral argument.

As to the Defendant's first ground, the court reaffirms its ruling at trial pursuant to Rule 403. As to Defendant's second ground, the court found that, under the facts of this case, Assault and Battery 2nd and Cruelty to Children were not lesser included offenses. As to the third ground, the court reaffirms its ruling at trial that the Solicitor was entitled to the final argument. As to the fourth ground and to the extent any error may have been committed, the court finds that any error did not affect the outcome of the trial and did not cumulatively prevent the Defendant from receiving a fair trial.

WHEREFORE, Defendant's motion for a new trial is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

August 19, 2013
Greenwood, South Carolina

WITNESSES

Steven P Nichols
Greenwood Police Department

WARRANT NUMBER

1829065

True BillPhilip R. McInch

Foreman of the Grand Jury

Date: 6/10/11**VERDICT**

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

June Term, 2011

Indictment # 11GS24- 1328**THE STATE**

VS.

Matthew Antwain Jackson

INDICTMENT FOR

**INFLECTING GREAT BODILY
INJURY UPON A CHILD**
16-03-0095

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

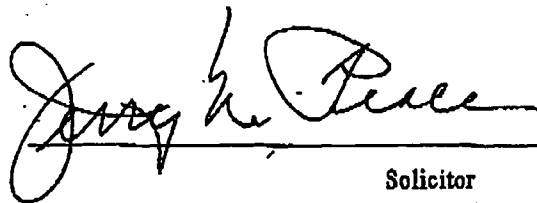
INDICTMENT FOR

**INFLECTING GREAT BODILY
INJURY UPON A CHILD
16-03-0095**

At a Court of General Sessions, convened on the 10th day of June, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Matthew Antwain Jackson, did in Greenwood County, state aforesaid, on or about the 20th day of January, 2011 willfully and unlawfully inflict great bodily injury upon a child; and/or as the child's parent or guardian knowingly allow another person to inflict great bodily injury upon a child, to wit: that the said defendant did cause life threatening head trauma (a subdural hematoma), and severe bruising to the body of the said victim, which act or acts caused great bodily injury to a child, Child
one (1) year of age, in violation of the provisions of Section 16-3-95 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 cases made and provided.


Solicitor

192
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood
 STATE VS.
Matthew Antwain Jackson
 AKA:
 Race: B Sex: M Age: 24
 DOB: SS#:
 Address: St
 City, State, Zip: Greenwood, SC 29646
 DL#: SID#:

INDICTMENT/CASE#: 11GS24-1328
 A/W#: 1829065
 Date of Offense: 1/20/2011
 S.C. Code: § 16-03-0095 (A)
 CDR Code #: 2766

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Inflicting Great Bodily Injury upon a child (up to 20 yrs)

in violation of § 16-03-95 of the S.C. Code of Laws, bearing CDR Code # 2766
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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: White, Elizabeth 7/18/2
 SC Bar#

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 20 ^(twenty) days/months/years or ☐ under the Youthful Offender Act not to exceed 12 ^(twelve) years
 and/or to pay a fine of \$ 5 ^(five); provided that upon the service of 12 ^(twelve) days/months/years and/or payment
 of \$ 5 ^(five); plus costs and assessments as applicable*; the balance is suspended with probation for 5 ^(five)

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. Credit 52 days - jail.

☒ 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

Total: \$ PTUP after 3 years if no issues.
 plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>18.80</u>
TOTAL	\$	\$ <u>688.80</u>

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. Wilson Institute

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 Fund

Other: Prohibited from possessing a firearm.
To complete anger management upon
being placed on probation.

☒ Appointed PD or appointed other counsel,
 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Angela Woodhams

Court Reporter: Jana Scott

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2155

Sentence Date: 8/8/13

8011121730

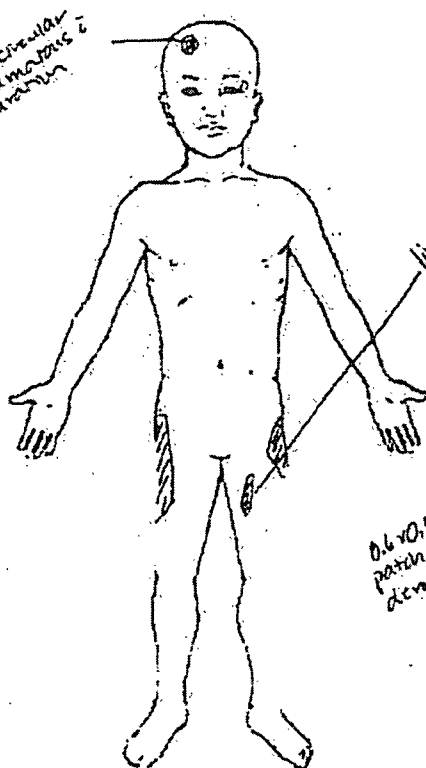
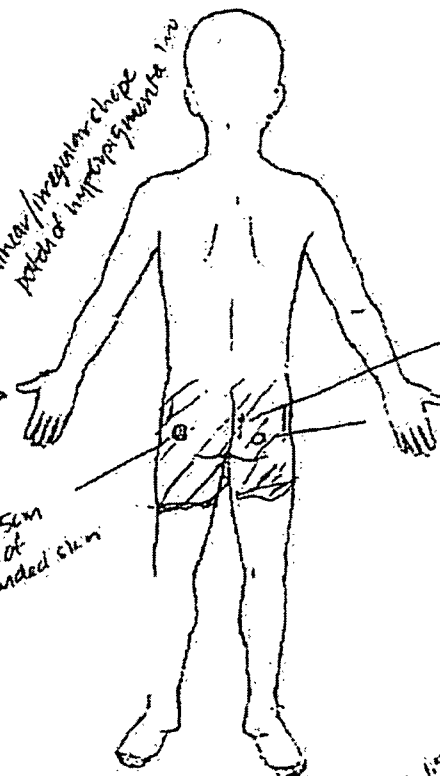
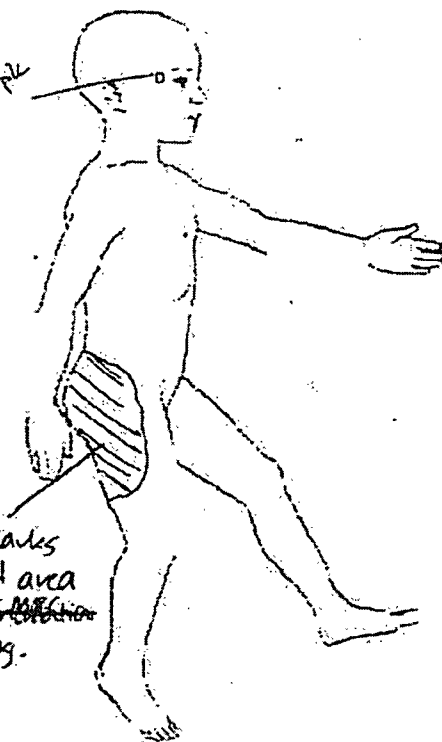
Child

Pat N. DARRYL R

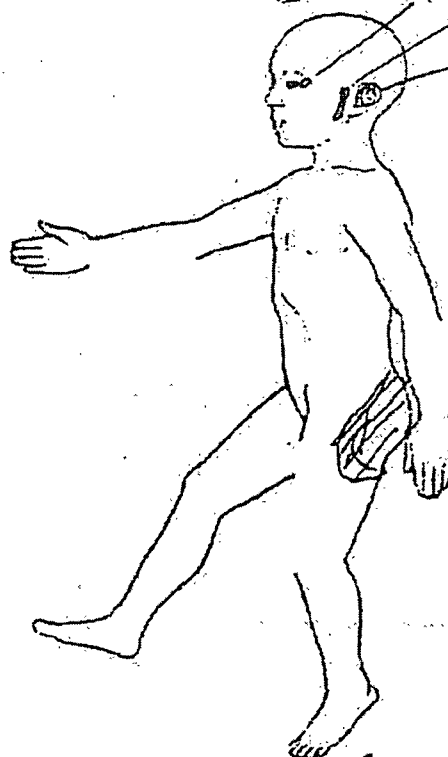
DO

Admit Date - 07/20/11
Date of Birth -

Date of exam: 1/21/11

1.7cm circular
erythematous &
induratedlinear/irregular chevron
pattern of bruising 1.2cmlinear distribution
of bruising along
gluteal fold0.5cm x 0.5cm
of denuded skin0.6 x 0.5cm
patch of
denuded skin0.8cm circular purple
bruise

1.5cm circular purple bruise

3 irregular shaped
purple contusion on
pinna

all cross hatching marks
representing confluent area
of tender hyperpigmented
dark purple bruising.
Areas of different

Mary-Fran Crosswell, MD

Mary-Fran Crosswell, MD

Addendum to dictated consult note.

PERIGAD 600-031-6890

STATE'S
EXHIBIT

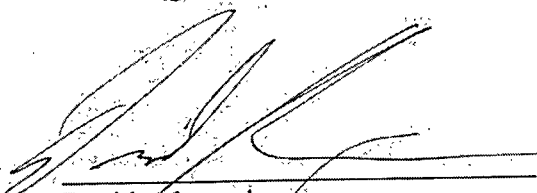
31

8-7-13

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."

December 22nd, 2014



David Alexander
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

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."

December 22nd, 2014

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Frank R. Addy, Circuit Court Judge

ORIGINAL
RECEIVED
DEC 22 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

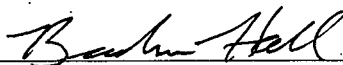
V.

MATTHEW ANTWAIN JACKSON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of December, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 22nd day of December, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.