

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2016-001666
Lower Court Case No. 2013-CP-08-2121

JUSTIN R. HILLERBY, #339543,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) INDICTMENT NO.: 2008-GS-08-2594

STATE OF SOUTH CAROLINA)
)
VS.)
)
JUSTIN R. HILLERBY,)
)
DEFENDANT.)
)

JURY TRIAL

VOLUME 1 OF 4

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on February 22, 2010, Commencing at 9:15 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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PROCEEDINGS

1
2 THE COURT: Ms. Williams, we have motions in the
3 case of Justin Hillerby?

4 MS. WILLIAMS: Yes, Your Honor.

5 THE COURT: Are you prepared to go forward at
6 this time?

7 MS. WILLIAMS: We are, Your Honor.

8 THE COURT: Mr. Bosnak?

9 MR. BOSNAK: Yes, Your Honor.

10 THE COURT: Are you prepared to go forward on
11 your -- do you have any motions?

12 MR. BOSNAK: Your Honor, I'm unsure. I just --
13 we're just going to do the Jackson v. Denno.

14 And what I'm not sure of, the two things that I
15 would like to address, there is an issue of Mr.
16 Hillerby being offered a lie detector test in which he
17 denied to take it. He said he was going to take, then
18 he said he didn't. Under Miranda, I think that's
19 inadmissible. We would ask that that not be able to be
20 brought out in trial.

21 THE COURT: Ms. Williams, your position?

22 MS. WILLIAMS: We won't make any reference to
23 the polygraph, Your Honor.

24 THE COURT: Thank you.

25 MS. WILLIAMS: The detective that is going to

1 testify about that will not use the word polygraph,
2 will not say that he is a polygrapher, and make no
3 reference to a polygraph.

4 THE COURT: All right. If you will please make
5 sure you instruct the detective that he is not -- he or
6 she is not to make any reference to Mr. Hillerby's
7 refusal to take the polygraph.

8 Anything further?

9 MR. BOSNAK: Just one last thing, and I don't
10 know if the prosecution plans to use it or not.

11 Prior to the death of this child, noon until
12 about six o'clock, they were at a swimming pool. Mr.
13 Hillerby, the victim's mother, her two children, and a
14 group of people were at the swimming pool. There were
15 some complaints and statements made at the swimming
16 pool about drinking, Mr. Hillerby and Ms. , the
17 victim's mother, drinking, cursing -- not fighting, but
18 using bad language -- the children not being looked
19 after properly. I would like to be addressed on that
20 issue, Your Honor. I don't think that it's relevant to
21 bring up that issue.

22 THE COURT: Let's do the Jackson --

23 [Off the record momentarily]

24 MR. BOSNAK: Yes, Your Honor?

25 THE COURT: Let's do the Jackson v. Denno

1 hearing, and we'll address that as it comes up.

2 I have the State's witness list. Mr. Bosnak --

3 MR. BOSNAK: Yes, ma'am. I'll give you a --

4 THE COURT: My recollection was that you were to
5 have all proposed voir dire, any proposed jury
6 instructions, and your witness list to me by 5:00 p.m.
7 Friday.

8 MR. BOSNAK: Your Honor, I came up here. We
9 faxed them. You weren't in the office.

10 THE COURT: Mr. Bosnak, I was in my office until
11 after 5:00 p.m. Friday.

12 MR. BOSNAK: Your Honor, I asked. I left my
13 witness list and everything in the clerk's office,
14 clerk of court.

15 THE CLERK OF COURT: I'll check.

16 MR. BOSNAK: I asked them if you were in the
17 office.

18 Here is my voir dire, and my original, and my
19 witness list, Your Honor. The witness list is a little
20 different than what we originally handed in.

21 [Whereupon, Mr. Bosnak proffers documents to the
22 Court]

23 THE COURT: Do you have a filed copy, Mr.
24 Bosnak?

25 MR. BOSNAK: No, ma'am. I handed -- like I

1 said, I handed it down with the clerk on Friday. I can
2 have people there that can verify that I came in. And
3 I was asking somebody if you were in your office and
4 they said no, that you were not there, that you had
5 left, Your Honor. I also have jury charges, if you
6 would like those.

7 THE COURT: We'll address those at a later time.

8 MR. BOSNAK: Yes, ma'am.

9
10 JACKSON V. DENNO

11 THE COURT: Are you prepared to go forward on
12 the Jackson v. Denno?

13 MS. WILLIAMS: Yes, Your Honor.

14 Let me just ask: there were three separate
15 statements given by the defendant. And although some
16 of the statements have common witnesses, we are going
17 to ask that we get a ruling on each statement, because
18 there's different issues of law in each one and I think
19 it would, in the long run, be easier even though -- it
20 might be a little redundant calling the same witnesses
21 twice, three times, for the separate statements.

22 THE COURT: All right. Whenever you are ready,
23 Ms. Williams.

24 MS. WILLIAMS: Your Honor, the State would call
25 Shannon Sharp.

1 [Whereupon, Mr. Sharp comes forward]

2 THE CLERK OF COURT: Raise your right hand.
3 Place your left hand on the Bible.

4 [Whereupon, Mr. Sharp is duly sworn by the clerk
5 of court as follows: do you solemnly swear or affirm
6 the testimony you will give the Court in this matter
7 will be the truth, the whole truth, and nothing but the
8 truth, so help you God]

9 THE WITNESS: Yes, I do.

10 THE CLERK OF COURT: Thank you. Please be
11 seated.

12 [Whereupon, the witness takes the witness stand]

13 THE CLERK OF COURT: State your full name, and
14 spell your last name for the record.

15 THE WITNESS: All right. My name is Shannon
16 Sharp, and the last name is S-H-A-R-P.

17 - - - - -
18 SHANNON SHARP,

19 Having Been First Duly Sworn,
20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Mr. Sharp, where do you work?

24 A. I am currently employed with the Summerville
25 Police Department.

MIA PERRON, CCR, CVR-CM

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1 Q. And what do you do there?

2 A. I'm assigned to the detectives division.

3 Investigate cases.

4 Q. And how long have you been at the Summerville
5 Police Department?

6 A. Just about ten years, ma'am.

7 Q. And how long have you been in law enforcement?

8 A. Twelve total, I believe.

9 Q. Did you take a statement or statements from the
10 defendant in this case, Justin Hillerby?

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

12 Q. And were one of those statements taken on the
13 18th of September, 2008?

14 A. Yes, ma'am.

15 Q. How many statements, total, did you take from
16 Mr. Hillerby?

17 A. Three total.

18 Q. And was that the -- where in the lineup did that
19 statement come?

20 A. The one on the 18th was the last one, ma'am.

21 Q. And how did that meeting on the 18th come about?

22 A. At Mr. Hillerby's request, ma'am.

23 THE COURT: Ms. Williams, could I stop you right
24 there?

25 Just for clarification, could you identify the

1 dates of each of the statements for me?

2 MS. WILLIAMS: Yes, Your Honor. There was a
3 statement given on September 15th, 2008; there was a
4 statement -- two statements given on September 17th,
5 2008, one oral and one written; and there was a written
6 statement given on September 18th, 2008.

7 THE COURT: Mr. Bosnak, do you agree with the
8 State's recitation that those are the statements that
9 were given?

10 MR. BOSNAK: Yes, Your Honor.

11 THE COURT: Thank you.

12 Q. [Ms. Williams] And on the 18th was Mr. Hillerby
13 in custody?

14 A. Yes, ma'am.

15 Q. And how many times had he been Mirandized before
16 you met with him on the 18th?

17 A. At least, by myself, this was the third time.

18 Q. And you were saying? How did this meeting come
19 about?

20 A. It was after Mr. Hillerby's bond hearing. He
21 requested it.

22 Q. And did he request to meet with anybody or --

23 A. No. I was informed he requested to meet with
24 me, specifically.

25 Q. Okay. And where was the -- where did the

1 questioning take place?

2 A. The questioning took place at the Summerville
3 Police Department, in the detectives division, in our
4 interview room.

5 Q. And who was present during that questioning?

6 A. Myself and Sargent Williams was.

7 Q. Was he under the -- was the defendant under the
8 influence of drugs or alcohol at the time of the
9 statement?

10 A. No, ma'am.

11 Q. Any kind of mental impairment, that was obvious
12 to you, that would prevent him from understanding what was
13 going on?

14 A. Not that I was able to detect, no, ma'am.

15 Q. Did he understand your questions?

16 A. Yes, ma'am.

17 Q. And each time that you have met with him, you
18 advised him of his Miranda rights. Was that in written
19 form?

20 A. Yes, ma'am, it was.

21 Q. Can you describe the physical surroundings of
22 the room where the questioning took place?

23 A. The interview room is I would guess a nine-by-
24 nine square room, cinder-block walls on all four walls, a
25 wooden door, a two-way window in one wall, a table, a

1 couple of chairs, and two refrigerators.

2 Q. What was about the length of time of this
3 particular questioning on the 18th?

4 A. Roughly, I would say approximately an hour,
5 maybe an hour and a half at the most.

6 Q. Okay. Was Mr. Hillerby denied any cigarette
7 breaks, bathroom breaks?

8 A. No, ma'am.

9 Q. Was he handcuffed?

10 A. No, ma'am.

11 Q. Were there any threats or promises made in
12 exchange for his statement?

13 A. Not at all, ma'am.

14 Q. Was he aware, at this time, the nature of the
15 investigation?

16 A. Yes, ma'am. He had had his affidavit read to
17 him, and he had also been bonded for the charge.

18 Q. And you said he was -- he was advised of his
19 Miranda rights?

20 A. Yes, ma'am. By myself at least two other times.

21 Q. How do you advise a defendant of his Miranda
22 rights?

23 A. What I use is the Summerville Police Department
24 advisement of rights form. I fill out their information
25 at the top. I ask them two questions. I always say,

1 look, you know, these are stupid questions but I have to.
2 ask: can you read and write. And then they'll yes or no.

3 The second question I always have to ask is the
4 highest level of education. In this case he said ninth
5 grade.

6 So then I showed him the form where I fill out
7 my name, I slide him that form to him, slide him a blue
8 pen, I get a blank form, and I say what I'm going to do
9 now is read you these. I say, these are your rights.

10 Q. Okay. Do you have the original copy of that
11 form with you today?

12 A. The other sargent out in the lobby does.

13 Q. Okay.

14 MS. WILLIAMS: You want to get that for me?

15 Q. [Ms. Williams] Is she the case agent for this
16 case?

17 A. Yes, ma'am, she is.

18 MS. WILLIAMS: The Court's indulgence for just a
19 moment.

20 THE COURT: Yes, ma'am.

21 MS. WILLIAMS: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 Q. [Ms. Williams] Do you think you can find it in
25 here?

1 A. Yeah. It will take a second, but, yeah.

2 Q. Just let me know when you find it.

3 [Whereupon, the witness reviews documents]

4 A. All right, ma'am.

5 Q. [Ms. Williams] You found it?

6 A. Yeah.

7 Q. Can you pull it out, please?

8 A. [Witness complies]

9 MS. WILLIAMS: Your Honor, may I approach?

10 THE COURT: You may.

11 Ms. Williams, you have permission to approach
12 the witness at any time.

13 MS. WILLIAMS: Thank you, Your Honor.

14 Q. [Ms. Williams] Okay. Is this the original copy
15 of the statement?

16 A. Yes, ma'am.

17 Q. Okay. And I see that some of the writing is in
18 black at the top. Who filled that out?

19 A. I did all of the writing that's in black.

20 Q. Okay. And what does that cover?

21 A. Like I was saying, this is the questions that I
22 ask and fill out. It's his information: his address,
23 where he works, social security number, race, sex, date of
24 birth, phone numbers.

25 Q. What about his highest level of education?

1 A. Yeah. That's two questions that I ask, is the
2 reading and writing and the highest level of education
3 that they have completed.

4 Q. Okay. And could he read and write?

5 A. He stated he could. Yes, ma'am.

6 Q. And what is the highest level of education?

7 A. Ninth grade.

8 Q. Okay. And then each of these rights: if you
9 would just read them out and tell me how you advised the
10 defendant of each of those rights.

11 A. Like I said, I fill out my name, Detective
12 Sharp. Then I slide the paper over to the person, and it
13 says -- and I read from a blank piece of paper.

14 It says: Detective Sharp has advised me he's a
15 member of the Summerville Police Department and has
16 further advised me that, number one, I have the absolute
17 right to remain silent, do not have to answer any
18 questions or give a statement, and this fact cannot be
19 used against me.

20 Q. And after that part of Miranda, does he sign?

21 A. If he understands, yes, ma'am, he --

22 Q. And in this case --

23 A. -- puts his initials.

24 Q. Okay. In this case with Mr. Hillerby, did he
25 initial that?

- 1 A. Yes, ma'am, he did.
- 2 Q. And is that -- are those his initials in blue?
- 3 A. Yes, ma'am, they are.
- 4 Q. Okay. And then what's the second thing you told
- 5 him?
- 6 A. After I get done with all five of those --
- 7 Q. Well, what is the second one?
- 8 A. Oh. I'm sorry.
- 9 The second one, number two: if I do answer
- 10 questions or give a statement, anything I say can and will
- 11 be used against me in a court of law.
- 12 Q. And did you show that to him, let him read it,
- 13 and did he initial it?
- 14 A. Yes, ma'am, he did.
- 15 Q. Okay. And then what?
- 16 A. Number three: I have the right to consult with
- 17 a lawyer of my choice before I answer questions or give a
- 18 statement, and to also have him present while I'm being
- 19 questioned.
- 20 Q. Okay. And did you slide it over to him, let him
- 21 read it, and did he sign it?
- 22 A. Yes, ma'am, he signed it. But the paper stayed
- 23 in front of him the whole time.
- 24 Q. Okay. Go ahead.
- 25 A. Number four: if I wish to talk to a lawyer or

1 have him present but I am unable to afford to hire a
2 lawyer, one will be appointed to represent me free of
3 charge.

4 Q. Did he sign that one?

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

6 Number five, last one: if I decide to answer
7 questions or give a statement without having a lawyer
8 present representing me, I have the absolute right during
9 this interview to stop answering questions and to remain
10 silent.

11 Q. Okay. And then after he initialed each of those
12 rights, did he sign the form?

13 A. Yes, ma'am.

14 And I specifically -- I always ask the same
15 question: did you understand everything that you just
16 initialed.

17 Q. Okay. And did he appear to have any trouble
18 understanding those rights at all?

19 A. No, ma'am.

20 Q. And were you there from the beginning until the
21 end?

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

23 Q. Who else was in the room?

24 A. Sargent Williams was in the room at this point.
25 And when we finished the whole form, Mr. Hillerby

1 indicated that he wanted to talk to me, so Sargent
2 Williams left out.

3 Q. So he specified which detective he wanted to
4 talk to?

5 A. The white guy. Yes, ma'am.

6 MS. WILLIAMS: Okay. Your Honor, at this time I
7 would like to mark this as State's Exhibit 1, just for
8 the limited purpose of this hearing, and make it a
9 Court's Exhibit.

10 THE COURT: For the purposes of this hearing,
11 State's 1?

12 MS. WILLIAMS: We would offer this as State's 1.

13 [Whereupon, State's Exhibit Number 1 is marked,
14 for purposes of the Jackson v. Denno hearing, by the
15 court reporter]

16 [Whereupon, State's Exhibit Number 1 is admitted
17 into evidence, for purposes of the Jackson v. Denno
18 hearing, by the Court]

19 Q. [Ms. Williams] When the defendant answered the
20 questions, was he rational, responsive? Anything about
21 his behavior made you think that he had difficulty
22 understanding any of these rights?

23 A. Nothing, ma'am.

24 Q. Did you ever threaten or coerce him?

25 A. No, ma'am. Not at all.

1 Q. Did you promise him a reward for signing the
2 form?

3 A. No, ma'am.

4 Q. At any time did he tell you he wanted an
5 attorney?

6 A. No, he did not.

7 Q. Did he ever change his mind, after the
8 questioning started or after he started writing his
9 statement, and tell you that he wanted an attorney?

10 A. No, ma'am, he did not.

11 Q. And at some point was his statement given to you
12 orally?

13 A. After he wrote the statement down, we discussed
14 what his statement was. And then when that was finished,
15 I told him that I was going to write on the statement, I
16 have some questions for you that I don't think you covered
17 in your statement, would you mind answering them, and he
18 said sure.

19 Q. So did he reduce his statement to writing at
20 some point?

21 A. Yes, ma'am, he did.

22 Q. And what format is that -- is the statement in?

23 A. It's on our voluntary statement form. And,
24 again, he wrote the first part. And then when he was
25 finished with that I believe I wrote, questions asked by

1 Detective Sharp of the Summerville Police Department. And
2 it's followed by Q and A's, and I wrote the Q part, the
3 questions.

4 Q. Okay. So the defendant wrote the original
5 narrative?

6 A. Yes, ma'am.

7 Q. And then you wrote questions.

8 And then did he, in his own writing, write the
9 answer?

10 A. Yes, ma'am, he did.

11 Q. Did you give him a copy of his statement?

12 A. Yes, ma'am.

13 Q. Did he say anything after you gave him a copy of
14 the statement?

15 A. He just said that his word was going to get out
16 because he thought he was being unfairly represented in
17 the media. And he also said that he felt much better and
18 maybe he could sleep now.

19 Q. So he felt like that statement was giving his
20 versions of events, and he was happy to give it?

21 A. Yeah. I assume so, yes, ma'am.

22 MS. WILLIAMS: Court's indulgence for just a
23 moment.

24 THE COURT: Yes, ma'am.

25 [Whereupon, Ms. Williams and Ms. Biagianti

1 confer]

2 MS. WILLIAMS: No further questions for this
3 witness at this time, Your Honor.

4 Please answer any questions the defendant may
5 have.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Mr. Bosnak?

8 MR. BOSNAK: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. BOSNAK:

11 Q. Detective Sharp, you said you've been in law
12 enforcement for twelve years; is that correct?

13 A. Roughly.

14 Q. How long have you been a detective?

15 A. Almost four, sir.

16 Q. Four years?

17 A. Yes, sir.

18 Q. And in those four years, have you had any type
19 of special training in interviewing people?

20 A. Yes, sir.

21 Q. What kind of training have you had?

22 A. I went to the Reid Technique for interview and
23 interrogation, sir.

24 Q. The Reid Technique?

25 A. Yes, sir.

1 Q. And when was that? Do you remember?

2 A. It was right after I got in the office, so it
3 was probably four years ago or more.

4 Q. 2006, probably? 2006, 2007?

5 A. Roughly, yes, sir. I'm not really for sure on
6 the date, to be honest with you.

7 Q. Have you had any training since then?

8 A. For interviews and stuff?

9 Q. Yes.

10 A. No, sir.

11 Q. Let me ask you: do different detectives, do
12 y'all talk about interviewing techniques and things like
13 that among yourselves?

14 A. I think pretty much all of us have been trained
15 through the Reid course. But, yes, we do.

16 Q. All right. And so you do talk about it?

17 A. Uh-huh.

18 Q. Okay. Now, first of all, you talked about an
19 interview room --

20 A. Yes, sir.

21 Q. -- in Summerville --

22 A. Uh-huh.

23 Q. -- the detective portion of the police
24 department?

25 A. Yes, sir.

1 Q. Now, that interview room doesn't have any video
2 cameras, does it?

3 A. No, sir.

4 Q. It doesn't have any type of recording device,
5 does it?

6 A. None, sir.

7 Q. And it's your policy not to video-record
8 interviews?

9 A. Yes, sir.

10 Q. And it's also your policy not to audiotape
11 recordings; correct?

12 A. Correct.

13 Q. Okay. And Mr. Hillerby first talked to you on
14 the 15th; is that correct?

15 A. That was the first time I spoke to him, yes,
16 sir.

17 Q. Okay. And I'm going to go to this statement
18 just a minute, because you talked about it. You asked him
19 if he can read and write, and he says yes?

20 A. Yes, sir.

21 Q. All right. Let me ask you about that. Have you
22 had any training to tell whether a person really can read
23 or write?

24 A. I judge that by their writing. If they tell me
25 they can't write, I guess they can't write.

1 Q. Okay. So you judge that by how well they can
2 write out a statement or sentence; correct?

3 A. Yes, sir.

4 Q. Okay. And it says he has a ninth-grade
5 education; correct?

6 A. That's what he told me, yes, sir.

7 Q. Does that give you pause about how high,
8 mentally, he's really functioning?

9 A. Not really, no, sir.

10 Q. Okay. Let me -- I'm going to show you this
11 first statement that you took from Mr. Hillerby, or that
12 he wrote out.

13 A. Uh-huh.

14 Q. It was dated 9/15/2008. Do you have that
15 document?

16 A. Yes, sir.

17 Q. Okay.

18 MS. WILLIAMS: Objection, Your Honor. I thought
19 we were going to do -- I'm not -- I don't want to limit
20 Mr. Bosnak in his cross-examination, but I thought we
21 were going to try to do the statements one at a time.
22 And this is regarding the statement of the 18th, unless
23 this has something to do with the statement on the --

24 THE COURT: All right. Counsel approach.

25 [Whereupon, an off-the-record bench conference

1 is held)

2 THE COURT: So the record is clear, the Court
3 did not understand Ms. Williams's request to each
4 statement individually.

5 Based upon our conference at the bench, the
6 State has indicated that this witness is involved in
7 other statements, as well. I am allowing Ms. Williams
8 to re-open her direct of this witness to include all of
9 the statements.

10 We will address all of the statements with each
11 witness and then I will make a ruling of course as to
12 each statement individually, independent of the other.

13 Thank you, Ms. Williams.

14 MS. WILLIAMS: Thank you, Your Honor.

15 Your Honor, the Court's indulgence. He is --

16 THE COURT: Yes, ma'am.

17 MS. WILLIAMS: -- pulling out the original
18 statement -- rights form for each statement.

19 [Whereupon, the witness reviews documents]

20 CONTINUED DIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Okay. Detective Sharp, do you have all the --

23 A. Yes, ma'am.

24 Q. -- rights forms?

25 A. Yes, ma'am.

1 Q. When was the first day that you came into
2 contact with the defendant, Justin Hillerby?

3 A. On the 15th, ma'am.

4 Q. And is that the day that the investigation was
5 opened?

6 A. Yes, ma'am. That was when we got the call to go
7 to the residence.

8 Q. And was --

9 THE COURT: Detective, I'm going to need you to
10 speak up.

11 Is that microphone on?

12 THE CLERK OF COURT: Yes, ma'am.

13 THE WITNESS: Sorry.

14 THE COURT: Thank you.

15 Q. [Ms. Williams] Was that the day that officers
16 first responded to the crime scene?

17 A. Yes, ma'am.

18 Q. And how was he transported to you?

19 A. Voluntarily, to the police department.

20 Q. Okay. And when he arrived, did he -- was he in
21 custody?

22 A. No, ma'am.

23 Q. Was he free to go?

24 A. Yes, ma'am.

25 Q. Did he come -- did he -- at that point, who was

1 in the room when he was questioned?

2 A. He was actually in our squad room, which is a
3 pretty large room. And it was, at various points, me and
4 him; me and my boss, Captain Rogers, and him; people
5 walking down the hallway.

6 Q. And at that time he was not the only person that
7 was being questioned; is that true?

8 A. Correct, ma'am.

9 Q. Who else was being questioned?

10 A. Ms. Spoerl, in our detectives' office.

11 Q. And in addition to them, over the course of the
12 following days were there other witnesses that were
13 brought in and questioned?

14 A. Yes, ma'am.

15 Q. And did Mr. Hillerby ever require any kind of
16 medical help or --

17 A. That --

18 Q. -- break --

19 A. That first day on the 15th, I stopped the
20 interview because he said he was experiencing chest pains,
21 he was dizzy, and thought he was going to pass out.

22 Q. Okay. And what did you do in response to that?

23 A. I called first responders who, in turn, I do
24 believe called EMS to come look at him.

25 Q. Okay. Was that after he had talked to you, or

1 in the middle of it?

2 A. It was right in the middle of it. He had
3 already talked to me and written out his statement, and I
4 was starting to ask him questions. And I think we had
5 maybe finished one question and started on the second one.

6 Q. Okay. And had he been given all of his rights
7 at that time?

8 A. Yes, ma'am, he had.

9 Q. And you just described the way that you give the
10 rights form and how you perform Miranda. Did you do it
11 that way on the 15th?

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

13 Q. Did you read each of the five rights to him?

14 A. Yes, ma'am.

15 Q. And after each one, did he sign?

16 A. Yes, ma'am, he did.

17 Q. And did he sign the form at the bottom?

18 A. Yes, ma'am, he did.

19 Q. And did he give a written statement that day?

20 A. Yes, he did.

21 Q. Did he -- was he given a copy of the statement?

22 A. He should have been, yes, ma'am.

23 Q. Was he?

24 A. Yes, ma'am.

25 Q. Was he handcuffed?

1 A. No. Never once.

2 Q. Was he free to go?

3 A. Yes, ma'am.

4 Q. Did he then leave?

5 A. Yes, ma'am.

6 Q. Was he also given cigarette breaks?

7 A. I think on the first day, the 15th, there was
8 three. At least two, anyway.

9 Q. Okay. So two to three cigarette breaks?

10 A. Yes, ma'am.

11 Q. Did he appear to be under the influence of
12 anything?

13 A. That day, no. But I think he was probably
14 drinking, because there was a little smell of alcohol.

15 Q. Okay. But did he appear to be intoxicated to
16 the point where he wouldn't understand your questions?

17 A. No, ma'am.

18 Q. And on that day, did he give a version of
19 events?

20 A. Yes, he did, ma'am.

21 Q. Do you have that rights form with you? The
22 original copy.

23 A. Yes, ma'am.

24 Q. On that day did he give a little bit of
25 information about how the child might have gotten the

1 injuries?

2 A. Yes, he did, ma'am.

3 Q. And that was just a one-page statement; is that
4 true?

5 A. That's correct, ma'am.

6 Q. And Mr. Hillerby was -- left; right? He was
7 free to go after he gave that statement; is that true?

8 A. Uh-huh. Yes, ma'am.

9 Q. Is this the original copy?

10 A. That one is.

11 MS. WILLIAMS: Your Honor, we're going to mark
12 this State's Exhibit 2 for the limited purpose of this
13 hearing --

14 THE COURT: Yes, ma'am.

15 MS. WILLIAMS: -- and ask it to be a Court's
16 Exhibit.

17 [Whereupon, State's Exhibit Number 2 is marked,
18 for purposes of the Jackson V. Denno hearing, by the
19 court reporter]

20 Q. [Ms. Williams] Okay. When was the next time
21 you came into contact with Mr. Hillerby?

22 A. The next time that I did was on the 17th, ma'am.

23 Q. And how did that come about?

24 A. For another interview, ma'am.

25 Q. How did that interview come about?

1 A. I believe it was Detective Sargent Williams, the
2 case agent, had spoke to Mr. Hillerby and had to set up a
3 second interview and since I had spoke to Mr. Hillerby the
4 first time, I was there, as well.

5 Q. And was there a polygraph involved in that
6 interview?

7 A. On the 17th?

8 Q. On that date.

9 A. No.

10 Q. Are you sure?

11 A. The polygraph was never completed.

12 Q. But was there an attempted polygraph?

13 A. Yes, ma'am.

14 Q. Okay. But Mr. Hillerby was not the only person
15 that was scheduled for a polygraph; isn't that true?

16 A. That is correct.

17 Q. In all, do you remember how many people were
18 polygraphed for this case?

19 A. No, ma'am, I do not.

20 Q. Was the mother of the victim polygraphed?

21 A. I believe she was.

22 Q. The roommate of --

23 A. I think all the roommates were.

24 Q. And the defendant?

25 A. Yes, ma'am.

1 Q. So where was the polygraph supposed to take
2 place?

3 A. At the Dorchester County Sheriff's Department on
4 Demmingway.

5 Q. Okay. And did Mr. Hillerby go to that
6 appointment?

7 A. Yes, ma'am.

8 Q. And did he drive himself there?

9 A. I'm not sure. I know he arrived with I believe
10 other people, but I'm not exactly sure who they were,
11 ma'am.

12 Q. Okay. And did he ever complete the polygraph?

13 A. No, ma'am.

14 Q. What happened?

15 A. I'm not exactly sure, but I know that they do a
16 pre-polygraph interview with the polygrapher and at some
17 point during that Mr. Hillerby said he did not want to
18 take the polygraph, he wanted to talk.

19 Q. Okay. And when he said he wanted to talk, did
20 he say who he wanted to talk to?

21 A. Myself and Sargent Logans.

22 Q. Okay. So what did you do next?

23 A. We took Mr. Hillerby from the sheriff's --
24 Dorchester County Sheriff's Office back to our police
25 department and back to the interview room that I described

1 a little while ago.

2 Q. And did you then give him another rights form?

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

4 Q. Was it administered exactly the same way as the
5 other two?

6 A. Yes, ma'am, it was.

7 Q. Did you read each of the five rights and have
8 him initial each one?

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

10 Q. On that day did he seem intoxicated?

11 A. No, ma'am.

12 Q. Did he seem like he didn't understand your
13 questions?

14 A. No, ma'am.

15 Q. Was he given smoke breaks?

16 A. On the 17th, I don't remember. I don't know.

17 Q. If he had wanted a smoke break, would you have
18 given him one?

19 A. Yes, ma'am, because at that time he was not in
20 custody.

21 Q. Okay. Were any promises made to him in exchange
22 for him giving the statement?

23 A. No, ma'am.

24 Q. Did he give a written statement on that day?

25 A. Yes, ma'am, he did.

1 Q. And did you give him a copy of that statement?

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

3 Q. And on that day, did he give a few more details
4 about what he did to that child?

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

6 Q. Do you have an original copy of that?

7 A. On the 17th? Yes, ma'am. It's right here.

8 MS. WILLIAMS: Your Honor, we would like to mark
9 this as State's Exhibit 3.

10 THE COURT: Yes, ma'am.

11 [Whereupon, State's Exhibit Number 3 is marked,
12 for purposes of the Jackson v. Denno hearing, by the
13 court reporter]

14 Q. [Ms. Williams] After he gave this final
15 statement, was Mr. Hillerby arrested?

16 A. Yes, ma'am, he was.

17 Q. And was that because of what he told you?

18 A. Yes, ma'am.

19 MS. WILLIAMS: Court's indulgence.

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Williams and Ms. Biagianti
22 confer]

23 MS. WILLIAMS: No further questions.

24 THE COURT: Mr. Bosnak?
25 - - -

1 CONTINUED CROSS EXAMINATION

2 BY MR. BOSNAK:

3 Q. Officer Sharp -- Detective Sharp. I apologize.
4 Can you tell me the difference between an interview and an
5 interrogation?

6 A. An interview, in my opinion, is trying to gain
7 information. And interrogation is a longer interview,
8 maybe -- I don't know what the right word is, but maybe
9 more less friendly.

10 Q. And what would you mean by less friendly?

11 A. Just more -- not so much in an upbeat manner.
12 Directly refuting his statements, things of that nature.

13 Q. Well, this certainly wasn't an upbeat matter,
14 the death of a twenty-month year-old child, was it?

15 A. No, sir.

16 Q. Pretty bad, wasn't it?

17 A. Not very pleasant.

18 Q. And things like that don't happen in Summerville
19 a lot, do they?

20 A. Not really, no, sir.

21 Q. And it had a lot of news coverage, didn't it?

22 A. I believe it did.

23 Q. TV?

24 A. Yes, sir.

25 Q. A lot of pressure to make an arrest; correct?

1 A. Not really, sir. No more than anything else.

2 Q. No more than anything else?

3 A. Correct.

4 Q. Okay. Now, during this period -- first of all,
5 let's start back on the 15th. At that time, did you have
6 the autopsy back from the coroner --

7 A. No, sir.

8 Q. -- or from MUSC?

9 A. No, sir.

10 Q. Okay. How about the pictures of the child, as
11 far as the autopsy pictures?

12 A. I didn't have any pictures of the child, sir. I
13 just went from what I saw.

14 Q. Okay. From what you saw on the scene?

15 A. Yes, sir.

16 Q. Okay. So you didn't have any autopsy pictures,
17 any type of pictures -- I mean, any type of reports or
18 anything like that from the coroner or MUSC?

19 A. No, sir. When I left the residence, the
20 deceased was still there, actually.

21 Q. Correct. Waiting for the coroner to come in --

22 A. Yes, sir.

23 Q. -- pronounce the child dead?

24 A. Yes, sir. I guess that's what they do.

25 Q. Wouldn't that be -- wouldn't that be what they

1 would do?

2 A. Yes, sir.

3 Q. And then take the child and perform an autopsy
4 to determine the cause of death?

5 A. Yes, sir.

6 Q. Okay. And certainly no DNA evidence was gotten
7 at that time? I mean, it was probably collected. But you
8 certainly didn't have the results of any DNA evidence, did
9 you?

10 A. No.

11 Q. And when we go to the 15th, that particular
12 statement --

13 Do you have that statement?

14 A. I have my copy, yes, sir.

15 Q. Again, I want to bring us back to Mr. Hillerby.
16 Ninth grade education. What's the first thing that sticks
17 out in that statement to you?

18 A. [No response]

19 Q. Looking at it?

20 A. I don't --

21 Q. Well, there's --

22 A. -- understand.

23 Q. -- no capitalization; correct?

24 A. That's true. I guess he also didn't indent
25 different paragraphs, as well, but --

1 Q. Well, there's no punctuation at all, is there?

2 A. I see a couple of periods, but I guess that
3 there is not.

4 Q. But it's basically a three-quarter of a page
5 continuous sentence; correct?

6 A. I guess so.

7 Q. Would that not draw any -- would that not raise
8 any flags about how well this person understands and how
9 much education they have?

10 A. No.

11 Q. It wouldn't?

12 A. That's just how he writes. I don't -- I can't
13 judge a person by how they write.

14 Q. Okay. Now, this statement basically goes from
15 the first thing in the morning until they found the child
16 the next morning at about 10:40. Would that be correct?

17 A. Yes, sir, that would be -- yes, sir.

18 Q. Approximately a twenty-four-hour period?

19 A. Correct.

20 Q. Correct?

21 A. Yes, sir.

22 Q. The day before, and then the next day?

23 A. Yes, sir.

24 Q. Okay. And there is nothing in here at all
25 that's incriminating, is it?

1 A. Not really, no, sir.

2 Q. And he stated that he came back, the mother went
3 out drinking that night?

4 A. Uh-huh.

5 Q. He kept both children?

6 A. [No response]

7 Q. Serena S [REDACTED], she didn't have any problems at
8 all, did she?

9 A. No, sir.

10 Q. Fed both children?

11 A. [Indicates affirmatively]

12 Q. Made sure she went to bed?

13 A. [Indicates affirmatively]

14 Q. Fed the little boy, also; correct?

15 A. That's what he said, yes, sir.

16 Q. And mentions in here about spilling a drink?

17 A. Uh-huh. Yes, sir.

18 Q. Okay. Doesn't say anything about any type of
19 discipline? It just said he put her in time out. Would
20 that be correct? The little boy in time out. I'm sorry.
21 Not the little girl.

22 A. Yes, sir.

23 Q. Okay. And you said that you gave the roommates,
24 the two roommates --

25 Brandy and Eric Riggins, they were the two

1 roommates; correct?

2 A. I believe so. I never spoke to them, but I
3 believe that's who it was.

4 Q. Were you present during their polygraph?

5 A. No, sir.

6 Q. So you couldn't answer anything --

7 A. I don't really --

8 Q. -- about what they did?

9 A. Correct. And I was also not there for
10 Ms. S 's if she, in fact, did. I don't know.

11 Q. That's fine.

12 But Justin terminated this interview, didn't he?

13 A. Yes, sir.

14 Q. And he was not under arrest at that time?

15 A. No, sir.

16 Q. All right. We're going to go to the 17th,
17 because Mr. Hillerby is arrested at that time.

18 A. He's arrested after the statements.

19 Q. After the statements. But he's arrested on the
20 17th?

21 A. Correct.

22 Q. Okay. Tell us -- go through a process that you
23 engage in, or other police officers engage in, when you
24 suspect somebody committed a crime.

25 A. Try to find out more about the person,

1 investigate their past history.

2 Q. Okay. Do a rap sheet?

3 A. Yes, sir.

4 Q. Nothing like that? No type of child abuse
5 or violent crimes or anything against a child at all in
6 Mr. Hillerby' past, is there?

7 A. I don't remember off the top of my head but if
8 you say so, I'll agree with you, sir. I don't remember.

9 Q. Okay. Well, let's move on, then.

10 You check their rap sheet. What else would
11 be -- what other things would you look into?

12 A. See if he's been involved in any -- anything at
13 all in the town.

14 Q. So any type of situation? Had caused any
15 trouble in the town; right? Is that what you're telling
16 me?

17 A. Yes, sir.

18 Q. Would that be fair to say?

19 A. See if he's had police intervention before.

20 Q. Okay. And then what else besides that? Besides
21 the rap sheet and the trouble, he might call the police
22 department?

23 A. It depends. If the police have been called and
24 he is -- we have done reports about him or with him or for
25 him in the past, I'll try to pull the reports and read the

1 reports.

2 Q. So you want all the police reports?

3 A. If we have it.

4 Q. And these police reports might not lead to a
5 crime, they just might be a complaint?

6 A. Uh-huh.

7 Q. Would that be correct?

8 A. Yes, sir.

9 Q. Somebody complaining that somebody was going to
10 try to break into somebody's house but if you investigated
11 it, you really didn't find anything?

12 A. Yes, sir.

13 Q. But you still have to take a report?

14 A. Yes, sir.

15 Q. Any time y'all are called out to check on
16 something, or there's a victim or there's a complaint,
17 y'all have to take a report. Would that be fair to say?

18 A. They're supposed -- patrol officers are supposed
19 to.

20 Q. Well, detectives would, wouldn't they?

21 A. If I did I would, yes, sir.

22 Q. Anything that you're called out on, you would
23 take a report?

24 A. Uh-huh.

25 Q. So you pull the reports at Summerville and see

1 what type of things this person has been involved in,
2 whether it's a crime or they've been convicted of anything
3 or not. Would that be fair to say?

4 A. Uh-huh.

5 Q. Okay. Now, besides that, what other things do
6 you look at?

7 A. That's really pretty much it. Maybe his
8 driver's history.

9 Q. Driver's history. Okay.

10 And why would a driver's history make any
11 difference in a case like that?

12 A. To see if his license is suspended and, if so,
13 what for.

14 Q. Oh. Okay. Okay. Maybe drinking or drugs,
15 something like that?

16 A. Yes, sir.

17 Q. Would that be fair to say?

18 A. Yes, sir.

19 Q. Okay. Thank you.

20 Now, you called Mr. Hillerby back in, but it
21 wasn't only Mr. Hillerby on the 17th, it was a group? It
22 was everybody that was in the house?

23 A. I think so. Sargent Williams spoke to Mr.
24 Hillerby, I believe. But I was present.

25 Q. Okay. And I guess what we would say is anybody

1 that was within the window of opportunity in the time
2 frame that child was killed? Is that the words we would
3 use?

4 A. I do believe so, yes, sir.

5 Q. Within the window of opportunity?

6 A. I would say within the residence.

7 Q. Right. And there were three people there,
8 besides Mr. Hillerby?

9 A. Yes.

10 Q. And they're roommates there. And then the
11 mother was there. The mother found him the next day;
12 correct?

13 A. I don't know who found the child, to be honest
14 with you.

15 MR. BOSNAK: Okay. Well, strike that, Your
16 Honor.

17 Q. [Mr. Bosnak] So you interviewed those people,
18 and they were given polygraphs?

19 A. The roommates and Jennifer.

20 Q. And Jennifer were given a polygraph. And they
21 took the polygraph?

22 A. I believe so.

23 Q. Okay. Summerville Police Department has the
24 results of those?

25 A. I would assume. Either that or the polygrapher

1 himself, Sargent Dixson.

2 Q. Okay. Now, you said that Mr. Hillerby didn't
3 want to take the polygraph but he --

4 A. I don't know if he did or not, but he didn't
5 that day. He just said he had rather talk to us.

6 Q. Okay. So he doesn't want to take a polygraph,
7 but he wants to talk?

8 A. Yes, sir.

9 Q. Okay. And what did he disclose to you on that
10 particular day on that new statement?

11 A. That he actually struck the child.

12 Q. Okay. And that was -- that was the child was
13 running down the hallway, and he was coming out of one of
14 the bedrooms, and the child hit his leg?

15 A. Hit his knee.

16 Q. Hit his knee?

17 A. That was one of the times he said he struck him.

18 Q. Okay. And it knocked the child down; correct?

19 A. According to Mr. Hillerby, it knocked the child
20 square off his feet causing his head to hit the ground
21 first.

22 Q. Those were the exact words he used?

23 A. Pretty close.

24 Q. Okay. And from that, what else did he tell you?
25 Did he tell you what time this was?

1 A. I believe he said it was between 9:30 and 10:00
2 p.m. on Sunday.

3 Q. 9:30 and 10:00 on Sunday.

4 So that would have been pretty close to right
5 before putting him to bed; would that be correct?

6 A. Yes, sir.

7 Q. Okay. And what else did he say he did to the
8 child?

9 A. Clipped his head in the hallway on a doorframe,
10 and then may again have --

11 Q. Let me stop you right there. Hit his head on
12 the door -- on the doorframe. Did he say he bumped it?
13 Or how much force was exerted, is what I'm trying to
14 understand. Clipped can mean a lot of things.

15 A. I don't know as if it was specifically asked how
16 much force was exerted but according to Mr. Hillerby, in
17 his words, later on the child was still moving but his
18 eyes wouldn't open.

19 Q. Okay. But first of all, wouldn't it be
20 important to know how hard the child's head hit the
21 doorframe?

22 A. He said that he hit -- that the child acted,
23 after he was hit, was -- he was wobbly, sitting like a
24 zombie, looking tired, refused food, couldn't sit in his
25 highchair, and then, like I said, possibly still moving

1 but his eyes wouldn't open, and when he laid him down --
2 let's see here -- he moved a little bit, but not much more
3 than a squirm.

4 Q. Okay. I'm going to go back to my question
5 again. You still haven't answered it.

6 A. Well, I can't quantify how much force was used,
7 but you -- can tell you what he said.

8 Q. But you could have asked him. You could have
9 asked him how hard --

10 MS. WILLIAMS: Your Honor, objection. I think
11 we're going beyond the scope of voluntariness, which is
12 the focus of a Jackson v. Denno hearing.

13 THE COURT: I'm going to allow it, Ms. Williams.

14 Q. [Mr. Bosnak] I think it would be -- could be --
15 a person should know, out of their own words, how hard he
16 hit the doorframe. Wouldn't that be correct, to really
17 know?

18 A. I just used what Mr. Hillerby said. I don't
19 know.

20 Q. But you're the detective and you're trying to
21 find out information.

22 A. And I found that information out by his
23 statements --

24 Q. Okay. Well, I'm --

25 A. -- what he said --

1 Q. -- I'm going to get to --

2 A. -- of how the child was reacting after he was
3 struck.

4 Q. Okay. Did you ask him which doorframe the
5 child's head hit?

6 A. The doorframe heading into the child -- ~~victim~~'s
7 room.

8 Q. Okay. The right or left side of the doorframe?

9 A. As you're walking in he said he was holding the
10 child in his arms with his head to the right. So it would
11 have been the right side of the doorframe.

12 Q. And that's in this statement?

13 A. That's what he told me.

14 Q. It's not in the statement.

15 A. Said, was it the left side or the right side of
16 his head. He says, I don't remember.

17 Q. Okay. But, now, you just testified --

18 A. Because that's what he told us.

19 Q. But it's not written down anywhere?

20 A. No.

21 Q. Okay. So it's something that he told you, but
22 it's not written down?

23 A. Correct.

24 Q. Did anybody go out to the house and try to get
25 any DNA evidence?

1 A. I'm not sure if it was collected at the time or
2 later. I'm not -- I don't know.

3 Q. Or hair fiber?

4 A. Sir, I'm not sure.

5 Q. Or blood? Anything like that?

6 A. I'm not sure.

7 Q. So we don't have any evidence, actually, other
8 than Mr. Hillerby saying that he had bumped his head on
9 the doorframe; correct?

10 A. I don't know. I didn't collect the evidence.

11 Q. Okay. Fair enough

12 Now, this is at 9:30, ten o'clock at night, and
13 this child is twenty months old, almost two years old, has
14 been in a swimming pool all day -- or from twelve o'clock
15 until about six o'clock -- hasn't had a nap. Wouldn't it
16 be reasonable, Detective Sharp, that the child was just
17 tired and worn out and ready to go to bed?

18 A. That's what I would have thought.

19 Q. Okay. Does Mr. Hillerby, in this, talk about
20 the drink being spilled again?

21 A. Hold on a sec. I'm not sure.

22 [Whereupon, the witness reviews documents]

23 A. If you'll give me a second. I'm rereading this.
24 I'm not sure.

25 [Whereupon, the witness reviews documents]

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A. Yes, he does. Sorry.

Q. [Mr. Bosnak] Okay. Which page are you on?

A. For the 17th, I'm on page 4.

Q. Page 4.

A. The very last question, bottom of the page.

Q. He said he grabbed him by the neck and shoulder;
correct?

A. Yes, sir.

Q. Okay. Now, I want to go back just a minute. It
would be commonplace to put a child in a highchair if you
were going to feed him, would it not?

A. Yes, sir.

Q. And also if you were going to give him something
to drink, that would be the place you would put them,
wouldn't you?

A. Yes, sir.

Q. You wouldn't want them spilling food all over
the house and --

A. No.

Q. -- dropping it and picking it up and eating it
again. So that's pretty common, isn't it?

A. Yes, sir.

Q. Okay. Now, after this statement is made and --
was this statement made first, before the offer of the
polygraph?

1 A. The statement on the 17th?

2 Q. Yes.

3 A. No. This was after he declined.

4 Q. Okay. So they asked him to come in, gave him
5 the polygraph, offered him the right to do the polygraph,
6 said he didn't want to do the polygraph but he wanted to
7 talk to y'all. Then he gave this statement.

8 A. Uh-huh.

9 Q. And after he gave this statement, then you went
10 ahead and had him arrested at that time?

11 A. Yes, sir. Sargent Williams arrested him.

12 Q. Sargent Williams drew up all the paperwork;
13 correct?

14 A. Yes, sir.

15 Q. Did anybody tell Mr. Hillerby at this time that
16 this -- they thought maybe this was an accident?

17 A. I don't know. They may have. I don't know.

18 Q. You didn't say that?

19 A. I don't recall.

20 Q. You didn't say -- you don't recall?

21 A. I don't know.

22 Q. You don't recall? Or you don't know?

23 A. I may have. I don't know.

24 Q. Okay. Saying that this is possibly an accident?

25 A. Uh-huh.

1 Q. And if it is could you please, you know, tell us
2 what happened, because nobody's going to get in any
3 trouble for an accident?

4 A. Uh-huh.

5 Q. Would that be possible that you said that?

6 A. That would be possible, yes, sir.

7 Q. Okay. And also that maybe possibly you did
8 something to the child, you knocked it down, it hit its
9 head, and you didn't get it medical treatment?

10 A. That sounds reasonable.

11 Q. And somebody could have conferred that to
12 Mr. Hillerby?

13 A. Yes, sir.

14 Q. Okay. And that was -- while you were talking
15 about all this, Mr. Hillerby was trying to think about
16 anything that he might have done --

17 A. I don't --

18 Q. -- to hurt the child?

19 A. I don't know what he was thinking about, but
20 that sounds reasonable.

21 Q. Okay. So he's trying to help y'all?

22 A. I don't know what his purpose was.

23 Q. Well, he's answering your questions.

24 A. Yes, sir.

25 Q. And he's not telling you he doesn't want to talk

1 to you.

2 A. That's correct, sir.

3 Q. And he's not giving you a hard time.

4 A. No.

5 Q. And he's cooperating with you.

6 A. Yes, sir.

7 Q. Okay. Now, did Mr. Hillerby -- did he seem
8 upset? You went back a minute ago and you said on the
9 15th that when Mr. Hillerby came in to talk to y'all he
10 was complaining of chest pains and passing out, was that
11 correct, on the 15th?

12 A. Yeah. He said he was dizzy, chest pains,
13 thought he might pass out. Yes, sir.

14 Q. Did he say why?

15 A. I don't think so.

16 Q. Didn't say why?

17 A. I don't -- if he did, I don't remember why.

18 Q. Okay. So he took this statement, and then you
19 wrote a police report from the verbal statements that
20 Mr. Hillerby spoke to you about? Would that be fair to
21 say?

22 A. Uh-huh.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes, ma'am.

25 Q. [Mr. Bosnak] Why not just write everything out

1 like you did the Q & A?

2 A. Because he was done. Said that his chest hurt
3 too bad, he was done.

4 Q. Now, this was on the 17th or this was on --

5 A. Oh.

6 Q. -- or on the 15th?

7 A. The 15th. Is that what you're saying?

8 Q. The 15th he terminated the interview because he
9 said he was having chest pains and he was about to pass
10 out?

11 A. Yeah. Yes, sir.

12 Q. Okay. Now, on the 17th --

13 A. 17th.

14 Q. -- that's what I'm talking about.

15 A. Okay.

16 Q. Why not just combine the verbal statements with
17 the written statement?

18 A. What do you mean?

19 Q. Well, just put it all together. In other words,
20 just put it -- write it all out and have Mr. Hillerby read
21 it and then sign it.

22 A. For us to write it?

23 Q. Yes, sir.

24 A. Because I wanted Mr. Hillerby to use his words.

25 Q. Okay. Well, why not have Mr. Hillerby write the

1 whole thing out and get him to sign it like you did on the
2 15th?

3 A. He did, but we had some follow-up questions to
4 ask him.

5 Q. Well, why not do that and the Q & A, also? Ask
6 the question and write the question out and have him write
7 a statement?

8 A. I do believe we did.

9 Q. Well, there's other stuff that's in the report,
10 your report, that's not in this written statement.

11 A. For the 17th?

12 Q. Yes, sir.

13 A. Okay.

14 Q. And these are just very short -- short answers
15 that he was giving; right?

16 A. For the most part.

17 Q. Was he allowed to elaborate?

18 A. Uh-huh. Yes, sir.

19 Q. He was. Okay.

20 So you're just responsible, again -- and I know
21 this is repetitive --

22 MR. BOSNAK: And the Court's indulgence.

23 Q. [Mr. Bosnak] You took three statements from
24 Mr. Hillerby?

25 A. Uh-huh.

1 Q. One on the 15th, two on the 17th, one being a
2 written statement or a Q & A. You ask a question, write a
3 question, he gives you an answer. Correct?

4 A. That's the one that's right here?

5 Q. Yes, sir. The written statement.

6 A. Yes, sir.

7 Q. And then he gave you some more information and
8 you wrote it in a supplemental report. Would that be
9 correct?

10 A. I think our interview was just the written part.
11 I'm not for sure, though.

12 Q. If you need me to, I have a supplemental report
13 that has your name on it, and it's dated 9/17/2008.

14 [Whereupon, the witness reviews documents]

15 A. Oh. Here we go. Yeah. Okay. I got it -- I'm
16 sorry -- now.

17 Q. [Mr. Bosnak] And so you did that, too?

18 A. Yeah. I wrote that report in reference to the
19 interview.

20 Q. And that would have been after the interview?

21 A. Yes.

22 Q. Could you tell me how long all this took?

23 A. The interview on the 17th?

24 Q. Yes, sir.

25 A. It started at roughly -- make sure it's the

1 right one.

2 Q. It started at what time, now?

3 A. It started roughly -- and I believe it's 11:30,
4 and I do believe it was ended by 1:15-ish.

5 Q. 1:50?

6 A. Fifteenish.

7 Q. 1:15.

8 A. 1:00 to 1:15-ish.

9 Q. Okay. And that would have taken care of not
10 taking the polygraph, the written statement, and the
11 information that he gave you in your supplemental report;
12 correct?

13 A. I would say yes, sir.

14 Q. Now, don't -- would that be correct?

15 A. I can't remember what time we were supposed to
16 meet at Dorchester County. But after that and then coming
17 to the office, I would say yes, sir.

18 MR. BOSNAK: No further questions, Your Honor.

19 Thank you.

20 THE COURT: Any redirect?

21 MS. WILLIAMS: Very briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. WILLIAMS:

24 Q. Mr. Hillerby has his GED, doesn't he?

25 A. I'm not exactly sure.

1 Q. If you know.

2 A. I don't know. I just wrote down what he told
3 me, ma'am.

4 Q. All three of the statements are in exactly the
5 same format, aren't they? Mr. Hillerby writes a paragraph
6 and then answers questions that you've written out. Is
7 that true?

8 A. Yes, ma'am.

9 Q. Each of them is exactly the same?

10 A. Yes, ma'am.

11 Q. And then you do a supplement kind of summarizing
12 what he says?

13 A. Yes, ma'am.

14 Q. And the reason that you want Mr. Hillerby to
15 write it, and not you, is so you're sure that it's what he
16 wants to say and it's his words; is that correct?

17 A. Yes, ma'am.

18 Q. And two of the statements, on the 17th and the
19 18th, Mr. Hillerby specifically requested to talk to you;
20 is that true?

21 A. Yes, ma'am.

22 MS. WILLIAMS: Nothing further.

23 THE COURT: Mr. Bosnak?

24 MR. BOSNAK: Nothing, Your Honor.

25 THE COURT: Detective, you may step down.

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Mr. Bosnak, I indicated that I would
4 grant your request to have the witnesses sequestered.
5 Does that extend -- are you requesting it extend to the
6 motions hearings, as well?

7 MR. BOSNAK: Yes, Your Honor.

8 THE COURT: Detective Sharp, please do not
9 discuss your testimony with any of the witnesses in
10 this case. Thank you.

11 MS. WILLIAMS: The State would call Officer
12 Darling.

13 [Whereupon, Mr. Darling comes forward]

14 THE COURT: Please come forward.

15 MS. WILLIAMS: Step this way.

16 THE CLERK OF COURT: Raise your right hand.
17 Place your left hand on the Bible.

18 [Whereupon, Mr. Darling is duly sworn by the
19 clerk of court as follows: do you solemnly swear or
20 affirm the testimony you will give the Court in this
21 matter will be the truth, the whole truth, and nothing
22 but the truth, so help you God]

23 THE WITNESS: I do.

24 THE CLERK OF COURT: Please be seated.

25 [Whereupon, the witness takes the witness stand]

1 THE CLERK OF COURT: State your full name.
2 Spell your last name for the record.

3 THE WITNESS: My name is Richard Darling.
4 D-A-R-L-I-N-G.

5 THE COURT: Ms. Williams?

6 MS. WILLIAMS: Thank you, Your Honor.

7
8 RICHARD DARLING,

9 Having Been First Duly Sworn,
10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Officer Darling, where do you work?

14 A. The Dorchester County Sheriff's Office.

15 Q. Okay. And where were you working on 9/18,
16 September 18th, of 2008?

17 A. I was the warrants officer for the Summerville
18 Police Department.

19 Q. And as part of your duties, did you transport
20 prisoners?

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

22 Q. And on that date, on the 18th, did you transport
23 Mr. Justin Hillerby?

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

25 Q. From where to where?

MIA PERRON, CCR, CVR-CM

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1 A. I transported him from the Summerville Municipal
2 Police Department to the Berkeley County Detention Center.

3 Q. And for what purpose? If you know.

4 A. Transporting to be lodged in the Berkeley County
5 detention center for the charges that he was charged with.

6 Q. Okay. So why was he in Summerville? What was
7 he doing in Summerville?

8 A. He was in Summerville in reference to a homicide
9 by child abuse.

10 Q. Did he have a court proceeding in Summerville
11 right before you transported him? Did he have a bond
12 hearing that day?

13 A. I don't recall if he had a bond hearing or not,
14 ma'am.

15 Q. Okay. When you transported him to the Berkeley
16 County detention center, did you then have to transport
17 him back to a bond hearing?

18 A. No. I transported him back because he asked to
19 speak to the detective.

20 Q. Okay. Tell me about that. Who initiated that
21 conversation?

22 A. Mr. Hillerby initiated a conversation on route
23 to -- or in route to the Berkeley County detention center.

24 Q. What did he say to you?

25 A. He questioned -- or made a statement about how

1 he was being charged.

2 Q. What was that statement?

3 A. He said he couldn't understand why he was being
4 charged the way he did.

5 Q. And did you respond to his statement?

6 A. I wasn't sure what he was talking about, so I
7 asked him what he was talking about.

8 Q. Did you remind him of his rights?

9 A. After he stated that he accidentally ran into the
10 child with his knee, I immediately advised him that, you
11 know, I didn't need to know the particulars of his case
12 and he needed to remember he had the right to remain
13 silent.

14 Q. Okay. And did you do anything to induce
15 Mr. Hillerby to talk to you?

16 A. No, ma'am, I did not.

17 Q. Did you try to trick him, did you --

18 A. No, ma'am. I --

19 Q. Did you say anything to him?

20 A. No, ma'am. When I told him, you know, he needed
21 to remember to -- he needed to remain silent, he said he
22 knew that, but he -- he wished that he took that into
23 consideration before they charged him the way he did --
24 that they did.

25 Q. So he just started talking about his case?

1 A. Yes, ma'am.

2 Q. And you're not a detective?

3 A. No, ma'am.

4 Q. Do you regularly interrogate people?

5 A. No, ma'am.

6 Q. Do you interview people?

7 A. No, ma'am. Not in that position I did not.

8 Q. You just transported them back and forth?

9 A. Yes, ma'am.

10 Q. And at some point when you -- when you were
11 getting ready to take him back, did he request to talk to
12 somebody after he started talking to you about this case?
13 Did he make any request to talk to anyone at Summerville?

14 A. Yes, ma'am. He asked to be transported back to
15 Summerville in order to speak to the detective.

16 Q. So what did you do?

17 A. I told him -- again, I told him that he had the
18 right to remain silent, and he didn't need to speak to
19 anybody or answer any questions. And he said he knew
20 that, and he still wanted to go back to the Summerville
21 Police Department.

22 Q. And did he specify who he wanted to speak with?

23 A. He just said the detective.

24 Q. Did he say anything about whether it was the
25 male or the female?

1 A. I believe he said it was the male detective.

2 Q. Okay. And before you transported him back, what
3 did you do? Did you call anyone?

4 A. I talked to -- I contacted the detective,
5 Detective Williams, and she told me to bring him back.

6 Q. Okay. And did anyone give you any information
7 about Mr. Hillerby before you left?

8 A. The detention sargent for Berkeley County
9 detention center said that he had spoke to a public
10 defender. She did not know the public defender's name. I
11 went inside, and I asked Mr. Hillerby if he had changed
12 his mind and -- because he had the right, that he didn't
13 have to talk to anybody. And he said, yeah, he knew, but
14 he wanted to go back and talk to the detective.

15 Q. Did you tell him that someone had told you that
16 he was talking to a public defender?

17 A. Yes, I did.

18 Q. And what did he say?

19 A. He said, yeah, that he still wanted to go back.
20 But he didn't know the public defender's name, either. He
21 just said it was a female.

22 Q. Okay. Did he say it was his lawyer?

23 A. No, he never did.

24 Q. Did he know her name?

25 A. No, he did not.

1 Q. And did he -- he then reiterated that he wanted
2 to go back?

3 A. Yes, ma'am, he did.

4 Q. And you in no way began the conversation with
5 Mr. Hillerby?

6 A. No, ma'am, I did not.

7 MS. WILLIAMS: Court's indulgence for just a
8 second.

9 THE COURT: Yes, ma'am.

10 [Whereupon, Ms. Williams and Ms. Biagianti
11 confer]

12 Q. [Ms. Williams] After Mr. Hillerby started
13 talking about why they didn't charge him with a lessor
14 offense, and started telling you this story, you did
15 eventually converse with him?

16 A. Yes, ma'am.

17 Q. And what kinds of things did you say to him?

18 A. He was talking about the truth, and I told him
19 that, you know, the truth -- if he's telling the truth,
20 the truth would be revealed in the autopsy, forensic
21 science is pretty accurate, and things such as that.

22 Q. Okay. And that was after he began talking to
23 you?

24 A. Yes, ma'am. And that was after I advised him
25 that, you know, he had the right to remain silent and he

1 didn't have to speak about his case.

2 MS. WILLIAMS: Court's indulgence.

3 THE COURT: Yes, ma'am.

4 Q. [Ms. Williams] Did Mr. Hillerby tell you
5 anything about why he wanted to talk to the male
6 detective?

7 A. He said he wanted to tell the truth.

8 Q. I'm going to show you your report, see --

9 A. I have a --

10 Q. -- if this would refresh --

11 A. -- copy right here.

12 Q. -- your memory.

13 The last line of your report, did he say
14 anything about he wanted to tell the truth and --

15 A. Are you talking about after I was bringing him
16 back to Berkeley County from taking him to Summerville?

17 Q. The last line of your report, if it refreshes
18 your memory.

19 Okay. Did he say he finally wanted to get some
20 sleep?

21 A. Yes. Well, that was -- he would be able to get
22 some rest tonight. And that was on the trip back, after
23 he had spoke to detectives.

24 Q. Okay. So after he spoke to detectives, he felt
25 like he could finally get some rest?

1 A. Yes.

2 [Whereupon, State's Exhibit Numbers 4 through 9
3 are marked, for purposes of the Jackson v. Denno
4 hearing, by the court reporter]

5 MS. WILLIAMS: Your Honor, at this time the
6 State is going to offer Exhibits 4 through 9. These
7 are certified copies, self-authenticating documents,
8 of --

9 And Mr. Bosnak has this in his discovery. We
10 have extra copies for him here today, but this -- I'll
11 provide these to Mr. Bosnak.

12 And we're offering these for the limited purpose
13 of this hearing. These are copies of Mr. Hillerby's
14 bond proceedings where he was advised of his rights by
15 the judge, the request for counsel that Mr. Hillerby
16 filled out on September 23rd. He was appointed counsel
17 through the public defender's office on October 3rd,
18 and discovery was requested by the public defender's
19 office on October 15th, I think -- October 13th, and
20 Mr. Bosnak was -- took the case on October 23rd.

21 THE COURT: Mr. Bosnak?

22 MR. BOSNAK: That's correct, Your Honor.
23 Without objection.

24 THE COURT: State's 4 though 9, for the purposes
25 of this hearing only.

1 [Whereupon, State's Exhibit Numbers 4 through
2 9 are admitted into evidence, for purposes of the
3 Jackson v. Denno hearing, by the Court.

4 MS. WILLIAMS: Your Honor, at this time, just to
5 make sure that -- we are offering for all of these
6 exhibits, State's 1 through 9, to be admitted for the
7 purpose of this hearing. I'm not sure if they've all
8 been admitted yet.

9 THE COURT: They have been. Thank you.

10 MS. WILLIAMS: Thank you, Your Honor.

11 [Whereupon, State's Exhibit Numbers 1 through
12 9 are admitted into evidence, for purposes of the
13 Jackson v. Denno hearing, by the Court]

14 THE COURT: Mr. Bosnak?

15 MR. BOSNAK: Thank you.

16 CROSS-EXAMINATION

17 BY MR. BOSNAK:

18 Q. Officer Darling?

19 A. Yes, sir.

20 Q. Mr. Hillerby knew what charges he now had
21 pending against him. Wouldn't that be fair to say?

22 A. Yes, sir.

23 Q. You said that he was kept in Summerville the
24 night before. He was arrested on the 17th, kept there in
25 the Summerville Detention Center, because he had a

1 hearing, excuse me, on the -- had a hearing and they
2 set -- couldn't set bond with him but he was charged.
3 Correct?

4 A. I don't know if he was set bond or not. I
5 know -- I believe he was charged, sir.

6 Q. So he understand the charges against him?

7 A. I can only assume so, sir.

8 Q. Okay. And --

9 A. We never discussed that.

10 Q. He seemed to be, when he was talking to you --
11 or you tell me if my inferences are right or not. Mr.
12 Hillerby was surprised that he was charged with that
13 particular crime. Would that be fair to say?

14 A. Yes, sir. He did seem confused.

15 Q. Okay. And you being a law enforcement officer,
16 he wanted to get your opinion; correct?

17 A. I wouldn't say that, sir. He was just talking.
18 He never addressed me directly.

19 Q. Or just maybe somebody's opinion?

20 A. No. He was just talking, as far as I could
21 tell.

22 Q. Now, you said that the truth will be revealed in
23 the autopsy. Correct me if I'm wrong, but an autopsy is
24 just to determine what caused the death of a person.
25 Wouldn't that be correct?

1 A. That would be my opinion, sir.

2 Q. Wouldn't tell who did it?

3 A. No, sir.

4 Q. Just it would tell -- it would tell the time of
5 death, the cause of death?

6 A. Yes, sir.

7 Q. Okay. So, really, that wouldn't tell who did
8 it. Mr. Hillerby then is concerned, thinking he should
9 have been charged with a lessor offense. Would that be
10 correct?

11 A. Yes, sir. I believe that was his statement.

12 Q. And then you told him that, undoubtedly, he
13 wasn't being truthful with the autopsy?

14 A. No, sir. I never did that.

15 Q. Okay. You didn't say -- you didn't say, I -- I
16 said, I'm not sure, unless the autopsy reveals that you
17 aren't being truthful. You didn't say that?

18 A. No, sir. I told Mr. Hillerby if you're saying
19 the truth -- which he was saying that -- what he was
20 saying about the child running into knee, that would
21 reveal -- be revealed by the autopsy.

22 Q. Okay. But I'm looking at the top of page 2, and
23 it said: I said, I'm not sure, unless the autopsy reveals
24 that you aren't being truthful.

25 Is that a misprint?

1 A. Okay. Yes, sir, I said that.

2 Q. You did say that?

3 A. Yes, sir.

4 Q. Okay. And then you told him: the detectives
5 aren't fools, and the physical evidence is just plain
6 factual. It doesn't lie or change it's story. It is what
7 it is.

8 Did you say that?

9 A. Yes, sir.

10 Q. Now, did you know at that time that the autopsy
11 had even been completed?

12 A. No, sir.

13 Q. Did you know if they even had any physical
14 evidence at that time?

15 A. No, sir. I was not aware of the particulars of
16 the case. I was speaking in general.

17 Q. In general. Okay.

18 Then he talks about how the media has painted
19 him. And you told him, you know the truth will always set
20 you free and if anyone's not truthful, well, it has a way
21 of allowing people to paint whatever picture they want of
22 a person who isn't truthful.

23 Isn't that correct?

24 A. Yes, sir. And I was speaking in general.

25 Q. Okay. But Mr. Hillerby is not speaking in

1 general, is he?

2 A. I can only assume he was, sir, because we were
3 not speaking of the particulars of his case.

4 Q. Well, he's speaking about being charged with
5 homicide by child abuse.

6 A. He was speaking of being charged with a lessor
7 offense.

8 Q. Right. But he's charged -- he tells you that
9 he's being charged with homicide by child abuse; correct?

10 A. No, sir. He's never -- he never told me what he
11 was being charged with.

12 Q. He didn't ever tell you that? Never told you --

13 A. No, sir.

14 Q. -- that he was charged with that?

15 A. No, sir. We never discussed his charge. I just
16 happen to know that he was being charged by homicide by
17 child abuse.

18 Q. Well, let's go to the top of page 1 --

19 A. Uh-huh.

20 Q. -- of your report. And it says on 9/18/2008: I
21 was assigned to transport the above suspect to Berkeley
22 County detention center to be housed for the crime of
23 homicide by child abuse.

24 A. Yes, sir.

25 Q. So you knew what he was being charged with?

1 A. That's what I was being told he was being
2 charged with, yes.

3 Q. Okay. So you knew that he was being charged
4 with homicide by child abuse?

5 A. Yes, sir.

6 Q. And he was telling you that he thought it should
7 be less? should be a lessor charge?

8 A. He said he -- he said that he wasn't -- could
9 not understand why he was being charged with what he was
10 charged.

11 Q. Right.

12 A. Okay. That --

13 Q. Homicide by child abuse.

14 A. Yes, sir. But we never discussed that he was
15 being charged by homicide by child abuse.

16 Q. But you knew what --

17 A. That never entered our conversation.

18 Q. I understand that. But you knew what he was
19 being charged with?

20 A. Yes, sir.

21 Q. And he says that he can't understand why they
22 charged me the way they did.

23 He was saying that they should have charged him
24 with a lessor offense. Wouldn't that be correct?

25 A. Yes, sir. He did say that.

1 Q. And that's what this whole conversation more or
2 less is about, isn't it?

3 A. Why he was not -- why he was being charged the
4 way he did?

5 Q. Yes, sir.

6 A. I would assume, yes, sir.

7 Q. And you were telling him that the autopsy would
8 tell who did it, and you were telling him about --

9 A. Never told him who -- the autopsy would say who
10 did it.

11 Q. Well, you said: what are you saying is the
12 truth, and the truth will be revealed in the autopsy. You
13 can't fool forensic science. Nowadays it's pretty
14 accurate.

15 Right?

16 A. Yes, sir. But he was speaking of that the child
17 ran into his knee.

18 Q. Right.

19 A. That's what that was based on.

20 Q. Okay. But he was speaking specifically, even
21 though you might have been talking to him generally?

22 A. I can't say. I can't assume what he was -- if
23 he was speaking specifically or not.

24 Q. Thank you, Officer.

25 You also -- Mr. Hillerby then asked, asked me,

1 what do you think will happen to him. And you told him,
2 I'm not certain, but God generally helps those who help
3 themselves. And I've found that the criminal justice
4 system generally functions the same way if you help them
5 to help you.

6 A. Yes, sir.

7 Q. Okay. And these were the type of conversations
8 and the things y'all were talking about going to Berkeley
9 County from Summerville -- Demmingway in Summerville to --

10 A. I believe that's about the extent of all of it.

11 Q. Okay. And then he tells you that he wants to
12 talk to the detectives again?

13 A. Yes, sir.

14 Q. And then you call and they tell you to bring him
15 back; is that correct?

16 A. Yes, sir.

17 MR. BOSNAK: Okay. Thank you. No further
18 questions.

19 THE COURT: Ms. Williams?

20 MS. WILLIAMS: Very briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Officer Darling, you wrote everything down in
24 your report, didn't you?

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

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1 Q. Word for word?

2 A. Yes, ma'am.

3 Q. When Mr. Hillerby initiates the conversation
4 with you, he initiates it on the way to the Berkeley
5 County detention center; correct?

6 A. Yes, ma'am, he did.

7 Q. Then you deposited him at the Berkeley County
8 detention center and called the detectives. Is --

9 A. Yes, ma'am.

10 Q. -- that what you testified to?

11 A. Yes, ma'am.

12 Q. So he's sitting in there?

13 A. Yes, ma'am.

14 Q. For how long, roughly?

15 A. Five, ten minutes, maybe.

16 Q. While he's in there he runs into a public
17 defender, to your knowledge?

18 A. To my knowledge, yes, ma'am.

19 Q. And after that you asked him again, do you still
20 want to go back and talk to the detectives. Is that
21 correct?

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

23 Q. And he says he does?

24 A. Yes, ma'am.

25 Q. And you asked him if he talked to an attorney?

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

2 Q. And he said what?

3 A. He said, yes, ma'am -- he says, yes, he did, but
4 he didn't know the attorney's name.

5 Q. And that he still wanted to go talk to the
6 detectives?

7 A. Yes, ma'am. And after I -- and I again had told
8 him, that, you know, he didn't have to talk to anybody or
9 answer any questions, that he had the right to remain
10 silent.

11 Q. And then he drives all the way back over to
12 Summerville, and then you deposited him in some kind of
13 cell after that?

14 A. I put him in a holding cell. Which Summerville
15 has a holding cell. They don't have a detention area, but
16 they have a holding-cell area.

17 Q. And then he talks to the one that he
18 specifically wanted to speak with? Detective Sharp?

19 A. I can only assume so, ma'am. I advised
20 detectives he was there and then I went on about my daily
21 duties until they called me back.

22 Q. And while he was telling you all this, before
23 you even started the discussion, you reminded him that he
24 had the right to remain silent?

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

1 MR. BOSNAK: Just a few follow-up questions.

2 MS. WILLIAMS: Oh. And one other question.

3 THE COURT: One second. Ms. Williams?

4 Q. [Ms. Williams] And Mr. Bosnak asked you if
5 Mr. Hillerby was confused. Mr. Hillerby was savvy enough
6 to know that he wanted to be charged with a lessor
7 included offense if he told a different story; isn't that
8 true?

9 A. That was his statement, that he couldn't
10 understand why he wasn't being charged with a lessor
11 offense.

12 Q. Right. He wanted to get his story out because
13 he thought he could be charged with a lessor?

14 A. I would assume so, ma'am.

15 MS. WILLIAMS: Thank you.

16 RE CROSS EXAMINATION

17 BY MR. BOSNAK:

18 Q. That's just what you had assumed; correct?

19 A. Yes, sir.

20 Q. Okay. Let me ask you: how long did it take you
21 to go from Demmingway up here with Mr. Hillerby?

22 A. We didn't leave from Demmingway, sir. We left
23 from the Summerville Police Department, which is 3000
24 West -- North Second Street.

25 Q. Yes, sir.

1 A. And I would say it takes pretty much on an
2 average anywhere between twenty-five and thirty-five
3 minutes --

4 Q. Twenty-five minutes --

5 A. -- according to traffic.

6 Q. Was your car equipped with a video recorder and
7 audio?

8 A. To be honest with you, sir, I think it was, but
9 I remember it was down. But I believe it did have a video
10 and camera in it, but it wasn't functioning.

11 Q. Okay. Do you know for sure --

12 A. But I had been back and forth in a couple of
13 cars during that time frame.

14 Q. So you don't know for sure if it was functioning
15 or not? To the best of your recollection, it wasn't?

16 A. It wasn't.

17 Q. And when did you write this report? How long
18 did you have to -- after taking Mr. Hillerby back to
19 Summerville, how long was it until you wrote this report?

20 A. A matter of minutes.

21 Q. A matter of minutes?

22 A. Yes, sir. As soon as I took him back to the
23 detention center and came back, I did my -- I did my
24 report.

25 Q. Did you write it at the Summerville police

1 department?

2 A. Yes, sir.

3 MR. BOSNAK: Okay. Thank you. No further
4 questions.

5 THE COURT: Officer, you may step down. The
6 rule of sequestration has been invoked. Please do not
7 discuss your testimony with any of the parties
8 involved. Thank you.

9 THE WITNESS: Yes, Your Honor.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: Ms. Williams, how many more
13 witnesses do you have?

14 MS. WILLIAMS: Just one, Your Honor.

15 THE COURT: All right. Call your next witness.

16 MS. BIAGIANTI: Detective Gray Dixson.

17 [Whereupon, Mr. Dixson comes forward]

18 THE CLERK OF COURT: Please raise your right
19 hand. Place your left hand on the Bible.

20 [Whereupon, Mr. Dixson is duly sworn by the
21 clerk of court as follows: do you solemnly swear or
22 affirm the testimony you will give the Court in this
23 matter will be the truth, the whole truth, and nothing
24 but the truth, so help you God]

25 THE WITNESS: Yes, ma'am, I do.

1 THE CLERK OF COURT: Please be seated.

2 [Whereupon, the witness takes the witness stand]

3 THE CLERK OF COURT: State your full name, and
4 spell your last name for the record.

5 THE WITNESS: Ray Dixson. D-I-X-S-O-N.

6 MS. BIAGIANTI: Good morning, Detective Dixson.

7 THE WITNESS: Good morning.

8 - - - - -

9 RAY DIXSON,

10 Having Been First Duly Sworn,

11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. BIAGIANTI:

14 Q. Can you please tell us where you are employed,
15 in what capacity, and for how long you've been employed
16 there.

17 A. I've been employed with the Dorchester County
18 Sheriff's Office for approximately a little over ten
19 years. I worked for Summerville Police Department for
20 five years prior to that. I am currently assigned to the
21 investigative division as a detective sargent.

22 Q. And, specifically, what do you do in the
23 detective division?

24 A. I'm the polygraph examiner.

25 Q. And did you have an occasion to meet with and

1 interview the defendant in this case, Justin Hillerby?

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

3 Q. And tell us what date you did that.

4 A. I met with Justin Hillerby September 17th of
5 2008.

6 Q. And tell the Court about how you got involved in
7 this case.

8 A. Detectives from Summerville Police Department
9 called me and asked me to meet with them and Mr. Hillerby
10 for an interview, examination. Gave them a date and a
11 time, and they came up. And Mr. Hillerby came up on his
12 own, I believe, on that date.

13 Q. And you say he came up on his own?

14 A. Yes, ma'am.

15 Q. And what time was the interview supposed to
16 start that morning, approximately, if you recall?

17 A. The interview -- I usually schedule most of my
18 tests right around between 9:00 and 9:30, so that it was
19 probably scheduled for right around 9:30.

20 Q. And tell the Court what you do when you begin
21 this interview process, what type of information you get,
22 what you say to the suspect at that point?

23 A. Whenever the person I'm going to interview comes
24 in, we sit there and we talk for a couple of minutes. The
25 first thing that we get -- or the first thing that I get

1 is their basic information, their name, date of birth,
2 age, place of birth, so on and so forth. Just their basic
3 information.

4 I advise them that -- I give them a preview of
5 what we're going to do that day. I explained to him that
6 the first thing we're going to do is go over some
7 paperwork. The next thing we're going to do is we're
8 going to sit here and we're going to talk for a while.
9 And then we get into a conversation about the testing
10 procedures and process, and we go from there.

11 Q. Now, going back to this general information, I
12 know you said name, age, social security number. And you
13 get all this information from the suspect or the examinee?

14 A. Yes, ma'am.

15 Q. From his own words?

16 A. Yes, ma'am.

17 Q. And what did -- type of educational level did
18 Mr. Hillerby tell you he had?

19 A. Mr. Hillerby advised me that he -- give me a
20 second. I apologize. He had made it to the ninth grade,
21 that's his education level, but he had a GED.

22 Q. And tell us a little bit about this room that
23 you and Mr. Hillerby were in and if anyone else was
24 present during these pre-test questions.

25 A. The room is about a twelve foot by a fourteen

1 foot. It has a rather small desk in it. It has a chair.
2 On top of the desk is a computer, as well as a small box
3 which is the actual polygraph with components. Then
4 there's an additional -- I'm sorry. If I haven't said so,
5 there's a chair behind the desk that's my chair. Then
6 there's another chair, and then a smaller chair in the
7 office. There are no -- well, the windows are covered
8 with black curtains. And the reason for that is to keep
9 sound as much out of the room as I possibly can keep,
10 because during the test needs to be very little sound.

11 Q. And do you dictate where the person or suspect
12 sits at that point?

13 A. No, ma'am. When he walks in -- when the person
14 comes into the room, there are two chairs. And usually I
15 get the -- sometimes people go straight to the polygraph
16 chair and they'll sit in it. Sometimes they don't.
17 Sometimes they'll just say where do you want me to sit and
18 I tell them, whichever chair is fine.

19 Q. Was Mr. Hillerby handcuffed that day?

20 A. He was not.

21 Q. Was he brought in in handcuffs?

22 A. No, ma'am, he was not.

23 Q. To your knowledge, was he under arrest at that
24 point?

25 A. No, ma'am.

1 Q. Was he free to leave at any point?

2 A. Yes, ma'am.

3 Q. And tell us a little bit about that. Do you
4 force people to take polygraphs?

5 A. No, ma'am. Absolutely not.

6 Q. And explain that to the Court.

7 A. Basically what they do is when they first come
8 into the room to be interviewed, one of the first pieces
9 of paperwork that we cover -- matter of fact, it's right
10 after their warnings -- is they consent to interview with
11 a polygraph.

12 The first thing I tell everybody is, when we go
13 over this consent to interview, is you -- I understand
14 you're here of your own free will, you're here because you
15 want to be here; correct. And I usually get the response
16 from there. And of course if it's yes, I'm here because I
17 want to be here, then we move on.

18 If I ever hear -- or have I ever heard a person
19 say anything along the lines of, no, I don't want to be
20 here, no, I don't want to do this, in essence, the
21 interview is stopped.

22 But then we go over the reason that they're
23 there. We go over their rights under polygraph. And then
24 of course we go over our waiver and consent of rights.

25 Q. Now, when you were going over these things with

1 Mr. Hillerby, did he seem to understand your questions?

2 A. Yes, ma'am.

3 Q. Did he appear to be under the influence of
4 alcohol or drugs?

5 A. No, ma'am.

6 Q. Did he tell you that prior to this he had taken
7 some alcohol and/or drugs?

8 A. Yes, ma'am.

9 One of the questions I do ask everybody when
10 they come in, along with preliminary information, is
11 whether or not they had had any drugs or alcohol within
12 the past twenty-four hours. And when I get an affirmative
13 or a, yeah, I've done this, yeah, I've done that, I will
14 ask how much. My next question is -- well, how much, how
15 long ago, and are you still feeling the effects of it.

16 Q. And what was the answer in this case?

17 A. No, he is not feeling the effects of it.

18 And what it was was he drank a few beers and
19 took sleeping pills last night.

20 Q. So the following night?

21 A. The previous night. Correct.

22 If I ever hear anybody -- if anybody tells me
23 that they are still feeling the effects, I can't even run
24 a polygraph on them, so --

25 Q. So you were confident that he was function --

1 fully functioning, without any deterrence from the alcohol
2 or sleeping pills?

3 A. Yes, ma'am.

4 Q. And did he seem to have any physical or mental
5 disability that would inhibit his participation in this
6 interview or test?

7 A. Nothing that I saw.

8 Q. Now, you alluded to it earlier that you go over
9 some rights. Tell the Court a little bit about those
10 rights and how specifically you do that -- how you did
11 that in this case.

12 A. I did the same thing in this case I do with
13 everyone. I give the examinee, or the person that I'm
14 interviewing, the copy of the Miranda rights. I grab a
15 copy, a blank copy, of the Miranda rights and I advise
16 them, please go over each one of these with me as I read
17 them to you; if you have any questions about any of these
18 rights, ask me. Okay. And we move on.

19 I read the first right: you have the right to
20 remain silent. I then look at the person that I'm
21 interviewing and I ask them, do you understand that.
22 Yeah. And I get a yes. And so I say, okay, if you
23 understand it and you have no questions about it, please
24 put your initials to the side.

25 Q. And did he do that in this case?

1 A. He did on all rights that we reviewed.

2 Q. And let's go over those individually, just for
3 the Court's edification.

4 A. Okay.

5 MS. BIAGIANTI: And, Your Honor, can I approach
6 the witness?

7 THE COURT: You may.

8 THE WITNESS: That's the original.

9 MS. BIAGIANTI: Your Honor, I'm going to mark
10 this State's Exhibit Number 10, I believe --

11 THE COURT REPORTER: Yes.

12 MS. BIAGIANTI: -- for purposes of this hearing.

13 [Whereupon, State's Exhibit Number 10 is marked,
14 for purposes of the Jackson v. Denno hearing, by the
15 court reporter]

16 Q. [Ms. Biagianti] Detective, I'm showing you
17 State's Exhibit Number 10 for purposes of this hearing.
18 Please proceed.

19 A. All right. The first right that we go over is
20 you have the right to remain silent. The next thing is
21 anything you say can and will be used against you in a
22 court of law. The next is you have the right to talk to a
23 lawyer for advise before we ask you any questions and to
24 have him -- have him or her present with you during
25 questioning. If you have no money for a lawyer, the Court

1 will appoint one to represent you without -- I'm sorry --
2 represent you without cost to you, if you wish. If you
3 decide to answer questions now without a lawyer present,
4 you will still have the right to stop answering questions
5 at any time. You also have the right to stop answering
6 questions at any time until you talk to a lawyer.

7 The next section just below that is: I have
8 read the statement of my rights and understand what my
9 rights are.

10 At that point is when I -- we go over that part
11 and I ask him, do you have any questions about anything
12 that we've just gone over. If I hear a, no, I have no
13 questions, then I tell them, okay, would you -- if you
14 want to, please sign that line saying that you have no
15 questions, you understand your rights.

16 Q. And was that done in this case?

17 A. It was.

18 Q. And you actually had him initial each right
19 after each right was read to him?

20 A. Yes, ma'am.

21 Q. And then farther down on the page, can you
22 please tell us what that is?

23 A. It's the consent -- the consent or the waiver of
24 rights. It says: I am willing to make a statement and
25 answer questions. I do not want a lawyer at this time. I

1 understand and know what I am doing. No promises or
2 threats have been made to me and no pressure or coercion
3 of any kind has been used against me.

4 And I ask them, is all that true, do you
5 understand that. Yes. And I ask him, is all that true.
6 Do you understand that. Yes. And I ask them all, if you
7 want to continue on and you want to talk to me, then
8 please sign on that line.

9 Q. And did he do that in this case?

10 A. He did.

11 Q. Did the defendant have any trouble understanding
12 any of his rights that you just went over with us?

13 A. No, ma'am.

14 Q. Did his answers to those questions appear to be
15 rational and responsive?

16 A. Yes, ma'am.

17 Q. Again, did you or anyone in your presence
18 threaten or coerce him or promise him any hope or reward
19 to have him make a statement?

20 A. No, ma'am.

21 Q. And tell us what happened next, Detective.

22 A. After the paperwork was completed, or after the
23 Miranda was completed?

24 Q. After the Miranda was completed.

25 A. Then we go over the consent to interview. Then

1 we go over a basic questionnaire of basically his fitness
2 for polygraph, which consists of the medical
3 questionnaire, drug or alcohol use, education level, so on
4 and so forth. And then we sit there and we talk -- during
5 the Miranda and consent, the primary detective or a
6 designee, in essence, of the case -- since I don't know
7 enough about any investigation to basically conduct an
8 interview, what I do is I ask basic questions. And in
9 this case Detective Sharp was in the room during the
10 Miranda and consent.

11 Q. And Detective Sharp actually witnessed the
12 Miranda waiver form; is that correct?

13 A. Yes, ma'am.

14 Q. Now, tell us a little bit about the pre-
15 polygraph interview.

16 A. The pre-polygraph interview basically -- the
17 very first thing that we cover is I ask him questions
18 about himself: where you're from, who raised you. Just
19 general information about him or the person that I'm
20 interviewing.

21 Q. And specifically what questions did you ask him
22 about this case in the pre interview?

23 A. The only thing I said about this case was -- we
24 go over how polygraph works and how the -- certain things
25 about that.

1 Then I simply ask him, so, tell me what
2 happened. What do you think happened in this case. What
3 do you think happened to ~~VICTIM~~. And then I get responses
4 from there.

5 Q. Okay. And at some point in time, did he refuse
6 to take the polygraph test?

7 A. Yes, ma'am. Once we get through all of that,
8 then we get to the point to where I'm now going -- I'm now
9 reviewing the actual test with the person. And in this
10 case I get to the very first question. And that very
11 first question, did you inflict any injury to ~~VICTIM~~ that
12 would have caused his death, at that point Mr. Hillerby
13 decided he didn't want to take the test.

14 Q. And did he indicate that he wanted to speak to
15 you?

16 A. Well, he just continued on -- well, yes.

17 Q. And did he indicate, when he was speaking to
18 you, some of the things that happened to ~~VICTIM~~ that
19 evening at his own hands?

20 A. Yes, ma'am.

21 MS. BIAGIANTI: Your Honor, at this time I just
22 offer State's Exhibit Number 10 into evidence.

23 THE COURT: Any objection, Mr. Bosnak, for the
24 purposes of this hearing only?

25 MR. BOSNAK: No, sir [sic], Your Honor.

1 THE COURT: All right. State's 10 is into
2 evidence for the purposes of this hearing.

3 [Whereupon, State's Exhibit Number 10 is
4 admitted into evidence, for purposes of the
5 Jackson v. Denno hearing, by the Court]

6 Q. [Ms. Biagianti] And after the defendant spoke
7 to you, did you at some point leave the room and speak to
8 the detectives from the Summerville Police Department --

9 A. Yes, ma'am.

10 Q. -- about what had transpired?

11 A. Yes, ma'am.

12 MS. BIAGIANTI: Please answer any questions the
13 defense might have for you.

14 THE COURT: Mr. Bosnak?

15 MR. BOSNAK: Officer Dixson, how are you?

16 THE WITNESS: Good, sir. How are you?

17 MR. BOSNAK: Fine.

18 CROSS-EXAMINATION

19 BY MR. BOSNAK:

20 Q. Detective Sharp was in the room with you while
21 this was going on?

22 A. Yes, sir.

23 Q. And you made a statement that all polygraphs
24 have to be voluntary, don't they?

25 A. Yes, sir.

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1 Q. A couple of reasons why. First of all, you're a
2 police officer?

3 A. Yes, sir.

4 Q. You're expected to obey the law?

5 A. Yes, sir.

6 Q. And we have rights?

7 A. Yes, sir.

8 Q. And one would be the due process rights of the
9 fourteenth amendment, wouldn't it?

10 A. Yes, sir.

11 Q. Against involuntary confessions?

12 A. Yes, sir.

13 Q. We can't force a person to take a polygraph?

14 A. Correct.

15 Q. And the Miranda warnings that you give them tell
16 them they can stop at any time?

17 A. Yes, sir.

18 Q. They have the right to remain silent?

19 A. Yes, sir.

20 Q. And they can terminate the interview at any
21 time?

22 A. Yes, sir.

23 Q. Mr. Hillerby terminated the interview?

24 A. He did not terminate the interview. He said he
25 did not want to take the test.

1 Q. Okay. But that -- but the test is an interview?
2 It's questions being asked?

3 A. The test itself is when the components are
4 attached to a person and they're answering questions under
5 polygraph. The interview itself is more or less just two
6 people talking, which is what I would concede to be an
7 interview.

8 Q. But you couldn't get any results on a polygraph
9 if the person wasn't being asked questions?

10 A. Well, that's correct.

11 Q. Okay. So it's a -- you're interviewing the
12 person or you're interrogating the person?

13 A. No, sir. I'm asking simple yes or no questions.

14 Q. Again, you're asking questions to get a
15 response?

16 A. Correct.

17 Q. And that response supposedly tells whether the
18 person is being truthful or not?

19 A. Correct.

20 Q. But you do it with words -- you do it with
21 words?

22 A. Yes.

23 Q. The test is --

24 A. Yes, sir.

25 Q. -- conducted with words?

1 A. Yes, sir.

2 Q. Question?

3 A. Yes, sir.

4 Q. Answer?

5 A. Yes, sir.

6 Q. Correct?

7 Okay. So it's an interview or interrogation,
8 however you want to label it?

9 A. I label it as a test, but, okay.

10 Q. Okay. We'll say test, then. I'll use your
11 definition.

12 Mr. Hillerby stated to you that he hit the child
13 with his knee; is that correct?

14 A. That is correct.

15 Q. And he's stating to you that he doesn't know if
16 that caused the child's death or not; correct?

17 A. Correct.

18 Q. Okay. And then he wants to terminate the
19 interview, but then he wanted to speak with Detective
20 Sharp. Would that be correct?

21 A. Yes, sir.

22 MR. BOSNAK: No further questions. Thank you.

23 THE COURT: Ms. Biagianti?

24 MS. BIAGIANTI: Briefly.

25

REDIRECT EXAMINATION

1
2 BY MS. BIAGIANTI:

3 Q. Did he ever ask for a lawyer?

4 A. No, ma'am.

5 Q. Did he ever ask -- or tell you he wanted to not
6 speak with you anymore?

7 A. No, ma'am.

8 Q. And when he was telling you what happened that
9 night, he also said -- you asked him I believe if there
10 was anything else that could have caused this trauma on
11 Blaze; correct?

12 A. Correct.

13 Q. And what did he tell you about that?

14 And if you need to refresh your memory, I
15 believe it's in the second page of your --

16 A. Yes, ma'am. The examinee, during the pre-test,
17 continued the outside issues, child's death, including
18 possible drowning, his roommates, the child falling, and
19 also child's health issues.

20 Q. Did he also say he grabbed him and he may have
21 shook him a little?

22 A. Yes.

23 Q. And did he also tell you that the baby monitor
24 was loud?

25 A. Yes, ma'am.

1 Q. And did he also tell you that he didn't think
2 that the roommates did anything to the child?

3 A. Correct.

4 MS. BIAGIANTI: Thank you. Nothing further.

5 MR. BOSNAK: Just one follow-up question.

6 RECROSS-EXAMINATION

7 BY MR. BOSNAK:

8 Q. He just said he may have shook him; correct?

9 A. Yes.

10 Q. It'll be on the first paragraph near the bottom.

11 A. Yes, sir. I actually lost it and looking back
12 for it. I'm sorry.

13 [Whereupon, the witness reviews documents]

14 A. You said the first paragraph?

15 Q. [Mr. Bosnak] It's the first paragraph. It's in
16 the middle of -- it's about three sentences up from --
17 three or four sentences up from the bottom.

18 A. Could have caused the trauma -- and he said that
19 when he grabbed him, he may have -- he may have shook him
20 a little.

21 Yes, sir.

22 Q. Correct. But that -- you don't know what he
23 meant by he may have shook him a little or anything, do
24 you?

25 A. No, sir.

1 MR. BOSNAK: Thank you.

2 THE COURT: Detective, you may step down. The
3 rule of sequestration has been invoked.

4 THE WITNESS: Am I free to go, or do I need to
5 stay?

6 THE COURT: You'll need to discuss scheduling
7 with the solicitor's office.

8 Do not discuss your testimony with any of the
9 individuals involved. Thank you.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 MS. WILLIAMS: Your Honor, we don't have any
13 further witnesses for this hearing.

14 MR. BOSNAK: No witnesses, Your Honor.

15 THE COURT: No witnesses?

16 We're going to take a short recess, ten minutes.

17 [Whereupon, a recess is taken from 10:56 a.m. to
18 11:13 a.m.]

19 THE COURT: Mr. Bosnak, you have no additional
20 witnesses, is that -- or no witnesses for this hearing?

21 MR. BOSNAK: That's correct, Your Honor.

22 THE COURT: All right. I'll be happy to hear
23 from you, Ms. Williams or Ms. Biagianti, concerning
24 arguments.

25 MS. WILLIAMS: Your Honor, Mr. Hillerby gave, in

1 essence, three written confessions and one oral
2 statement to Detective Dixon. The State's position is
3 that every single one of these statements was
4 voluntarily, knowingly, and intelligently made.

5 Even though he was only in custody for the one
6 on the 18th, he was Mirandize ad nauseam. He was
7 Mirandized a total of four times. And he never waived
8 his right. He never relinquished his waiver. He
9 never, ever asked for attorneys for any of these
10 statements. In fact, he not only didn't ask for an
11 attorney, but he requested to speak to a specific
12 detective.

13 I think the case law -- not only is the
14 statement on the 18th the only statement that isn't a
15 self-serving statement, I think the case law on this
16 topic is squarely behind the State that the statement
17 on the 18th should be admitted.

18 And, Your Honor, I am handing Mr. Bosnak some
19 case law. May I approach?

20 THE COURT: You may.

21 [Whereupon, Ms. Williams proffers documents to
22 Mr. Bosnak]

23 MS. WILLIAMS: The Supreme Court recently took
24 up this issue on Montejo vs. Louisiana. And the issue
25 that the court discussed, and in so doing overruled

1 Michigan vs. Jackson, was that in a proceeding where --
2 like a bond proceeding where a defendant is just
3 summarily given counsel where he doesn't request
4 counsel, and then decides to talk to the police, that
5 that statement would not be suppressed. And as I said,
6 the Court overrules Michigan v. Jackson because in
7 Michigan v. Jackson, just as a procedure, an attorney
8 was presented or appointed to the defendant during the
9 bond hearing. And in that case the defendant decided
10 to speak to police afterwards, and the Court said that
11 that statement was not a good statement because he
12 already had counsel.

13 In this case we don't even have Mr. Hillerby
14 having counsel. Nothing was appointed. The Court has
15 the paperwork from his bond hearing. The judge goes
16 through all of his rights, talks about his right to an
17 attorney, he never requested an attorney.

18 And in this case we don't even have the facts
19 that are in Monteio vs. Louisiana. They never appoint
20 an attorney for him. He has a chance meeting with a
21 public defender in the jail and doesn't even know her
22 name. And as you can see from the other copies of
23 the paperwork that was entered as State's exhibits,
24 Mr. Hillerby does not even fill out the indigency
25 paperwork for an attorney until the 23rd of September,

1 and this statement is given on the 18th of September.

2 He begins a conversation with the person that's
3 transporting him back to the jail. He's placed inside,
4 talked to the public defender for a minute, and comes
5 out and still wants to talk to that specific detective.
6 He makes the decision to do so.

7 This issue is also covered in a South Carolina
8 case, State v. Cope, where that defendant was actually
9 approved for the public defender. He had filled out
10 his paperwork before he gave the statement, but he
11 wanted to talk to detectives. And the Court said that
12 was okay.

13 In this case he wasn't even approved yet. So
14 even if he had been approved, because he initiated the
15 contact it still would have been a statement that would
16 be admissible.

17 This defendant never invokes his right to
18 counsel. He never had an attorney before he spoke to
19 detectives on the 18th. But even if he had, even if
20 the Court finds that his two-minute meeting with
21 whatever public defender he ran into at the jail, he is
22 the one who initiates contact. He is the one that
23 requests to talk to Detective Sharp specifically.

24 Up until this point he's giving self-serving
25 statements and he thinks that if he gives this

1 statement, he is going to get charged with a lessor
2 included offense.

3 Incidentally, after he fills out his paperwork
4 on the 23rd, the Court's exhibits will show that he's
5 appointed an attorney on the 3rd of October, 2008.

6 Clearly, in each of the statements that he gives
7 he knows exactly what he's doing. By the time he gives
8 his statement on the 18th, he's been given his Miranda
9 rights three times. This is the fourth time he is
10 Mirandized. None of the times was he under the
11 influence of drugs or alcohol, he clearly understands
12 what he's doing, he has his GED, he writes the
13 statement out himself, and then answers the questions.

14 The State's position is that each of the
15 statements, the one on the 15th, the one on the 17th,
16 and especially the one on the 18th, is admissible.
17 They were voluntarily, knowingly given. He
18 intelligently waives his rights, and they should be
19 admitted.

20 THE COURT: All right. Ms. Williams, just for
21 the record, if you would please -- you have State's
22 1 through 10. Which statements, just for the record,
23 so that I can clearly delineate my ruling as to each of
24 the statements, if you could please, for the record,
25 each exhibit -- give me a brief synopsis of why they

1 are admissible.

2 MS. WILLIAMS: Yes, Your Honor. If I could just
3 approach and get --

4 THE COURT: You may.

5 MS. WILLIAMS: -- the exhibits.

6 I think they might go in descending order, so I
7 will clarify that for the record.

8 Your Honor, State's Exhibit 1 is the original
9 copy of the Miranda form for the statement given on the
10 18th. And if the Court would review State's Exhibits
11 4, 5, 6, 7, 8 and 9, I think that those exhibits, which
12 are the defendant's bond hearing and each of the things
13 the judge told him as he checked off what he was
14 telling him at the bond hearing about his rights. That
15 would be State's Exhibit 4.

16 State's Exhibit 5 is an attachment to that,
17 telling him when his bond return date is.

18 State's Exhibit 6 is a letter from the clerk
19 saying that he was approved by the public defender.

20 State's Exhibit 7 is an application that the
21 defendant filled out himself for a public defender,
22 requesting one. And that was on the 23rd of September,
23 2008.

24 State's Exhibit 8 is Mr. Bosnak entering his
25 appearance on October 21st.

1 And State's Exhibit 9 is a public defender
2 requesting Rule 5 on October 13th.

3 I think those exhibits, combined with State's
4 Exhibit 1, which is the rights form given on the 18th,
5 tell the Court that Mr. Hillerby did not have counsel.
6 It is our contention that even if he did have counsel
7 it didn't matter, because he initiated contact and
8 requested the meeting with police. But he does not
9 have counsel at this point, so the Court doesn't even
10 have to reach that question.

11 State's Exhibit 3 is the rights form filled out
12 by Detective Sharp for the statement given on September
13 17th. State's Exhibit 10 is the rights form given by
14 Detective Dixson on the 17th before he took the oral
15 statement from the defendant. And the last one is the
16 rights form for the statement given on the 18th to
17 Detective Sharp. And that would be State's Exhibit 2.

18 THE COURT: Anything further, Ms. Williams?

19 MS. WILLIAMS: No, Your Honor.

20 THE COURT: Mr. Bosnak?

21 MR. BOSNAK: Your Honor, may it please the
22 Court.

23 THE COURT: Yes, sir.

24 MR. BOSNAK: My understanding about this test is
25 it's a four-part test. The first is did Mr. Hillerby

1 makes the statements. And of course he made the
2 statements.

3 The second part of this test would be the
4 Miranda portion of this, would be did Mr. Hillerby
5 receive Miranda. And that answer to that would be yes.

6 The third part would be did he understand his
7 Miranda rights. And, Your Honor, I think we take into
8 that consideration his condition, his intelligence, and
9 different things like that. And I would say under the
10 circumstances, having a GED, ninth grade, telling the
11 officers that he did understand those, that he did
12 understand his Miranda rights. And, of course, that's
13 your ruling.

14 The last part that we would argue would be the
15 totality of the circumstances. Was this, in effect --
16 were these statements true and were -- excuse me --
17 were free and voluntarily made.

18 And, Your Honor, this is where we have the
19 problem with this issue. Mr. Hillerby originally came
20 in and gave a statement on the 15th to Detective Sharp,
21 which has no incriminating information in it
22 whatsoever. He's then asked to come in again on the
23 17th to take the polygraph. And at that time he gives
24 some answers that I don't think are technically
25 incriminating about the polygraph, and refuses it,

1 which is his right under Miranda.

2 From then he does -- which is strange, because
3 he says he doesn't want to take the polygraph but he
4 wants to talk to the detectives again. And I find that
5 kind of strange. Most defendants would say, I just
6 don't want to talk anymore; I want to talk to a lawyer.
7 But he agrees, and he talks with Detective Sharp again.

8 And Detective Sharp even stated under oath that
9 they had talked to Mr. Hillerby and had told Mr.
10 Hillerby that this might have been an accident, and
11 that he couldn't get in trouble for an accident, and
12 all they were trying to do was just trying to find out
13 what happened. That was his testimony.

14 And when you look at Officer Darling stated --
15 which to me is more of coercive. But when he talked to
16 Officer Darling, it was plain that Mr. Hillerby was
17 confused about the procedure and what was going on
18 because he had -- in his mind, he thought that he was
19 supposed to say anything that might have happened, and
20 it was an accident and people didn't get in trouble for
21 accident. That's why he was saying, look, I don't know
22 why I'm being charged with this; I think I should be
23 charged -- if anything, I should be charged with a
24 lesser offense.

25 Really, what Officer Darling should have said at

1 that time is -- he shouldn't have talked to him at all.
2 And I think those are very coercive things, talking
3 about you can tell how a -- who killed a person through
4 an autopsy, how you can't fool forensic evidence when
5 nobody knows anything about the forensic evidence at
6 that time, bringing God and religion into this and
7 saying the criminal justice system works the same way.
8 All these type of statements with a man that has never
9 been in any kind of trouble like this before, that's in
10 shock, that has also -- as the polygraph examiner just
11 said, had been drinking and taking sleeping pills the
12 night before. And nobody has ever told us exactly how
13 many sleeping pills or how many drinks Mr. Hillerby
14 had. And Detective Sharp even said he smelled the odor
15 of alcohol on his breath.

16 That was all on the 17th, and he was arrested on
17 the 17th. They took him. He found out what he was
18 being charged with. They didn't have any probable
19 cause. Let me back up. They didn't have any probable
20 cause to arrest him, until they got these statements.

21 Our contention is, like they said, a high
22 profile case, a case that doesn't happen much, a death
23 of a child in Summerville; a case, whether they want to
24 admit it or not, is something that they're looking to
25 find a defendant real quick in this case because there

1 is a lot of news media so there is an urgency to put
2 this on someone.

3 From that, after this coercive talk with Officer
4 Darling -- and I don't think he's part of this. Please
5 don't take this as him being a part of this, or trying
6 to -- they're working together, because I don't believe
7 this. But the statements and the things that he said
8 prompted Mr. Hillerby to go back and to give another
9 statement on the 18th to Detective Sharp. And, again,
10 Detective Sharp is still saying that they're talking
11 about an accident. And this is why Mr. Hillerby is
12 confused.

13 So I do say that the statement on the 18th is a
14 coerced statement because of the totality of the
15 circumstances, Your Honor. Thank you.

16 THE COURT: Ms. Williams?

17 MS. WILLIAMS: Just briefly.

18 He may not have faced a murder charge before,
19 but Mr. Hillerby was no stranger to the system. He had
20 one, two, three disorderly conducts, a driving under
21 the influence, violation of city ordinances, possession
22 of twenty-eight grams or less of hashish or marijuana,
23 public drunkenness, all of these that he went to court
24 for and was convicted for. And, clearly, these are not
25 admissible for the purposes of the trial. But to say

1 that he was inexperienced with the system I think is an
2 overstatement.

3 In fact, I think his statement to Officer
4 Darling that he doesn't understand why he's not being
5 charged with a lesser included offense shows that he
6 knows exactly what's going on. And he thinks if he
7 goes and talks to his buddy Mr. Sharp, Detective Sharp,
8 the one that he wants to talk to, he can convince them
9 to charge him with a lesser included offense. This was
10 something he wanted to do, he decided to do it, and he
11 initiated it.

12 And Officer Darling was honest to a fault. He
13 put every single thought in every single statement he
14 made in that report. Clearly, if he was not going to
15 be honest he would not have put all those things into
16 that report, because they're not all that helpful. But
17 one thing that he was very sure about on the stand was
18 that the defendant initiated the contact. He wanted to
19 talk to Detective Sharp. He wanted to talk to him over
20 the way over. After he sat in the detention center for
21 a while, while the officer made a phone call, and all
22 the way back.

23 And even if the Court were to think he was
24 trying to trick him, which we contend that he wasn't,
25 there is case law that says even if police officers

1 make misrepresentations, that it doesn't necessarily
2 make the statement inadmissible. And I would point the
3 Court to State v. Register, 23 S.C. 471, and State v.
4 Linen, 278 S.C. 175.

5 And then the other thing, just to clarify for
6 the record, Your Honor, the sleeping pills and the
7 drinking were with regard to the evening before on the
8 17th. And that's the day that Mr. Hillerby drives
9 himself up to take the polygraph. On the 15th is when
10 Detective Sharp said he's not drunk, because he can
11 spell alcohol maybe from the night before. By the time
12 we get to the 18th, he's been in jail overnight, so
13 clearly he's not intoxicated on that day. Thank you.

14 MR. BOSNAK: Your Honor, if I may respond just
15 briefly? Very quickly?

16 I think Assistant Solicitor Williams kind of
17 made my point for me that Detective Sharp is buddy-
18 buddy to Mr. Hillerby, I'm on your side, I'm going to
19 watch out for you, if it's just an accident, you know,
20 you're not going to get in any trouble about this. And
21 I think that's -- I think they answered the question.
22 And in that way, that's a form of coercion, too, like
23 I'm buddy-buddy, I'm going to help you, I'm on your
24 side, nothing is going to happen to you. These are
25 promises that are being made, or inferred promises.

1 Also, on top of this, Mr. Hillerby has a minor
2 record which is nothing but misdemeanor charges. It's
3 a lot different to be charged with misdemeanors where
4 you know all you've got to do is pay a fine and you're
5 going to go home. Everybody knows what homicide means,
6 or what murder means, and no bond means. And that was
7 my point, that Mr. Hillerby had never, ever been
8 charged with anything like this whatsoever. And he was
9 fearful, he was afraid.

10 He was locked up on the 27th. I think during
11 the trial will certainly prove that they knew they were
12 going to lock him up on the 17th. And when he gave
13 that -- when he gave -- and he had no bond, wasn't
14 going to get out of jail. And on the 18th when he came
15 back over there, that's what he tried to do, tried to
16 get a lessor charge and trying to get out because
17 that's what Detective Sharp and those had promised.
18 Thank you, Your Honor.

19 THE COURT: Based upon the testimony that the
20 Court has heard from the -- from Detective Sharp,
21 Darling and Dixson with respect to the statement given
22 on September 15th of 2008, the statements on September
23 17th of 2008, as well as the statements on -- or
24 statement on September 18th of 2008, based upon the
25 testimony, the Court must consider whether --

1 And I agree with you, Mr. Bosnak. I must think
2 of the totality of the circumstances. In doing that, I
3 need to look at Mr. Hillerby's age, his lack of
4 education, his intelligence level, as well as consider
5 whether or not Mr. Hillerby understood or was
6 intoxicated at the time that he gave the statements to
7 law enforcement.

8 Mr. Hillerby initialed the Miranda on all --
9 with regard to each of the -- each contact with the law
10 enforcement officers, indicating that he understood his
11 rights. He even indicated to Officer Darling on the
12 trip to Hill-Finklea Detention Center that he knew he
13 had the right to remain silent and he understood what
14 that meant.

15 Looking at the totality of the circumstances,
16 the Court is -- finds that the statements were
17 voluntarily, knowingly, and intelligently given; Mr.
18 Hillerby understood his rights. The fact that he has a
19 ninth grade education, the Court did consider that.
20 But the fact that he has his GED and did not seem to be,
21 confused about what was going on -- the confusion,
22 according to my understanding, of the test that was
23 given was why he wasn't being charged with a lesser
24 included crime.

25 The Court finds that there was no coercion by

1 any of the officers in any of the statements given by
2 Mr. Hillerby. The Court considered whether Mr.
3 Hillerby had been drinking. The odor of alcohol, but
4 none of the officers indicated that that impacted
5 Mr. Hillerby's understanding of the right.

6 Note your objection for the record, Mr. Bosnak.

7 MR. BOSNAK: Thank you, Your Honor.

8 THE COURT: Anything further? I understand the
9 State has two motions in limine.

10 And, Mr. Bosnak, in our pre-trial conference and
11 in chambers before coming out just now, you indicated
12 that you do not oppose the State's motion in limine.
13 Is that correct?

14 MR. BOSNAK: That's correct, Your Honor.

15 THE COURT: And with that, I have granted your
16 motion for sequestration.

17 You have one additional motion in limine; is
18 that correct?

19 MR. BOSNAK: That's correct, Your Honor.

20 THE COURT: All right. What we're going to do,
21 I'm going to go ahead -- do you wish -- do you feel
22 that that needs to be taken up at this time, Mr.
23 Bosnak, or can we address that when it becomes more
24 appropriate?

25 MR. BOSNAK: Your Honor, it's left up to you.

1 client is doing bad acts, which clearly the statute in
2 State v. Lyle prohibits. The only reason they've
3 allowed bad acts and things like that to be brought up
4 is for motive, identification, absence of mistake,
5 intent. And none of that is present. None of that has
6 anything to do with the pool incident. Thank you.

7 THE COURT: Mr. Bosnak, do you have any
8 witnesses or anything -- any other evidence you wish
9 the Court to consider, other than the statements that
10 you've just made here today? your argument here at this
11 time?

12 MR. BOSNAK: Well, Your Honor, why we're making
13 this argument is because they probably have more
14 statements and more witnesses -- and I haven't gotten
15 their witness list, so I don't know -- about this pool
16 incident and what was going on around the swimming
17 pool. And, you know, if we get into that, you know,
18 we'll be here for two weeks. And, also, I'll have to
19 bring up some type of rebuttal witnesses for it. So
20 that's one reason I would like to correct it right now,
21 if we could.

22 THE COURT: Ms. Williams, as to -- what do you
23 intend to offer to show what was happening at the pool
24 during that time?

25 MS. WILLIAMS: Your Honor, we have two witnesses

1 who will testify totally for about five minutes apiece,
2 if that, just on their observations of the defendant,
3 the statements he made to the victim, and the actions
4 he made in terms of physical actions to the victim.

5 In one of the defendant's statements he says,
6 well, he could have bumped his head at the pool and
7 says he had a bruise on his head already. So he's
8 indicating it could have been an accident at the pool.

9 It also goes to the State's theory of the case,
10 which is that Mr. Hillerby and the victim's mother got
11 into an argument about the fact that Mr. Hillerby was
12 caught in a lie and Mr. Hillerby said, fine, I'll stay
13 with the kids, then. And these are just observations
14 by two people that didn't even know the two, about the
15 way that Mr. Hillerby acted around this child, that
16 makes it evident that he doesn't want to be around this
17 child.

18 It is part of the story, and it is actions taken
19 by the defendant within hours of the proposed time of
20 death that the coroner gives. So we don't even know
21 when this child died. But this is part of the day that
22 the child was killed allegedly by the defendant. And
23 these are just two witnesses that are going to testify
24 to things they observed directly, behavior by the
25 defendant toward the victim that day.

1 THE COURT: Mr. Bosnak?

2 MR. BOSNAK: Your Honor, again, this is clearly
3 a prior bad act, just trying to make my client look
4 like a bad guy. My client, again, was under no
5 obligation to take care of those children, to do
6 anything with them. He agreed to keep the children.

7 Now, logic would dictate if he got upset and was
8 mad with the children -- they were at the pool from
9 twelve o'clock until six o'clock. If he was mad and
10 upset with the children, he could have just told the
11 mother, you're not going out tonight, I'm not staying
12 with the kids, and could have walked away and there was
13 nothing at all anybody could do about it.

14 And I find that far reaching to say that he made
15 statements and acted a certain way towards the child
16 and that translated into some type of intent or some
17 type of motive.

18 THE COURT: Mr. Bosnak, will there be evidence
19 presented that the child may have suffered an injury at
20 the pool or could have suffered the injury -- an injury
21 at the pool?

22 MR. BOSNAK: No, Your Honor. We're not making
23 that contention at all, that the child got hurt at the
24 pool. We're not making -- we won't bring that up at
25 all he got hurt at the pool. We're not going to bring

1 up at all that maybe he got some water in his lungs or
2 anything. We don't think -- we don't think that's what
3 happened to the child. We don't think that has
4 anything to do with it at all.

5 We think that's -- the only reason the pool --
6 we're interested in the pool is that the child was at
7 the pool from twelve o'clock to six o'clock and at nine
8 or ten o'clock at night he's going to be tired, as most
9 two-year-olds would be. That's all we're going to
10 bring up. We are not raising any type of defense or
11 any type of allegation that the child might have
12 slipped at the pool and hit his head and that caused
13 his death. That clearly is not what happened.

14 THE COURT: Ms. Williams, do one or both of your
15 witnesses intend to indicate or testify that there was
16 some sort of abuse or neglect at the pool?

17 MS. WILLIAMS: Your Honor, what these witnesses
18 observed goes to motive, goes to intent. It just goes
19 to the demeanor of the defendant that day. And, you
20 know, they're fact witnesses.

21 What they're -- what they observed is that the
22 child was falling into the pool repeatedly and
23 aggravating the defendant. And the things that he says
24 to the child just hours before the child's death are
25 highly relevant. They're more probative than they are

1 prejudicial. It goes to lack of accident. Because in
2 one of the statements the defendant says himself that
3 he bumped his head at the pool, indicating it could
4 have happened at the pool. So that's already out
5 there.

6 In addition to that, it's his demeanor toward
7 this child. And we would just argue that it's res
8 gestae and it goes to motive, intent, and it's highly
9 probative evidence.

10 And we would limit it to two witnesses. There's
11 eight witnesses that came forward about the way that he
12 treated this kid at the pool. And I think it's highly
13 probative of the motive and the frame of mind that this
14 defendant was in just hours before he killed this
15 child.

16 MR. BOSNAK: Your Honor, if I may?

17 THE COURT: You may, Mr. Bosnak. Thank you.

18 MR. BOSNAK: I could understand if the police
19 had been called, or DSS would have been called, or
20 there would have been some action. There was no action
21 like that, so undoubtedly it wasn't too bad.

22 The other thing is I could understand that if
23 say one of the bailiffs here, or deputies, hit me here
24 in court and I went over to his house tonight and shot
25 him, how that would be relevant because he embarrassed

1 me in front of everybody. We're talking about a two-
2 year-old child. And it's a stretch to say because you
3 got aggravated at a two-year-old child at the swimming
4 pool over something that you're going to wait until
5 9:00 or ten o'clock at night and beat him to death. I
6 mean, that's a stretch.

7 And intent -- what they're saying because he was
8 having a good time at the pool, or Justin got mad about
9 something at the pool, that's the intent on killing the
10 child. Your Honor, the evidence just doesn't show that
11 at all. And what it is is just trying to make Justin
12 Hillerby look like a bad guy because they don't have
13 any physical evidence showing Mr. Hillerby did it.
14 This is just Mr. Hillerby is a bad guy, Mr. Hillerby
15 didn't like the child and so, in other words, he must
16 have been the one that killed the child. Thank you,
17 Your Honor.

18 THE COURT: Thank you.

19 I find that based upon what the State has
20 indicated that the two witnesses will testify to, I
21 do find that that will be admissible to prove intent in
22 the absence of accident.

23 Based upon what has been presented here today in
24 the context, I am denying your motion in limine. I do
25 find that the evidence of the actions of Mr. Hillerby

1 at the pool is more probative than prejudicial to
2 Mr. Hillerby.

3 Note your objection for the record. Thank you.

4 MR. BOSNAK: Thank you, Your Honor.

5 THE COURT: Anything further, pre-trial wise,
6 Mr. Bosnak?

7 MR. BOSNAK: Nothing, Your Honor.

8 THE COURT: Thank you.

9 MS. WILLIAMS: Just for the record, Your Honor,
10 I think you covered this. But the State had filed two
11 motions in limine, one on third-party guilt and one on
12 drug use by the defendant. And it's our understanding
13 that Mr. Bosnak has stipulated to those motions in
14 limine and that he will not bring up anything to do
15 with those two topics.

16 THE COURT: Is that correct, Mr. Bosnak?

17 MR. BOSNAK: Your Honor, I'm going -- I'm going
18 to limit that. If the roommates are credible and we
19 don't have to impeach them for any reason, I'm not
20 going to bring it up. In other words, I don't plan to
21 make their drug use an issue here. But I certainly
22 have the right --

23 THE COURT: When the witnesses -- when the
24 roommates testify and if it becomes an issue, I'm
25 instructing you, Mr. Bosnak and Ms. Williams, to

1 approach the bench and we will outside -- at that time
2 perhaps it may be necessary outside of the presence of
3 the jury. But I believe that that -- based upon what
4 I'm hearing, and my understanding of the facts thus
5 far, is that that will be more appropriate once that
6 witness is on the stand.

7 MR. BOSNAK: Thank you.

8 THE COURT: Any objection to handling it that
9 way, Ms. Williams?

10 MS. WILLIAMS: No, Your Honor.

11 THE COURT: Mr. Bosnak?

12 MR. BOSNAK: Thank you, Your Honor.

13 THE COURT: And just we have had -- and I don't
14 remember the date, I did not write it down, a matter
15 about Mr. Hillerby's haircut. I notice his haircut is
16 still in the same style as it was. Just want to
17 address that matter outside of the presence of the
18 jury.

19 The jury will be here in two-and-a-half hours,
20 Mr. Bosnak.

21 MR. BOSNAK: Yes, sir [sic], Your Honor.

22 The information that we were given that day in
23 court was not correct. I've been over to the jail
24 three or four times and asked, you know, can we get him
25 a haircut, other than a buzz cut; can he get a razor --

1 I mean, I'm finding it hard to believe that he can't
2 get shaved. I mean, if nothing else, can we not get a
3 razor back there and let him shave in one of the
4 bathrooms, with people watching him, I mean, if nothing
5 else.

6 But, no, nothing was done on that. The only
7 thing that I was told was Saturday if I could have
8 found somebody to cut his hair -- he could have got a
9 haircut then, if I could have found someone. Well, I
10 don't know anybody that can come up here on Saturday
11 and cut his hair.

12 THE COURT: Well, Mr. Bosnak, we are in recess
13 in this matter until 2:30.

14 MR. BOSNAK: Yes, ma'am.

15 THE COURT: My understanding is that the jail is
16 more than willing to accommodate you, and has been
17 accommodating, and would have made arrangements to get
18 Mr. Hillerby's hair cut. I am not in the position, nor
19 do I desire to be in the position, to determine the
20 style in which Mr. Hillerby may cut his hair or that
21 the jail is instructed to cut his hair. A barber had
22 been made available. He may use it, or you can make
23 other arrangements.

24 As I indicated, the jury will be here at 2:30.
25 My understanding is that you have clothing available --

1 MR. BOSNAK: Yes, ma'am.

2 THE COURT: -- for Mr. Hillerby?

3 If there is anything further needed in that
4 area, if you'll let the Court know before the jury
5 comes.

6 Anything before we recess in this matter?

7 MR. BOSNAK: Nothing, Your Honor.

8 THE COURT: Anything before we recess?

9 MS. WILLIAMS: Nothing from the State, Your
10 Honor.

11 THE COURT: All right. If the three of you will
12 meet -- four of you, if you need -- need be. Your
13 paralegal may accompany for the conference. If you'll
14 meet with my clerk in about ten minutes just to go over
15 the preliminary matters.

16 MR. BOSNAK: Thank you, Your Honor.

17 THE COURT: All right. Thank you. We're in
18 recess in this matter.

19 [Whereupon a recess is taken from 11:48 a.m. to
20 2:31 p.m.]

21 [Whereupon, the roll is called by the clerk of
22 court]

23 [Whereupon, the jury is qualified by the Court]

24 THE COURT: All right. Ladies and gentlemen of
25 the jury panel, you have been qualified.

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Anything from the State or --

MS. WILLIAMS: Nothing from the State, Your Honor.

THE COURT: -- or from Mr. Bosnak before we proceed with the jury selection in your case?

MR. BOSNAK: Nothing, Your Honor.

THE COURT: Does your client request formal arraignment?

MR. BOSNAK: No, Your Honor.

JURY VOIR DIRE

THE COURT: All right. Ladies and gentlemen of the jury panel, we are now going to proceed into selecting the jury for the next case on the docket.

Solicitor, please call your case.

MS. WILLIAMS: The State calls docket number 2008-GS-08-2594, State vs. Justin Ryan Hillerby.

THE COURT: Mr. Bosnak, if you would please stand, introduce yourself, your client, and any persons that will be assisting you at your table throughout this trial.

MR. BOSNAK: Yes, Your Honor.

My name is Mike Bosnak. I'm a lawyer, and my office is in North Charleston, South Carolina, and I live in Hannahan.

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1 This is Justin Hillerby, the defendant. He's in
2 Summerville, South Carolina.

3 This is my paralegal, Corey Price. She lives in
4 Goose Creek.

5 THE COURT: Ladies and gentlemen of the jury
6 panel, is there any person related by blood, marriage,
7 close personal friend, ever have any business,
8 personal, or professional dealings with the defendant,
9 Mr. Hillerby? If so, please stand.

10 [Whereupon, there is no response]

11 THE COURT: Thank you. There are none.

12 Is there any member of the jury panel related by
13 blood, marriage, close personal friend, ever have any
14 business, professional, or personal dealings, or ever
15 been represented by Mr. Bosnak or his paralegal, Ms.
16 Price? If so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: Thank you. There are none.

19 Ladies and gentlemen, Mr. Hillerby is charged
20 through an indictment -- which the indictment is simply
21 the paperwork, the piece of paper, that brings us to
22 court today. Mr. Hillerby has pled not guilty to the
23 indictment for homicide by child abuse. The State
24 alleges that Mr. Hillerby did, on or about the dates of
25 September 13th, 2008, through November -- excuse me --

1 September 15th, 2008, cause the death of ~~VIOLA~~ [REDACTED]
2 [REDACTED], date of birth [REDACTED], this death
3 occurred as the defendant was committing child abuse
4 and/or neglect, and the underlying circumstances show
5 extreme indifference to human life in violation of the
6 code of laws of South Carolina.

7 Is there any member of the jury panel who knows
8 anything about this case, read, watched, listened to
9 any news accounts, had there been any about this case,
10 other than what I just read to you? If so, please
11 stand.

12 All right. Your jury number and name? Ma'am,
13 in the corner. Your jury number and name?

14 [Whereupon, there is no response]

15 THE COURT: All right. Ma'am, please have a
16 seat. I'll speak with you in private.

17 Yes, sir. Your jury number and name?

18 MR. THORNHILL: 156. Ronald Thornhill.

19 THE COURT: Yes, sir.

20 MR. THORNHILL: Saw some news accounts of it.

21 THE COURT: All right. Mr. Thornhill, is there
22 anything about you watching the news accounts that will
23 affect your ability to be fair and impartial in this
24 case?

25 MR. THORNHILL: No, ma'am.

1 THE COURT: You will be able to listen to the
2 facts as presented by the witness stand, apply the law
3 as the Court gives it, and render your verdict based
4 upon those things alone?

5 MR. THORNHILL: Yes, Your Honor.

6 THE COURT: Thank you. You may be seated.
7 Just for the record, may I have that juror's
8 number?

9 THE BAILIFF: Judge, it's number 29.

10 THE COURT: All right. Thank you.

11 And, ma'am, please come see me. And, again,
12 just as I did in the previous qualifications, I'm going
13 to give you an opportunity to come speak with me if
14 there is anything that you need to speak with me in
15 private concerning.

16 Ms. Williams, if you will please stand,
17 introduce yourself and as well as any persons that will
18 be assisting you at your table throughout this trial
19 here today or this week.

20 MS. WILLIAMS: Good afternoon. My name is Anne
21 Williams. I'm an assistant solicitor with the ninth
22 circuit, and that encompasses Charleston and Berkeley
23 County.

24 My co-counsel is Dori Biagianti. She is also an
25 assistant solicitor. We both work for Solicitor

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Scarlett Wilson, who is based in Charleston.

My investigator is Charles Harp. He works for our circuit.

And seated over here is Cassandra Williams. She is a detective with the Summerville Police Department.

THE COURT: Is there any member of the jury panel related by blood, marriage, close personal friend, had any business dealings, ever been represented by either Ms. Williams or Ms. Biagianti of the Berkeley County Solicitor's Office? If so, please stand.

[Whereupon, there is no response]

THE COURT: Thank you. There are none.

Is there any member of the jury panel who has had any business, professional dealings with Mr. Harp of the solicitor's office? If so, please stand.

[Whereupon, there is no response]

THE COURT: Thank you. There are none.

Is there any member of the jury panel who is related by blood, marriage, have any social, business, or professional relationships with officer -- excuse me -- Sargent Williams of the Summerville Police Department? If so, please stand.

[Whereupon, there is no response]

THE COURT: Thank you. There are none.

1 Is there any member of the jury panel who has
2 ever been employed by, or had any matter whatsoever
3 handled by, the solicitor's office in either Berkeley
4 or Charleston County? If so, please stand.

5 [Whereupon, there is no response]

6 THE COURT: Thank you. There are none.

7 Ladies and gentlemen, I am now going to call a
8 list of potential witnesses that may be called to
9 testify in this case. Ladies and gentlemen, if you are
10 related by blood, marriage, close personal friend, have
11 any business, personal, or professional dealings with
12 any of these individuals, please stand: Leonard
13 S ; Sheila Peck, Summerville 911 dispatch operator;
14 Brandon H ; Courtney T ; Mary Ann Bowman, with
15 the State Law Enforcement Division; Sharon S ; Eric
16 Riggins; Brandy Mihill; Amy Summers; Jennifer Angel;
17 Katie Shuler, Berkeley County Sheriff's Department;
18 Jennifer S ; Melissa Georgoulis; Officer Jason
19 Workman, with the Summerville Police Department;
20 Officer Randy Olsen, with the Summerville Police
21 Department; Blaine Locklair, with the Summerville
22 Police Department; Amy Stephens, with SLED; Patricia
23 Cooks, with SLED; Betty Butler, with SLED; Sherry
24 Brown, with SLED; Captain George Ploth, Summerville
25 Fire Department, Engineer Jacob Evans, Summerville --

1 excuse me -- Summerville Fire Department; Officer Laura
2 Sloan, Summerville Police Department; Scott Worsham,
3 with SLED; Detective Dixon, Dorchester County
4 Sheriff's Department; Officer Rick Darling, Summerville
5 Police Department; Detective Shannon Sharp, Summerville
6 Police Department; Dr. Nicholas Batalis, Medical
7 University of South Carolina; Dr. Mia Amaya, with MUSC;
8 Sargent Williams, Summerville Police Department;
9 Detective Sharp, Summerville Police Department; Dr.
10 Ronald Astroski; Dr. Elizabeth Baker Gibbs; Dr. Ricky
11 Flynn Pavinich; Serena S [REDACTED]; Laurie Shoup; John
12 Williams; Amy Summers; Eric Riggins; Joseph Stroud.

13 Any member of the jury panel related by blood,
14 marriage, close personal friend, to any of those
15 individuals? Please stand.

16 [Whereupon, there is no response]

17 THE COURT: Thank you. There are none.

18 Is there any member of the jury panel who has
19 ever been employed by, or has any relative that is
20 employed by, the State Law Enforcement Division? If
21 so, please stand.

22 [Whereupon, there is no response]

23 THE COURT: Thank you. There are none.

24 Is there any member of the jury --

25 UNIDENTIFIED: Berkeley County?

1 THE COURT: State Law Enforcement -- I'll get
2 there in just a moment.

3 Is there any member of the jury panel who has
4 ever been employed by or has a relative employed by the
5 Berkeley County Sheriff's Department, the Summerville
6 Police Department, the Summerville Fire Department, or
7 the Dorchester County Sheriff's Department? If so,
8 please stand.

9 Yes, ma'am. Your jury number and name.

10 MS. PINKNEY: Juror number 123. Eliza M.
11 Pinkney.

12 THE COURT: Yes, ma'am?

13 MS. PINKNEY: Captain Fiall.

14 THE COURT: Are you related to Captain Fiall?

15 MS. PINKNEY: Yes.

16 THE COURT: All right. And is there anything
17 about your relationship with Captain Fiall that will
18 affect your ability to be fair and impartial in this
19 case?

20 MS. PINKNEY: No, ma'am.

21 THE COURT: All right. Thank you. Your jury
22 number?

23 MS. PINKNEY: 123.

24 THE COURT: Thank you.

25 Yes, ma'am?

1 MS. PAGELS: Juror number 117. Toni Pagels.

2 My -- the father of my children, my ex-husband,
3 is a City of North Charleston police officer, but I
4 don't know anybody that you're speaking of. I don't
5 know if I --

6 THE COURT: All right. And is there anything
7 about your ex-husband being a City of North Charleston
8 police officer that will affect your ability to be fair
9 and impartial in this case?

10 MS. PAGELS: No.

11 THE COURT: Your jury number and name?

12 MS. PAGELS: 117. Toni Pagels.

13 THE COURT: Thank you.

14 Yes, ma'am?

15 MS. MCCUNE: Jury number 101, Georgia McCune.
16 My husband is a reserve deputy sheriff of Berkeley
17 County.

18 THE COURT: And what is his name?

19 MR. MCCUNE: Ron McCune.

20 THE COURT: Is there anything about your
21 husband's employment that will affect your ability to
22 be fair and impartial in this case?

23 MR. MCCUNE: No, ma'am.

24 THE COURT: Your juror number?

25 MR. MCCUNE: 101.

1 THE COURT: Thank you. Is there anyone else?

2 [Whereupon, there is no response]

3 THE COURT: Thank you. There are none.

4 Is there any member of the jury panel that
5 belongs to a civic group such as People Against Rape,
6 Parents Empowered to Save Teens, Citizens Against
7 Violent Crimes, Citizens Against -- Citizens Advocating
8 Decency and Return to Ethics? If so, please stand.

9 [Whereupon, there is no response]

10 THE COURT: Thank you. There are none.

11 THE BAILIFF: Judge?

12 THE COURT: Yes?

13 MS. ALLEN: Judge, Jury number 2. Sandra Allen.

14 THE COURT: Yes, Ms. Allen.

15 MS. ALLEN: I support and have helped the
16 Citizens Against Violent Crimes.

17 THE COURT: All right. Is there anything about
18 your involvement with that group, Ms. Allen, that will
19 affect your ability to be fair and impartial in this
20 case?

21 MS. ALLEN: I have to say there's a possibility.

22 THE COURT: All right. And will you be able to
23 listen to the facts as presented, apply the law as the
24 Court gives it, and render a fair and impartial
25 verdict?

1 MS. ALLEN: I don't -- I don't know.

2 THE COURT: Ms. Allen, and there is no right or
3 wrong answer. Both the defendant and the State deserve
4 a juror who can listen to the facts as presented, apply
5 the law as the Court gives it, and render a verdict
6 that is based upon those things. Will you be able to
7 do that, Ms. Allen?

8 MS. ALLEN: I sort of doubt it.

9 THE COURT: All right. Thank you, Ms. Allen. I
10 am going to excuse you from the trial of this case.
11 You need to remain with us. You don't have to answer
12 any questions further regarding this case. Thank you,
13 Ms. Allen.

14 Is there anyone else?

15 [Whereupon, there is no response]

16 THE COURT: Thank you. There are none.

17 Is there any member of the jury panel who has
18 served on a jury before? If so, please stand.

19 All right. I just need you to state your jury
20 number and name. Tell me the type of jury and what
21 county.

22 MR. SCHAUMAN: Number 132. It was a Berkeley
23 County, and it was a claims dispute.

24 THE COURT: All right. Thank you.

25 Yes, sir. Your jury number and name?

1 MR. MCCALL: My jury number is 100, George
2 McCall, and I have served on Berkeley County in a civil
3 suit.

4 THE COURT: All right. Thank you.
5 Yes, sir?

6 MR. MYERS: Juror number 115. I served on a
7 traffic court, traffic jury.

8 THE COURT: All right. Here in Berkeley County?

9 MR. MYERS: Yes, ma'am.

10 THE COURT: All right. Thank you.
11 Yes, sir?

12 MR. BURBAGE: Jury 23. Marion Burbage. I
13 served in Berkeley County on a civil suit.

14 THE COURT: All right. Thank you, sir.
15 Yes, ma'am?

16 MS. SPELLS: Juror number 147. Served on the
17 grand jury in Berkeley County.

18 THE COURT: And how long ago did you serve on
19 the grand jury?

20 MS. SPELLS: Five or six years.

21 THE COURT: I'm sorry?

22 MS. SPELLS: Five or six years.

23 THE COURT: Five or six years ago?

24 MS. SPELLS: Uh-huh.

25 THE COURT: All right. Thank you.

1 MR. JIAO: Jury number 81. Conrad Jiao. I've
2 been on three juries, all involving traffic accidents,
3 civil -- on civil lawsuits for Berkeley County.

4 THE COURT: All right. Thank you, sir.

5 Yes, ma'am?

6 MS. PAGELS: 117. Toni Pagels. Civil court --

7 THE COURT: Thank you.

8 MS. MEYER: 106. Gina Meyer. Civil, Berkeley
9 County.

10 THE COURT: Thank you.

11 All right. Ladies and gentlemen, just as I had
12 indicated to you before, there are some questions that
13 I have determined are of a personal nature. I do not
14 expect or anticipate that you wish to stand and answer
15 these questions, so I'm going to read a list of
16 questions. Please listen very carefully. At the end
17 of the questions I will have you come forward to speak
18 with me, if you need to answer any of these questions.

19 Have you ever been the victim of a child
20 abuse -- of child abuse, neglect; have you or a member
21 of your immediate family ever been the victim of child
22 abuse, or arrested for or convicted of child abuse,
23 negligent assault, or a death of a child; if you feel
24 because of your religious, moral or philosophical
25 beliefs that you would be unable to sit and listen to

1 the testimony presented from the witness stand, apply
2 the law as the Court gives it, and render a verdict
3 based upon those things; or if there is any reason
4 whatsoever -- based upon the questions I have asked you
5 here today, what I have indicated to you the State is
6 alleging in the indictment against Mr. Hillerby, or if
7 for any reason you do not feel, again, that this is the
8 week that you can serve on jury duty, or for any other
9 reason you need to speak with me in private, now is the
10 time to come forward.

11 THE BAILIFF: Number 52, Judge. Nancy Fogel.

12 THE COURT: Yes, ma'am. Please come forward.

13 [Whereupon, the Court, Ms. Fogel, and counsel
14 confer]

15 THE COURT: Juror 52 is excused from the trial
16 of this case. Thank you.

17 THE BAILIFF: Number 176. David Wright.

18 THE COURT: Yes, sir.

19 [Whereupon, the Court, Mr. Wright, and counsel
20 confer]

21 THE COURT: Mr. Wright will remain. Thank you.
22 Counsel?

23 [Whereupon, an off-the-record bench conference
24 is held]

25 THE COURT: Yes, sir?

1 THE BAILIFF: Number 98, Brian K. Matthews.

2 [Whereupon, the Court, Mr. Matthews, and counsel
3 confer]

4 THE COURT: Mr. Matthews is excused from the
5 trial of this case.

6 Thank you, sir.

7 MR. MATTHEWS: Yes, ma'am.

8 THE BAILIFF: Number 29, Lady M. Cedeno.

9 [Whereupon, the Court, Ms. Cedeno, and counsel
10 confer]

11 THE COURT: Juror 29 is excused.

12 THE BAILIFF: Number 54, Carolyn Ford.

13 [Whereupon, the Court, Ms. Ford, and counsel
14 confer]

15 THE COURT: Juror 54 is excused from the trial
16 of this case.

17 Yes, sir?

18 THE BAILIFF: Number 81, Conrad Jiao.

19 [Whereupon, the Court, Mr. Jiao, and counsel
20 confer]

21 THE COURT: 81 will remain.

22 Yes, ma'am?

23 THE BAILIFF: Number 101, Georgia McCune.

24 [Whereupon, the Court, Ms. McCune, and counsel
25 confer]

1 THE COURT: 101 will remain.

2 THE BAILIFF: Number 105, Debra Meara.

3 [Whereupon, the Court, Ms. Meara, and counsel
4 confer]

5 THE COURT: 105 is excused from the trial of
6 this case.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 THE COURT: Madam Clerk, please select the jury.
10 Mr. Bosnak, number of strikes?

11 MR. BOSNAK: How many, Your Honor?

12 THE COURT: Number of strikes?

13 MS. WILLIAMS: Five and ten.

14 THE COURT: Five and --

15 MS. WILLIAMS: I think it's ten and five.

16 THE COURT: Is that your understanding, Mr.
17 Bosnak?

18 MR. BOSNAK: That's my understanding, ten and
19 five. Thank you.

20 THE COURT: All right. And I will select two
21 alternates.

22 [Off the record momentarily]

23 THE COURT: Ladies and gentlemen of the jury
24 panel, the clerk of court is selecting in random order
25 the individuals who will be selected to serve as jurors

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in this case.

We have just implemented a new computer-selection process and sometimes it's a little bit slower than the old-fashioned one where we used to just have somebody stick their hand in and draw out a number. So please be patient with us. And just to alert you, that is what we are doing.

Once the jury is selected for this case, the remainder of the panel will be allowed to retire for the evening.

[Off the record momentarily]

THE COURT: Is the State ready?

MS. WILLIAMS: Court's indulgence just for one moment, Your Honor.

[Whereupon, Ms. Williams and Ms. Biagianti confer]

MS. WILLIAMS: The State is ready, Your Honor.

THE COURT: Mr. Bosnak?

MR. BOSNAK: Yes, Your Honor.

THE COURT: All right, Madam Clerk.

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1 STRIKING OF THE JURY

2 THE CLERK OF COURT: Ladies and gentlemen of the
3 jury, as I call your name please come forth and bring
4 your personal belongings with you. If I say seat the
5 juror, please have a seat in the jury box to my right.
6 If I say excuse the juror, please return to your
7 original seat.

8 Juror number 129, Cynthia Simons.

9 [Whereupon, Ms. Simons comes forward]

10 THE CLERK OF COURT: What says the State?

11 MS. WILLIAMS: Please seat the juror.

12 THE CLERK OF COURT: What says the defense?

13 MR. BOSNAK: Please excuse the juror.

14 THE CLERK OF COURT: Excuse the juror.

15 [Whereupon, Ms. Simons returns to the audience]

16 THE CLERK OF COURT: Juror number 177, Tammy
17 Wright.

18 [Whereupon, Ms. Wright comes forward]

19 THE CLERK OF COURT: What says the State?

20 MS. WILLIAMS: Please seat the juror.

21 THE CLERK OF COURT: What says the defense?

22 MR. BOSNAK: Please excuse the juror.

23 THE CLERK OF COURT: Excuse the juror.

24 [Whereupon, Ms. Wright returns to the audience]

25 THE CLERK OF COURT: Juror 156, Ronald

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Thornhill.

[Whereupon, Mr. Thornhill comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Please seat the juror.

THE CLERK OF COURT: Seat the juror.

[Whereupon, Mr. Thornhill is seated in the jury
box as a juror]

THE CLERK OF COURT: Juror 44, Steven Deese.

[Whereupon, Mr. Deese comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Please seat the juror.

THE CLERK OF COURT: Seat the juror.

[Whereupon, Mr. Deese is seated in the jury box
as a juror]

THE CLERK OF COURT: Juror 178, William Farrisior.

[Whereupon, Mr. Farrisior comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please excuse the juror.

THE CLERK OF COURT: Excuse the juror.

[Whereupon, Mr. Farrisior returns to the audience]

THE CLERK OF COURT: Juror 121, Deborah Philbin.

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[Whereupon, Ms. Philbin comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Please excuse the juror.

THE CLERK OF COURT: Excuse the juror.

[Whereupon, Ms. Philbin returns to the audience]

THE CLERK OF COURT: Juror 23, Marion Burbage.

[Whereupon, Mr. Burbage comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Please excuse the juror.

THE CLERK OF COURT: Excuse the juror

[Whereupon, Mr. Burbage returns to the audience]

THE CLERK OF COURT: Juror 21, Joaquin Bryan.

[Whereupon, Mr. Bryan comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Please seat the juror.

THE CLERK OF COURT: Seat the juror.

[Whereupon, Mr. Bryan is seated in the jury box
as a juror]

THE CLERK OF COURT: Juror 169, Manning Lee

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Watson.

[Whereupon, Mr. Watson comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please excuse the juror.

THE CLERK OF COURT: Excuse the juror.

[Whereupon, Mr. Watson returns to the audience]

THE CLERK OF COURT: Juror 61, Katrina Gethers.

[Whereupon, Ms. Gethers comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Please seat the juror.

THE CLERK OF COURT: Seat the juror.

[Whereupon, Ms. Gethers is seated in the jury
box as a juror]

THE CLERK OF COURT: Juror 111, Chad Morley.

[Whereupon, Mr. Morley comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Please seat the juror.

THE CLERK OF COURT: Seat the juror.

[Whereupon, Mr. Morley is seated in the jury box
as a juror]

THE CLERK OF COURT: Juror 172, Charlie West.

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[Whereupon, Mr. West comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Please seat the juror.

THE CLERK OF COURT: Seat the juror.

[Whereupon, Mr. West is seated in the jury box
as a juror]

THE CLERK OF COURT: Juror 35, Kent Clark.

[Whereupon, Mr. Clark comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please excuse the juror.

THE CLERK OF COURT: Excuse the juror.

[Whereupon, Mr. Clark returns to the audience]

THE CLERK OF COURT: Juror 31, Kenneth Chandler.

[Whereupon, Mr. Chandler comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Excuse the juror.

THE CLERK OF COURT: Excuse the juror.

[Whereupon, Mr. Chandler returns to the
audience]

THE CLERK OF COURT: Juror 115, Andre Myers.

[Whereupon, Mr. Myers comes forward]

1 THE CLERK OF COURT: What says the State?

2 MS. WILLIAMS: Please seat the juror.

3 THE CLERK OF COURT: What says the defense?

4 MR. BOSNAK: Please seat the juror.

5 THE CLERK OF COURT: Seat the juror.

6 [Whereupon, Mr. Myers is seated in the jury box
7 as a juror]

8 THE CLERK OF COURT: Juror 176, David Wright,
9 Sr.

10 [Whereupon, Mr. Wright comes forward]

11 THE CLERK OF COURT: What says the State?

12 MS. WILLIAMS: Please excuse the juror.

13 THE CLERK OF COURT: Excuse the juror.

14 [Whereupon, Mr. Wright returns to the audience]

15 THE CLERK OF COURT: The State has four strikes.
16 Juror 101, Georgia McCune.

17 [Whereupon, Ms. McCune comes forward]

18 THE CLERK OF COURT: What says the State?

19 MS. WILLIAMS: Please seat the juror.

20 THE CLERK OF COURT: What says the defense?

21 MR. BOSNAK: Please excuse the juror.

22 THE CLERK OF COURT: Excuse the juror.

23 [Whereupon, Ms. McCune returns to the audience]

24 THE CLERK OF COURT: Juror 24, Leanne Burriss.

25 [Whereupon, Ms. Burriss comes forward]

1 THE CLERK OF COURT: What says the State?

2 MS. WILLIAMS: Please seat the juror.

3 THE CLERK OF COURT: What says the defense?

4 MR. BOSNAK: Court's indulgence.

5 THE COURT: Yes, sir.

6 [Whereupon, Mr. Bosnak reviews documents]

7 MR. BOSNAK: Please seat the juror.

8 THE CLERK OF COURT: Seat the juror.

9 [Whereupon, Ms. Burriss is seated in the jury
10 box as a juror]

11 THE CLERK OF COURT: Juror number 10, Felicia
12 Berenyl.

13 [Whereupon, Ms. Berenyl comes forward]

14 THE CLERK OF COURT: What says the State?

15 MS. WILLIAMS: Please seat the juror.

16 THE CLERK OF COURT: What says the defense?

17 MR. BOSNAK: Please excuse the juror.

18 THE CLERK OF COURT: Excuse the juror.

19 [Whereupon, Ms. Berenyl returns to the audience]

20 THE CLERK OF COURT: Juror 46, Paula Dove.

21 [Whereupon, Ms. Dove comes forward]

22 THE CLERK OF COURT: What says the State?

23 MS. WILLIAMS: Please seat the juror.

24 THE CLERK OF COURT: What says the defense?

25 MR. BOSNAK: Please seat the juror.

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THE CLERK OF COURT: Seat the juror.

[Whereupon, Ms. Dove is seated in the jury box
as a juror]

THE CLERK OF COURT: Juror 97, Teresa Martin.

[Whereupon, Ms. Martin comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Court's indulgence.

THE COURT: Yes, sir.

[Whereupon, Mr. Bosnak reviews documents]

MR. BOSNAK: Excuse the juror.

THE CLERK OF COURT: Excuse the juror.

[Whereupon, Ms. Martin returns to the audience]

THE CLERK OF COURT: Juror 132, Ronald Schauman.

[Whereupon, Mr. Schauman comes forward]

THE CLERK OF COURT: What says the State?

MS. WILLIAMS: Please seat the juror.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Excuse the juror.

THE CLERK OF COURT: Excuse the juror.

[Whereupon, Mr. Schauman returns to the
audience]

THE CLERK OF COURT: Juror 100, George McCall.

[Whereupon, Mr. McCall comes forward]

1 THE CLERK OF COURT: What says the State?

2 MS. WILLIAMS: Please excuse the juror.

3 THE CLERK OF COURT: Excuse the juror.

4 [Whereupon, Mr. McCall returns to the audience]

5 THE CLERK OF COURT: Juror 114, Monica Mullikin.

6 [Whereupon, Ms. Mullikin comes forward]

7 THE CLERK OF COURT: Any cause for challenge

8 from the State?

9 MS. WILLIAMS: No.

10 THE COURT: What says the defense?

11 MR. BOSNAK: Please present the juror.

12 THE CLERK OF COURT: Seat the juror.

13 [Whereupon, Ms. Mullikin is seated in the jury
14 box as a juror]

15 THE CLERK OF COURT: Juror 64, Wanda Graham.

16 [Whereupon, Ms. Graham comes forward]

17 THE CLERK OF COURT: Any cause for challenge

18 from the State?

19 MS. WILLIAMS: None from the State.

20 THE CLERK OF COURT: What says the defense?

21 MR. BOSNAK: Seat the juror.

22 THE CLERK OF COURT: Seat the juror.

23 [Whereupon, Ms. Graham is seated in the jury box
24 as a juror]

25 THE CLERK OF COURT: Juror 63, Roger Gourdine.

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[Whereupon, Mr. Gourdine comes forward]

THE CLERK OF COURT: Any cause for challenge from the State?

MS. WILLIAMS: None from the State.

THE CLERK OF COURT: What says the defense?

MR. BOSNAK: Seat the juror.

THE CLERK OF COURT: Seat the juror.

[Whereupon, Mr. Gourdine is seated in the jury box as a juror]

THE CLERK OF COURT: Alternate 1. Juror number 5, Annette Bagan.

[Whereupon, Ms. Bagan comes forward]

MR. BOSNAK: Court's indulgence.

THE COURT: Yes, sir.

[Whereupon, Mr. Bosnak reviews documents]

MR. BOSNAK: Seat the juror.

THE CLERK OF COURT: I haven't asked the State.

MS. WILLIAMS: Please seat the juror.

MR. BOSNAK: Sorry. I apologize.

[Whereupon, Ms. Bagan is seated in the jury box as an alternate juror]

THE CLERK OF COURT: Juror number 89, Janet Kowal.

[Whereupon, Ms. Kowal comes forward]

THE CLERK OF COURT: What says the State?

1 MS. WILLIAMS: Please seat the juror.

2 THE CLERK OF COURT: What says the defense?

3 MR. BOSNAK: Excuse the juror.

4 THE CLERK OF COURT: Excuse the juror.

5 [Whereupon, Ms. Kowal returns to the audience]

6 THE CLERK OF COURT: Juror 147, Shirley Spells.

7 [Whereupon, Ms. Spells comes forward]

8 THE CLERK OF COURT: What says the State?

9 MS. WILLIAMS: Please seat the juror.

10 THE CLERK OF COURT: What says the defense?

11 MR. BOSNAK: Please seat the juror.

12 THE CLERK OF COURT: Seat the juror.

13 [Whereupon, Ms. Spells is seated in the jury box
14 as an alternate juror]

15 THE COURT: Any motions or matters pertaining to
16 the jury as selected, or the jury selection process?
17 From the State?

18 MS. WILLIAMS: Possibly, Your Honor. Your
19 Honor, we have a matter of law that we would like to
20 take up outside the presence of the jury.

21 THE COURT: All right. Ladies and gentlemen of
22 the jury as selected, I need you to be escorted to your
23 jury room.

24 [Whereupon, the jury exits the courtroom at
25 4:16 p.m.]

1 THE COURT: Ladies and gentlemen, the jury panel
2 that was not selected, you will have a ten-minute
3 smoke, bathroom, rest break. Do not leave. Please be
4 back in here in ten -- or outside the door in ten
5 minutes. I need all of the jurors outside of the
6 courtroom at this time. Thank you.

7 [Whereupon, the jury panel exits the courtroom
8 at 4:16 p.m.]

9 THE COURT: Y'all may be seated.

10 MR. BOSNAK: Your Honor, can Mr. Hillerby be
11 excused to go to the restroom?

12 THE COURT: Not at this time. Thank you.
13 Please be seated.

14 I can't do anything, Ms. Williams, until all of
15 the jurors are out.

16 [Off the record momentarily]

17 THE COURT: Mr. Bosnak, is your client shackled?

18 MR. BOSNAK: Yes, he is, Your Honor.

19 THE COURT: All right. Do you understand why I
20 could not allow him to be -- to go to the restroom
21 while there were jurors still in the courtroom?

22 MR. BOSNAK: Yes, Your Honor.

23 THE COURT: Mr. Hillerby, is it imperative that
24 you be excused at this time?

25 MR. HILLERBY: Yes, ma'am.

1 THE COURT: Please escort Mr. Hillerby to the
2 restroom. Please make sure -- they have assured me
3 that the jury is in --

4 Mr. Bosnak, may we proceed with this hearing
5 while your client is in the restroom?

6 MR. BOSNAK: Yes, Your Honor.

7 THE COURT: All right.

8 [Whereupon, Mr. Hillerby exits the courtroom at
9 4:17 p.m.]

10 -----
11 BATSON HEARING

12 THE COURT: All right. Ms. Williams?

13 MS. BIAGIANTI: Your Honor, I'll be handling it
14 for the State.

15 THE COURT: Thank you. Ms. Biagianti?

16 MS. BIAGIANTI: Thank you, Your Honor.

17 At this time the State would like for the
18 defendant -- we would like to have a Batson v. Kentucky
19 motion and have the defendant explain his explanation
20 of strikes. It looks like out of nine strikes he only
21 struck white -- members of the white race, I believe.

22 [Whereupon, Ms. Biagianti reviews documents]

23 MS. BIAGIANTI: Six females and three males,
24 Your Honor.

25 THE COURT: All right. Mr. Bosnak?

1 MR. BOSNAK: Your Honor, I put on three white --
2 I mean, three white females. Put on a white nurse in
3 the red sweater, one was an alternate, and then the
4 young lady with the dark hair, white female I think.
5 Could be Italian or Hispanic or something, but she's
6 white to me.

7 MS. BIAGIANTI: Your Honor, I don't think that
8 that would be the point. I think that the State is
9 entitled to an explanation as to a race-neutral reason
10 for his explanation. He had nine strikes. He would
11 have to at some point, just by the numbers, put some
12 white people on the jury. But I think it's incumbent
13 upon him to show a prima facie reason for striking that
14 particular juror.

15 And in the interim, I'm going to go through and
16 see. I haven't finished the list. But if he struck
17 similar people of a similar background --

18 THE COURT: All right. Mr. Bosnak, the State
19 has indicated that it is requesting a Batson hearing,
20 which I must give to them. You are now -- you must now
21 offer, as proponent of the strike, an explanation for
22 your strike. I need you to go through each of your
23 strikes, one through nine, and indicate to the Court
24 your reason for striking them.

25 MR. BOSNAK: Your Honor, may I be heard just a

1 minute on this?

2 THE COURT: Yes.

3 MR. BOSNAK: My understanding of Batson would be
4 that if I struck every white person. I put plenty of
5 white people on the jury. I put a couple of white men
6 on it, and a couple of white women.

7 Because I have a certain type of juror that
8 we're particularly looking for we think would be
9 favorable to our case, I don't understand how that
10 applies to Batson. I'm confused.

11 THE COURT: Mr. Bosnak, I am -- the Court is
12 requesting -- pursuant to their request for a Batson
13 hearing, I am requesting you to go through your
14 strikes. My strike sheet indicates that your strikes
15 were all of white race. I am requesting you to offer
16 an explanation for your strikes.

17 MR. BOSNAK: Court's indulgence.

18 THE COURT: Yes, sir.

19 [Whereupon, Mr. Hillerby re-enters the courtroom
20 at 4:24 p.m.]

21 MR. BOSNAK: Your Honor, one of the things with
22 Ms. Simmons, more than anything else, was age at sixty-
23 three, an ex-government worker we felt would be more
24 partial to law enforcement and to the State's case.
25 That's the reason we chose her, not to put her on,

1 because of age.

2 THE COURT: And just for the record, your client
3 is returning back in. All right.

4 MR. BOSNAK: -- would be because of age and her
5 employment, Your Honor, would be one of the reasons.

6 THE COURT: As to your number-two strike?

7 MR. BOSNAK: Your Honor, the one reason why we
8 did not choose the DHEC nurse was because in my
9 experience a lot of times with nurses, and especially
10 in this type of case, they try to solve a crime. In
11 other words, they try to figure out what's going on and
12 kind of apply their own standard instead of listening
13 to the evidence. And that's one of the problems we're
14 going to have in this case.

15 THE COURT: All right. As to juror 121, which
16 was your third strike.

17 MR. BOSNAK: Was it 131, Your Honor?

18 THE COURT: 121.

19 MR. BOSNAK: 121. Excuse me.

20 THE COURT: Which is your third strike. Is that
21 your --

22 MR. BOSNAK: Again --

23 THE COURT: -- is that what you show --

24 MR. BOSNAK: Again --

25 THE COURT: -- Ms. Biagianti?

1 MS. BIAGIANTI: His third strike was juror
2 number 121.

3 THE COURT: All right. Yes, Mister --

4 MR. BOSNAK: One thing, again, was age at fifty-
5 six years old.

6 THE COURT: All right. Juror number 23, which
7 was your fourth strike.

8 MR. BOSNAK: Your Honor, I felt that he and his
9 wife both were custodial -- custodians. And some of
10 the information in this case is going to be somewhat
11 complex on police procedures and confessions and DNA
12 evidence. And that was one of the reasons that I
13 struck him. Again, age and his occupation.

14 THE COURT: And how old is Mr. Burbage?

15 MR. BOSNAK: He's fifty-six.

16 THE COURT: All right. Next strike?

17 MR. BOSNAK: Which was our next strike, Your
18 Honor? Was the -- which one was that? our next strike?

19 THE COURT: Thirty-one.

20 MR. BOSNAK: Thirty-one?

21 THE COURT: Mr. Chandler.

22 MR. BOSNAK: Your Honor, his age and where he
23 works. He works at a bar over at Daniel Island.

24 THE COURT: And how old was he?

25 MR. BOSNAK: He's twenty-two-years old, if I'm

1 not mistaken, Your Honor.

2 And with his age and where he works, I just
3 didn't think he would be serious about the case.

4 THE COURT: All right. Juror 101?

5 MR. BOSNAK: Your Honor, she had a husband that
6 was a police officer. She also had a lot of issues.
7 I think she came up once or twice up here. She just
8 didn't seem to me like she really wanted to be on the
9 jury. And then I will strike anybody that has a --
10 in most cases, strike anybody that has a law
11 enforcement -- a family member that's in law
12 enforcement.

13 THE COURT: All right. Juror 10?

14 MR. BOSNAK: That was the nurse with DHEC, Your
15 Honor. And her husband, civil engineer.

16 THE COURT: So we had two nurses --

17 MR. BOSNAK: Yes, ma'am. I did put --

18 THE COURT: -- from DHEC?

19 MR. BOSNAK: No. That's the one nurse that we
20 struck. I did put another nurse on the jury.

21 THE COURT: You're seventh strike was juror 10,
22 Ms. Berenvi.

23 MR. BOSNAK: Yes, ma'am. That was the DHEC
24 nurse.

25 THE COURT: Well, 177: why did you strike her,

1 which was your seventh strike?

2 MR. BOSNAK: Let me go back -- we looked at the
3 wrong --

4 [Whereupon, Mr. Bosnak reviews documents]

5 MR. BOSNAK: Your Honor, she's home telecom --
6 home telephone --

7 THE COURT: And she being 177?

8 MR. BOSNAK: Yes, ma'am, 177.

9 And we do have certain phone calls and
10 recordings, and things like that. Try to keep people
11 that don't do things that are issues in the case.

12 THE COURT: All right. Juror number 97, which
13 was your eighth strike.

14 MR. BOSNAK: Worked at Gilligan's, Your Honor.
15 Again, in the bar business. And of course she's forty-
16 seven, but in the bar business, and this case does
17 involve drinking and things like that.

18 THE COURT: All right. Your number 9 strike,
19 juror 132?

20 MR. BOSNAK: Age, Your Honor.

21 THE COURT: And how old?

22 MR. BOSNAK: Sixty-eight.

23 THE COURT: All right. As to the strike of the
24 alternate, your challenge to juror 89, Ms. Kowal?

25 MR. BOSNAK: Your Honor, she's a librarian,

1 reads a lot. And to be honest with you, she's a
2 librarian, reads a lot, and would probably have ideas
3 about this and have her own ideas about this instead of
4 listening to the facts.

5 THE COURT: All right.

6 MR. BOSNAK: Also, let me say one other thing,
7 Your Honor.

8 In listening to these people and listening to
9 them talk, and their jobs and their background, I try
10 to also look at people that are going to relate to --
11 that are going to relate to what I say in my openings
12 and closings. So that -- I'll give you an example.
13 The white gentleman with the hurt hand that we sat,
14 tall, red-headed man, he's even heard things about Mr.
15 Hillerby, which certainly we probably should have
16 struck him. But he was honest enough to tell you that
17 he had heard those types of things, read the paper and
18 on the news and it wouldn't affect him. He's to me an
19 honest juror I think would give us an honest shake.
20 Those are some of this, just gut-level things.

21 THE COURT: All right. Anything further?

22 MR. BOSNAK: Nothing, Your Honor.

23 THE COURT: Ms. Biagianti?

24 MS. BIAGIANTI: Thank you, Your Honor.

25 As far as Mr. Bosnak's strikes for I believe the

1 first juror, number 129, I believe he stated age, as
2 well as number -- juror number 132, also an age. Both
3 of those were white people, Your Honor. He sat three
4 similarly-situated -- not similarly-situated. They're
5 similarly-situated in age of the black race. He sat
6 number 172, who is sixty-two; 115, who is sixty-five;
7 and number 46, who is sixty-five.

8 So he was not striking purely based on age, or
9 he would have struck those three individuals --

10 THE COURT: All right. You indicated juror 172
11 was sixty-two -- excuse me -- 176 was sixty-two years
12 of age; juror 45 is sixty-five years of age. And you
13 were speaking so quickly, Ms. Biagianti --

14 MS. BIAGIANTI: Sorry, Your Honor.

15 Number 172 I believe is sixty-two; number 115, a
16 black male, is sixty-five; and number 46, a black
17 female, is sixty-five, four, sixty-four, right around
18 there, Your Honor.

19 THE COURT: Ms. Biagianti, do you know -- can
20 you indicate to the Court what the occupation that
21 those individuals -- those three individuals are?

22 MS. BIAGIANTI: Your Honor, I believe the last
23 female I spoke of was in social work, was a student in
24 school for social work. So I would think that the same
25 analogy that he made as to the librarian, that she

1 reads a lot, would probably be applicable to this
2 student who is in social work, who I think may possibly
3 have read or will read things about child abuse, as
4 well as the librarian that he struck.

5 As far as number 115, he was a custodian, I
6 believe, which was another reason -- another reason
7 that Mr. Bosnak stated that he struck number 23,
8 because he was a custodian. And number 115 does the
9 exact same thing as number 23, who he struck. Number
10 115 works at Trident Medical Hospital and is a
11 custodian. And number 23, Your Honor, is a custodian,
12 and he's a white male.

13 THE COURT: All right. So your position, Ms.
14 Biagiante, is that Mr. Burbage and Mr. Myers, 23 and
15 115, respectively, are --

16 MS. BIAGIANTI: Similarly situated --

17 THE COURT: Similarly situated --

18 MS. BIAGIANTI: Except for race.

19 THE COURT: Mr. Bosnak struck Mr. Burbage and
20 it's your position that he struck them based solely on
21 race --

22 MS. BIAGIANTI: Yes, Your Honor.

23 THE COURT: -- is that correct?

24 MS. BIAGIANTI: Yes, Your Honor.

25 THE COURT: All right.

1 MS. BIAGIANTI: And I think the State has just
2 as much of a right to have a jury of the defendant's
3 peers, and this is clearly -- striking every white male
4 and every white female is not entitling the State to
5 the same fairness as we would give to a defendant.

6 THE COURT: Mr. Bosnak?

7 MR. BOSNAK: I'm outraged by that statement,
8 Your Honor, because she's saying that a black person
9 cannot give a white defendant -- that a black person
10 will give a white defendant some type --

11 THE COURT: Mr. Bosnak, we need to focus on --

12 MR. BOSNAK: Well, that's what she's saying,
13 Your Honor.

14 THE COURT: Mr. Bosnak, I need for you to
15 explain to me and give to me a race-neutral reason
16 why you sat Mr. Meyer but struck Mr. Burbage.

17 MR. BOSNAK: Your Honor, I put white males on
18 the jury. There are white males on that jury.
19 Again --

20 THE COURT: The test here today, Mr. Bosnak --
21 they are challenging your strikes. You need to provide
22 to me a reason why you sat a similarly-situated
23 individual, same age and occupation, and the only
24 difference, according to the State, is that there is a
25 difference in the race. I am requesting that you

1 indicate to me a race-neutral reason for striking, that
2 you did not strike based on disparate treatment.

3 MR. BOSNAK: I did not, Your Honor. I put
4 people on the jury that I looked at, that I heard them
5 speak and talk, that I felt comfortable talking to, and
6 that was the only reason that I put them on the jury,
7 Your Honor, and I --

8 THE COURT: Mr. Bosnak, specifically, you said
9 that the reason you struck Mr. Burbage was because of
10 his age and because of his occupation. Mr. Meyer is
11 older than Mr. Burbage. I need for you to indicate to
12 the Court, if you can, a reason, a race-neutral reason,
13 for striking --

14 MR. BOSNAK: Your Honor, Mr. Myers is younger.
15 He's fifty-five years old, and he looked younger than
16 that to me, than Mr. Burbage. Mr. Burbage is how old?
17 Sixty-two. That's the reason why. It was just because
18 I got a different feel. I had no idea how this was
19 going to shake out. I just had a better feel for that
20 gentleman. This is not an exact art. And I think the
21 jury is very representative of all races and sexes.

22 THE COURT: All right. Ms. Biagianti, it is
23 your burden. I'll give you the final word.

24 MS. BIAGIANTI: Your Honor, I'm not going to
25 address Mr. Bosnak's comments. But I would say number

1 55, Mr. Myers, custodian, Burbage, number 62, also
2 custodian. Those are -- I'm sure we could go down the
3 list and find a few age different. But he said age.
4 Age is the reason why he also struck number 129, and
5 she is sixty-three, but yet he sat a sixty-five-year-
6 old in -- 115, Mr. Andre Myers -- excuse me -- number
7 111, who's a white male, as well as number 46, who's a
8 black female and she's sixty-five, Your Honor. So his
9 race neutral -- those aren't -- generalizations about
10 an entire group is not sufficient.

11 I'll have you look at Pevton vs. Pierce, which
12 is 329 S.C. 51. And he is not giving an articulable
13 reason, which the State has not showed an alternate
14 juror that was put there because of race. Everything
15 that he has stated, either age or occupation, the State
16 has shown that he sat someone in the same age and same
17 occupation of a different race. And every item he
18 stated is not a race-neutral reason. And he's the one
19 who has to make the -- even though it's my burden --
20 prima facie showing to the Court of why he struck those
21 people.

22 THE COURT: All right. And then it is up to the
23 Court to determine whether or not the reason given is
24 so fundamentally implausible as to constitute mere
25 pretext. Is that correct, Ms. Biagianti?

1 MS. BIAGIANTI: Yes, Your Honor.

2 THE COURT: Based upon the totality of the
3 circumstances presented here, as the Court has reviewed
4 the entire record, as well as the credibility and
5 demeanor of the strike proponent, I do not feel that
6 the State has met it's burden. Primarily, I looked to
7 the fact that Mr. Thornhill, a white male of basically
8 the same age, was seated. The reasons given by Mr.
9 Bosnak for striking the jury, the jurors, the
10 particular jurors, appear to be race-gender neutral,
11 and I deny your motion to -- I deny your Batson motion.
12 The jury will remain as seated.

13 You, I believe, Ms. Biagianti, have articulated
14 clearly for the record for any further purposes.

15 MS. BIAGIANTI: Thank you, Your Honor.

16 THE COURT: Anything before I bring back in this
17 jury?

18 MS. WILLIAMS: Nothing further from the State.

19 MR. BOSNAK: Nothing, Your Honor.

20 THE COURT: And hold on one second.

21 It is impossible now to begin. What time do you
22 wish to begin in the morning?

23 MS. WILLIAMS: The State is ready whenever the
24 Court wants to. Nine o'clock?

25 MR. BOSNAK: Same thing, Your Honor. 8:30, nine

1 o'clock. Whenever you want to see us.

2 THE COURT: I have another matter unrelated to
3 this case at nine o'clock. I anticipate that is going
4 to take an hour, so I will have the jury return at
5 10:00 and we will begin promptly at 10:00.

6 Are there any other motions or matters that we
7 need to address this evening?

8 MS. WILLIAMS: Only, Your Honor, that Mr. Bosnak
9 has stipulated to the SLED chain and so we will not be
10 presenting any chain of evidence for the evidence.
11 It's going to be discussed by the forensic scientist.

12 THE COURT: Is that correct, Mr. Bosnak?

13 MR. BOSNAK: That is correct, Your Honor.

14 THE COURT: All right. Thank you.

15 MS. WILLIAMS: And one other thing he's also
16 stipulated to. There's a picture of the victim, ~~VICTIM~~
17 [REDACTED], that we are going to be introducing into
18 evidence, and we also want to use it in our opening.
19 Ordinarily, we can't use something that, you know,
20 we're going to introduce into evidence in our opening
21 before it's been introduced. But rather than put a
22 different picture in --

23 THE COURT: Are you objecting to the picture?

24 MR. BOSNAK: No, ma'am.

25 THE COURT: All right.

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MS. WILLIAMS: Thank you.

THE COURT: And let's bring in the jury panel.

Mr. Hillerby, I need for you to remain seated.

[Whereupon, the jury panel enters the courtroom at 4:40 p.m.]

THE COURT: Ladies and gentlemen of the jury, this concludes your service for the day. You will need to call back tomorrow afternoon after 6:00 p.m. to receive further instructions for the week. So you are done for today. You do not have to report here tomorrow. Please make sure that you call back after 6:00 p.m. to the jury hotline to receive further instructions for the remainder of the week.

Does any juror have any question as to what you are to do tomorrow?

[Whereupon, there is no response]

THE COURT: Thank you. Y'all have a wonderful evening. Thank you for being in my courtroom, and thank you for your service to Berkeley County. You are excused.

[Whereupon, the jury panel is excused and exits the courtroom at 4:41 p.m.]

THE COURT: All right. Ma'am, I need you to step on outside.

Please bring in the jury. Please rise for the

1 jury.

2 [Whereupon, the jury enters the courtroom at
3 4:44 p.m.]

4 THE COURT: Thank you. Please be seated.

5 Ladies and gentlemen of the jury, you have been
6 selected as the jury in this matter. And just a few
7 preliminary matters before we recess for the evening.
8 Due to the lateness of the hour, we are not going to
9 begin the trial of this case tonight.

10 When you walk into the courtroom, out of your
11 respect for your new position as judges of the facts in
12 this case -- and I will give you more information
13 regarding that. But out of respect for your new
14 position as judges of the facts, when you walk into the
15 courtroom and when you exit, all members of the
16 courtroom will rise and remain standing until all of
17 you are seated. So please come in and take your seats.

18 The two alternates, you need to -- you can
19 switch back and forth, but I need for the two of you to
20 remain over there so that I know that you are my
21 alternates. All right?

22 Mr. Gourdine, you have been selected as the
23 foreperson for this jury. I will give you further
24 instructions regarding that tomorrow during my opening.
25 What that basically means is you are in charge of

1 writing the verdict for the jury, as well as the jury
2 spokesperson here in court. So if you feel that we
3 need to take a break, your members need to alert you
4 and then you alert the bailiff. And you will be the
5 spokesperson here in court.

6 Mr. Gourdine, when we return tomorrow, I need
7 you to take the position at the end, and you have that
8 assigned seat.

9 The rest of you may sit wherever you choose to
10 sit, with the exception of those three seats.

11 Ladies and gentlemen, we will break for this
12 evening. You need to return to your jury room at 10:00
13 a.m. in the morning. I have matters unrelated to this
14 case, that were previously scheduled, that I must
15 handle unrelated to this case. Please make sure that
16 you are in your jury room no later than 10:00 a.m. We
17 cannot begin until all of you are here.

18 Ladies and gentlemen, please remember do not
19 read, watch, listen to, any news accounts regarding
20 this case should there be any. Do not do any
21 independent investigation regarding this matter.

22 Ladies and gentlemen, you have not been given
23 the oath, nor have you been given the instructions, the
24 Court's instructions, but let me advise you that
25 everything you hear from -- and base your decision on

1 in reaching your verdict must come from the witness
2 stand and the exhibits, if any, that are presented.

3 Do not discuss this case amongst yourselves or
4 with anyone when you go home this evening. I'm sure
5 that your significant other or friends or family
6 members are going to want to know what you are -- which
7 case you are trying and listening to. You may not
8 discuss this case with anyone, and that includes fellow
9 jurors.

10 You may not discuss this case with any of the
11 individuals involved in this case. They have all been
12 instructed not to speak with you. So if you see them
13 in the parking lot when you are leaving today and they
14 don't even talk to you, they are not being rude. They
15 are merely following the Court's instructions.

16 Ladies and gentlemen, do not read, watch, listen
17 to, any news accounts regarding this case. I know I am
18 repeating myself. Do not do any independent
19 investigations.

20 Please be back in your jury room at 10:00 a.m.
21 I will see you in the morning. Please have a restful
22 and wonderful evening.

23 Please rise for the jury.

24 Thank you. You are excused.

25 [Whereupon, the jury exits the courtroom at

1 4:47 p.m.]

2 THE COURT: Thank you. Be seated.

3 Any motions or matters from the State outside
4 the presence of the jury?

5 MS. WILLIAMS: We have a small scheduling issue,
6 Your Honor. We have a SLED witness, scientist, who
7 supposedly has to be out of here by 10:30. Her
8 supervisor can testify, Robin Taylor. The other one is
9 going to a conference in Seattle. But her name wasn't
10 read to the jury. If Mr. Bosnak doesn't object to
11 Robin Taylor testifying, we can ask this jury if
12 anybody knows her tomorrow. Surely -- you know, we
13 have two alternates. Surely there won't be anybody
14 that can't be fair and impartial because they happen to
15 know Robin Taylor. I don't know if Mr. Bosnak had an
16 objection. Otherwise, we may just not call her.

17 THE COURT: Mr. Bosnak --

18 MR. BOSNAK: No, I don't have any objection to
19 that. If the person is going to testify to the same
20 thing and they have the qualifications, I don't have
21 any objection.

22 THE COURT: All right. Thank you.

23 Any other motions or matters from the State?

24 MS. WILLIAMS: Nothing, Your Honor.

25 THE COURT: Any motions or matters --

1 MR. BOSNAK: Nothing from the defense, Your
2 Honor.

3 THE COURT: And just so the record is clear, it
4 appears to the Court -- I have not been advised, but
5 just visually it appears to the Court that Mr. Hillerby
6 during the lunch break received a haircut and a shave.

7 Is that correct, Mr. Bosnak?

8 MR. BOSNAK: Yes, Your Honor.

9 THE COURT: All right. Are there any motions or
10 matters or anything regarding Mr. Hillerby's personal
11 appearance?

12 MR. BOSNAK: No. No, Your Honor. We've got him
13 all set in clothes and stuff. Thank you.

14 THE COURT: And Mr. Hillerby is in custody so we
15 do not need to address bond or anything of that nature;
16 is that correct?

17 MR. BOSNAK: That's correct, Your Honor.

18 THE COURT: All right. Anything before we break
19 for the evening hour? Please be prepared to begin with
20 openings at 10:00 a.m.

21 MS. WILLIAMS: We will, Your Honor. Thank you.

22 THE COURT: Mr. Bosnak?

23 MR. BOSNAK: Yes, Your Honor.

24 THE COURT: All right. We're in recess.

25 [JURY TRIAL ADJOURNS AT 4:50 P.M.]


C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Monday, February 22, 2010.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 21st day of August, 2010.



Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

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PROCEEDINGS

1
2 THE COURT: Any matters before we bring in the
3 jury?

4 MS. WILLIAMS: Yes, Your Honor. We just have
5 one more stipulation.

6 Mr. Bosnak has stipulated that while each of the
7 two tapes that the State is going to introduce -- and
8 this is all pending on authentication -- while they're
9 being played, that a transcript will be handed out to
10 the jury for a demonstrative aid. Those will be
11 collected after the tape is finished and will not be
12 introduced as evidence. Only the tape will be
13 introduced as evidence, and the transcripts will not be
14 allowed to go back to the jury.

15 THE COURT: Mr. Bosnak?

16 MR. BOSNAK: That's fine, Your Honor, where the
17 jurors can have a full understanding of what's being
18 said.

19 THE COURT: All right. Any objection to
20 allowing the jurors to take notes throughout the trial?

21 MS. WILLIAMS: None from the State.

22 THE COURT: Mr. Bosnak?

23 MR. BOSNAK: Nothing from the defense, Your
24 Honor.

25 One thing I would like to say is when we're

1 working PowerPoint, when the prosecution finishes,
2 before I get up please take whatever they have up on
3 the screen off. And we'll do the same thing. And I'm
4 going to do that. Just don't want any pictures left up
5 on the screen drawing attention.

6 THE COURT: All right. Any problem with doing
7 that, Ms. Williams?

8 MS. WILLIAMS: None at all.

9 THE COURT: All right. Thank you.

10 MR. BOSNAK: Thank you, Your Honor.

11 THE COURT: Any other matters? Any additional
12 matters?

13 MS. WILLIAMS: No, Your Honor.

14 MR. BOSNAK: Thank you, Your Honor.

15 THE COURT: Let's bring in the jury.

16 [Off the record momentarily]

17 THE COURT: Please rise for the jury.

18 [Whereupon, the jury enters the courtroom at
19 10:04 a.m.]

20 THE COURT: Good morning, Mr. Foreman, ladies
21 and gentlemen of the jury. Once again, I welcome you
22 to my courtroom.

23 I'm Judge Kristi Harrington, and the case that
24 we are about to try is the case of the State vs. Justin
25 Ryan Hillerby.

1 Before we begin this trial, I want to tell you
2 that this trial probably will be different from what
3 you might expect. Many people do not have the chance
4 to attend actual court sessions as you are doing now.
5 Most people think from watching televisions or movies
6 or reading books that trials are always full of high
7 drama, intense action, and riveting circumstances.
8 While all of these things may be true at times, please
9 remember that this trial is not for your entertainment.
10 It is a fundamental part of our democracy. It is a
11 search for the truth in an effort to make sure that
12 justice is done between the parties before the Court
13 here today. Searching for the truth is often slow,
14 repetitive, and deliberative.

15 This courtroom is a place of honor, dedicated to
16 the protection and preservation of citizens' rights
17 through what many have called the greatest justice
18 system ever created. The attorneys that appear before
19 you are advocates for the parties that they do
20 represent, but, first and foremost, they are officers
21 of this court. They are sworn to uphold the integrity
22 and fairness of our judicial system and to help you in
23 the search for the truth. You should expect them to be
24 professional and competent and ethical in the
25 representation of their client's interest.

1 Madam Clerk, please swear the jury.

2 THE CLERK OF COURT: Ladies and gentlemen of the
3 jury, please stand and raise your right hand to be
4 sworn.

5 [Whereupon, the jury is duly sworn by the clerk
6 of court as follows: you shall well and truly try and
7 true deliverance make between the State of South
8 Carolina and the defendant at the bar, whom you shall
9 have in charge, and a true verdict render according to
10 the evidence, so help you God]

11 [Whereupon, jurors respond]

12 THE CLERK OF COURT: Please be seated.

13 [Whereupon, jurors comply]

14 THE COURT: Thank you, ladies and gentlemen, for
15 accepting the important responsibility of jury service
16 and for your contribution here today, and the remainder
17 of the week, to our justice system.

18 What I will say now is intended to serve as an
19 introduction to the trial of this case. These remarks
20 are not a charge on the law in this case. I will
21 instruct you on the law applicable to this case at the
22 end of the trial before you retire to consider your
23 verdict. This is merely an explanation of the
24 procedure that we will follow throughout the trial of
25 this case so that you may better understand what is

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happening.

The defendant is charged, by an indictment filed in this court, with the crime of homicide by child abuse, the elements which will be explained to you later. The indictment is simply the charge by which the case is brought into this court. It is not in any sense evidence of the allegations that it contains. The defendant has pled not guilty to this indictment. The State therefore has the burden of proving each of the elements of the indictment beyond a reasonable doubt. It will be your duty, ladies and gentlemen, to decide whether the State has met that burden.

Your purpose here as jurors is to find and determine the facts. You are the sole judge of the facts in this case. If at any time I make any comment regarding the facts, you must disregard it. You are to determine the facts from the testimony you hear and from the other evidence introduced in court here this week. It is up for you -- your decision to determine the inferences which you feel may be properly drawn from the evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously, because ordinarily there is no way to correct an erroneous determination of the facts by a jury.

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1 On the other hand, and with equal emphasis, the
2 same law that makes you the judges of the facts in this
3 case makes me the judge of the law. The law as given
4 by this Court is the only law that you may consider.
5 You must accept it and follow it, even though you may
6 disagree with it. I cannot tell you what I think the
7 facts are, and you cannot disagree with me about what
8 the law is or what the law should be. Your job is to
9 take the law as I give it to you, apply it to the facts
10 as you find them from the testimony of the witnesses
11 and any other evidence that may be introduced. After
12 doing that, you will render a verdict, a true and just
13 verdict, under the solemn oath that you just took as
14 jurors.

15 Until I advise you to begin your deliberations,
16 you must not discuss this case with anyone. That
17 includes your fellow jurors, your family members,
18 friends, or anyone involved in this case. This
19 includes discussions face to face, maybe perhaps by
20 telephone, e-mail, any internet blogs. As our
21 technology increases, I always have to increase and
22 include certain other communications, methods of
23 communications.

24 But the important thing is that you cannot
25 discuss this case with anyone until you are told to do

1 so by the Court. You must not discuss it with anyone
2 except for your fellow jurors in the jury deliberation
3 room, once I give you the indication that you may do
4 so.

5 As I indicated to you last evening, do not think
6 that any of the individuals involved in this case are
7 being rude. They are merely following the Court's
8 instruction not to talk to you.

9 During the trial, as I indicated last evening,
10 do not read, listen to, watch any news reports, should
11 there be any concerning this case. You must not
12 consider anything that you may have read or heard about
13 this case prior to or outside of this courtroom,
14 whether before or during the trial. It is important
15 that you keep an open mind and not decide any issue in
16 this case until all of the evidence has been presented,
17 the parties have made their closing arguments, and I
18 have instructed you on the law in this case.

19 It is your solemn responsibility to determine
20 the guilt or innocence of the defendant, and your
21 verdict must be based solely on the evidence as it is
22 presented to you in this trial and on the law as I
23 instruct you during and at the close of the trial.

24 In just a moment the solicitor will make what is
25 called an opening statement in which the solicitor will

1 explain to you the issues in this case, or at least
2 what the solicitor thinks the issues are. The attorney
3 for the defendant may also make an opening statement,
4 although he is not required to do so. What the
5 attorneys tell you during their opening statements is
6 not to be considered in any way as evidence in this
7 case. It is only the attorneys' contention as to what
8 they believe the issues are.

9 The evidence in this case will be presented to
10 you by the testimony of sworn witnesses from the
11 witness stand, as well as any exhibits that may be
12 introduced into evidence.

13 From time to time you may hear one of the
14 attorneys say something like, Your Honor, I have a
15 question of law or a matter of law to discuss with you,
16 or may we approach the bench. Or I might find it
17 necessary to excuse you from the courtroom. The reason
18 for this is because you are the judges of the facts in
19 this case. Sometimes when I am discussing matters of
20 law with the attorneys, it may be necessary for me to
21 make a comment regarding the facts of this case. And
22 as the law indicates, I am not supposed to tell you
23 what I think the facts are in this case so I will
24 excuse you from the courtroom while these discussions
25 take place so that in no way my comments will influence

1 you.

2 In determining what the true facts are in this
3 case, you must decide whether or not the testimony of
4 the witnesses is believable. It will be my
5 responsibility to rule as a matter of law as to whether
6 certain testimony is admissible at all. But once the
7 testimony is admitted, whether or not you believe it is
8 solely for you to determine.

9 In determining whether to believe a witness, you
10 have the right to consider the interest of any witness,
11 the bias of any witness, the prejudice of any witness,
12 the opportunity for that witness to have seen the
13 matters and things about which the witness may testify,
14 as well as the way the witness acts on the witness
15 stand. You have a right to consider anything that is
16 in the record that will help you evaluate the testimony
17 of the witnesses. That means it is your duty to pay
18 close attention to the witnesses, to observe the
19 witnesses, to listen to the witnesses, and to pay close
20 attention to the attorneys and to the Court.

21 Please do not let your thoughts wander, but give
22 strict attention to the testimony in this case so at
23 the end of all the testimony, after the arguments of
24 counsel and the charge on the law by the Court, you
25 will be in a position to determine what the facts are

1 and to apply the law to those facts.

2 It will be your added duty, Mr. Foreperson, to
3 act as the jury spokesperson here in court and to also
4 write the verdict. I will give you further
5 instructions on that additional duty when I instruct
6 you on the law applicable to this case.

7 I will -- you will be allowed to take notes
8 during this case. The bailiff will give you your
9 notepads once I finish my instruction. But I always
10 caution jurors that just as some of us were better
11 note-takers in school than others, the notes are for
12 your use. One juror's notes are no more accurate or
13 important than any other jurors. I also caution you
14 when you are taking notes sometimes you may be looking
15 down to write. You may miss what is happening on the
16 witness stand or before you. So with those cautionary
17 notes about the note-taking, you will be allowed to
18 take notes throughout the progress of this trial.

19 Madam Bailiff, if you will please give the
20 jurors their notepads.

21 [Off the record momentarily]

22 THE COURT: Ladies and gentlemen, just for
23 scheduling: we typically take a -- we will begin
24 normally in the mornings between 9:00 and 9:15. We
25 will take a mid-morning break, and break as close to

1 12:00 as possible, considering the scheduling of the
2 witnesses and where we are in the witnesses' testimony.
3 We will break as close to 5:00 as possible.

4 And, Mr. Foreman, I recall that there was a
5 juror that had some childcare issues so if that becomes
6 an issue, if you will please let me know what time we
7 need to break if we need to break earlier than that.
8 All right?

9 Please give your attention to the attorney for
10 the State as she gives her opening statement.

11 MS. WILLIAMS: Thank you, Your Honor. May it
12 please the Court, counsel.

13 - - - - -
14 OPENING STATEMENT

15 MS. WILLIAMS: Two people know what happened to
16 VICTIM [REDACTED] on the final hours of his life. Two
17 people. One of them is VICTIM [REDACTED]. He will never be
18 able to tell you what happened to him. The other one
19 is the person that beat him to death, the defendant,
20 Justin Hillerby.

21 Unfortunately, you will hear evidence of
22 statement after statement after statement that Justin
23 Hillerby gave after the death of this child. You will
24 hear witnesses from law enforcement, people he knew,
25 people he didn't know, tell you what he said. They

1 will describe his demeanor. And this evidence is the
2 most compelling evidence you will hear in this trial,
3 spoken by the only other person that was there during
4 the death of this child.

5 Now, on the evening of September 14th, 2008,
6 Mr. Hillerby and the mother of this child, who was his
7 girlfriend, had just gotten back from a day at the
8 pool. They had been at the pool all day drinking, and
9 he got a telephone call from a friend of his who wanted
10 him to go out and party. Ms. S intercepted the
11 call and said it was her time to go out, it was his
12 turn to watch the kids that night. So he was left home
13 with the children.

14 She had an eight-year-old daughter named Serena,
15 and twenty-two-month-old ~~VICTIM~~, and she went out with
16 these friends. She left the home about six o'clock,
17 returned about 2:00 a.m., intoxicated, had an argument
18 with a couple that was renting a room in the home,
19 roommates, and checked the monitor, nothing on the
20 monitor, the baby monitor was quiet, and went to bed.

21 In the meantime, Serena S [REDACTED], the eight-year-
22 old child that was in the home, went to bed about 8:30
23 that evening. The roommates, Eric Riggins and Brandi
24 Mihill, who rented a room in this home, came home about
25 8:30 or nine o'clock. They were probably the last two

1 people to see this child alive. When they saw the
2 child, he was behaving normally. He looked like he had
3 been crying. And you will hear them testify about the
4 demeanor of the child and how he was acting.

5 Now, the State has to prove all the elements of
6 homicide by child abuse beyond a reasonable doubt. We
7 welcome that burden. In this case we will prove all of
8 the elements of that crime. Homicide by child abuse
9 has three components: one is the State must prove that
10 Justin Hillerby caused the death of a child under the
11 age of eleven. That means you must find that he caused
12 the death of ~~VICTIM~~ [REDACTED]. And ~~VICTIM~~ [REDACTED] was under
13 the age of eleven when he died. Secondly, that while
14 committing this -- when he died, he was committing
15 child abuse, that the death was caused by child abuse.
16 And, lastly, that this death occurred under
17 circumstances manifesting extreme indifference to human
18 life.

19 Now, ~~VICTIM~~ [REDACTED] died -- and you will hear
20 evidence from medical personnel -- from what they call
21 blunt-force trauma to the head. And as we said before,
22 he cannot speak. He cannot give a statement. But the
23 evidence left behind on his body will speak. And when
24 you hear about the injuries inflicted on this child
25 that caused his death, you will see that it's extreme

1 indifference to human life.

2 Now, you're going to hear evidence from lots of
3 different people, fact witnesses, people that observed
4 the people and events around this evening. You're
5 going to hear forensic evidence, DNA specialists,
6 medical personnel, pathologists, forensic pediatrician,
7 all kind of evidence. The Summerville Police
8 Department did a very extensive investigation.

9 But the most important thing that you bring to
10 this trial today is common sense. This is not a CSI
11 mystery. The most important thing you bring is common
12 sense. Because the thing that will convince you that
13 Mr. Hillerby killed this child are the words that he
14 spoke, his own statements. Thank you.

15 THE COURT: Mr. Bosnak?

16 MR. BOSNAK: May it please the Court.

17 - - - - -
18 OPENING STATEMENT

19 MR. BOSNAK: Ladies and gentlemen of the jury,
20 now for the other side of the story. On September the
21 15th, 2008, about 9:40 -- about 10:40 in the morning,
22 Justin Hillerby is awakened by Jennifer S
23 screaming. He runs to where she is. She's in the
24 bedroom of her twenty-month-old son, VICTIM [REDACTED]. As
25 you saw on the screen, a beautiful child. And the

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1 child was dead. In other words, the child, she's
2 turned him over. There's blood out of the child's
3 mouth. Justin checks the child. The child is cold to
4 the touch, and the child is still. That's where Justin
5 Hillerby's nightmare starts, right there.

6 What you're going to hear in this case is what
7 happened. And what you're going to hear is that there
8 was somebody in this house all the time that Justin
9 Hillerby was taking care of both children, Serena
10 S [REDACTED] and VICTIM [REDACTED]. As the solicitor said, they
11 went to the pool that day. They got to the pool at
12 about twelve o'clock in the afternoon. They stayed at
13 the pool all day. When they got home, it was around
14 6:00, 6:30 in the evening. Now, remember, this is
15 September the 14th, still warm.

16 The mother, she jumped in the shower because she
17 was going to go out that night. She took a shower,
18 took off, got out of the house I'm going to say 6:00,
19 6:30, somewhere around that time. Justin cooked
20 supper, fixed dinner, for VICTIM and for Serena, fed
21 them. At about that time, sometime around eight
22 o'clock, the roommates Brandi and Eric come in. They
23 come in the house. Serena goes to bed about eight
24 o'clock. Justin has fed both children.

25 The roommates come in. They're both going to

1 testify that VICTIM was over in the corner crying. He
2 was okay, no blood, nothing like that, and he was all
3 right. He was crying. And they asked him, why is
4 VICTIM crying. And they said -- Justin said, he spilled
5 my drink and I put him over in the corner for timeout.
6 They went to their bedroom and watched TV the rest of
7 the evening. They might have come back out and in,
8 because one of them's relative's car didn't crank, and
9 they had left the car over there at this home and they
10 were trying to help them get it cranked where they
11 could take it and move it.

12 Justin puts this child to bed at about ten
13 o'clock. He states that he's coming out of one of the
14 bedrooms and the child is coming around the corner,
15 coming around, and he hits the child with his leg,
16 knocking the child on the floor. Tells the child, come
17 on, get up, walk it off. He feels like, again, it's
18 9:30, quarter to 10:00, the child is just tired. He's
19 been outside all day playing in the pool. Tells him to
20 get up, walk it off.

21 He goes back in the living room. The child
22 comes back in the living room and plays on what we call
23 a futon. Justin has cooked him some corn-dog bites and
24 he's eating corn-dog bites, and the little boy wants
25 some. So he puts him up in a highchair and gives the

1 little boy some corn dogs and one of these little
2 cartons with juice in it. I don't know exactly what
3 you call it. And puts those up.

4 And the little boy, really not hungry, he's
5 starting to nod off. Justin changes the little boy's
6 diapers, puts his jumpsuit on, the little pajamas with
7 the feeties in them, and puts the child in bed. And
8 then he goes back out and lays down on the couch and
9 goes to sleep.

10 When the mother comes in, she comes in about
11 1:00, some time like that, gets him up, tells him to go
12 to bed. And then I don't know what she does, but she
13 does get in an argument with the roommates, they say
14 about 1:40 in the morning, over rent and say she's
15 intoxicated.

16 Now, ladies and gentlemen, please, I beg of you,
17 anything that you do, please listen to this case. It's
18 very, very important. There are two different stories.
19 We don't have to prove who did this. This is not a
20 who-done-it. Okay? We don't have to prove that. I
21 just have to prove beyond -- they have to prove beyond
22 a reasonable doubt that Justin Hillerby sitting there,
23 that he did this. Okay?

24 Now, there's no physical evidence that Justin
25 Hillerby hurt this child at all. There's no DNA, there

1 is no blood on Justin Hillerby. There's nothing to
2 show -- they didn't take pictures of his hands to show
3 cuts or bruises. They didn't take pictures of his
4 knees to see if he hit the child so hard that it could
5 have bruised him. There's nothing like that.

6 What they've done is they've taken statements.
7 They continuously interrogated Mr. Hillerby over a
8 three-day period. And they took statements, and they
9 took statements, and they took statements out of
10 context. They lied to Mr. Hillerby, the police, about
11 what they were there for and what they were talking to
12 him about, and that they were only there to help him
13 and that's all they were there for. And you're going
14 to hear all that. And then what they do is they take
15 bits and pieces of things out of context, and that's
16 what they call statements. There is no statement from
17 Mr. Hillerby that he completely writes out telling
18 everything what happened in a chronological order.
19 There's nothing like that.

20 Also, you're going to hear other things from
21 other people, and it's bits and pieces of what people
22 heard or thought they heard. That's all the evidence
23 they're going to have against Mr. Hillerby.

24 Again, please listen. Thank you.

25 THE COURT: Call your first witness.

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MS. WILLIAMS: Thank you, Your Honor. Leonard

S

If you'll just come up here, Mr. S.

[Whereupon, Mr. S. comes forward]

THE CLERK OF COURT: Please raise your right hand. Place your left hand on the Bible.

[Whereupon, Mr. S. is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you will give the Court in the trial of this case will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: I do.

THE CLERK OF COURT: Please be seated.

[Whereupon, Mr. S. takes the witness stand]

THE CLERK OF COURT: State your full name, and spell your last name for the record.

THE WITNESS: Leonard George S.

S-

MS. WILLIAMS: Good morning, Mr. S.

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1 LEONARD G. S

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. What is your relationship to the victim in this
7 case? *VICTIM*

8 A. I'm maternal grandfather.

9 Q. So your daughter is who?

10 A. Jennifer S

11 Q. And she is the mother of *VICTIM*.

12 A. Yes, she is.

13 Q. And where are you from?

14 A. Originally from Pitman, New Jersey.

15 Q. How long have you been here in South Carolina?

16 A. Five years.

17 Q. What made you and your family move down to the
18 south?

19 A. I was getting ready to retire, and we sold our
20 house in New Jersey, and we got the chance to put down
21 payments on two houses.

22 Q. And who would the other house be for?

23 A. For Jennifer.

24 Q. And at that time did Jennifer have a child?

25 A. She had Serena S [REDACTED].

1 Q. But was ~~Victim~~ born yet?

2 A. No, he was not.

3 Q. Where did you work?

4 A. I worked for WRH [phonetic] Systems out of
5 Classtat, New Jersey.

6 Q. What did you do for them?

7 A. I was a conveyor installation foreman.

8 Q. How many years did you work for them?

9 A. Thirty-seven years.

10 Q. And then did you continue that work when you
11 moved down here?

12 A. Yes. I did for a while.

13 Q. And so you and your wife moved down here and
14 bought Jennifer a house close by?

15 A. Yes.

16 Q. How did the daily arrangement work between the
17 two families?

18 A. Well, Jennifer was working to go ahead and pay
19 off the mortgage, so she was working in the photography
20 studio at Walmart in Goose Creek. And she worked
21 sometimes morning shift and sometimes afternoon shift
22 until at night, and so we took care of Serena. And then
23 when ~~VICTIM~~ came along, we took care of him, also, while
24 she was working.

25 Q. How often would you see the children?

1 A. Averaged about six days out of seven, or five
2 out of seven sometimes.

3 Q. So almost every day?

4 A. Yes.

5 Q. I'm going to show you a picture.

6 MS. WILLIAMS: Your Honor, I'm going to show
7 Mr. Bosnak what has been marked as State's Exhibit 1.

8 [Whereupon, Ms. Williams proffers documents to
9 Mr. Bosnak]

10 [Whereupon, Mr. Bosnak reviews documents]

11 MS. WILLIAMS: May I approach, Your Honor?

12 THE COURT: You may.

13 Q. [Ms. Williams] Mr. S I would like you
14 to look at this picture and tell me what this picture
15 is of.

16 A. That's my grandson.

17 Q. When you say it's your grandson, is that *vicini*?

18 A. Yes, it is.

19 Q. Do you know when this picture was taken?

20 A. I think it was three days before he died.

21 Q. And would you say that's an accurate depiction
22 of the way that he looked three days before he died?

23 A. Oh, yes.

24 MS. WILLIAMS: Your Honor, we would offer
25 State's Exhibit 1 into evidence.

1 MR. BOSNAK: Without objection, Your Honor.

2 THE COURT: State's 1 into evidence without
3 objection.

4 [Whereupon, State's Exhibit Number 1 is admitted
5 into evidence by the Court]

6 MS. WILLIAMS: Permission to publish?

7 THE COURT: You may.

8 Q. [Ms. Williams] Now, are there any bruises or
9 marks on VICTIM's face in the picture?

10 A. [No response]

11 Q. Do you remember his face being bruised?

12 A. I don't see any, and I don't remember him having
13 any, no. He had a little bit of Eczema, but that was well
14 taken care of with whatever the doctor gave him. My wife
15 and I would put it on him when necessary, and Jennifer,
16 too.

17 Q. And if he had bruises all over his face three
18 days before his death, you would notice that?

19 A. Definitely.

20 Q. What kind of child was VICTIM? What was he like?

21 A. Very happy, playful. He enjoyed being with us
22 and mom, especially his sister.

23 Q. How far away were the two homes from each other?

24 A. Four blocks.

25 Q. Four blocks.

1 MS. WILLIAMS: Your Honor, I'm going to show
2 Mr. Bosnak what's been marked as State's Exhibit 2.

3 [Whereupon, Ms. Williams proffers documents to
4 Mr. Bosnak]

5 [Whereupon, Mr. Bosnak reviews documents]

6 MS. WILLIAMS: Mr. S , if you could just
7 talk into that microphone, or maybe move it a little
8 closer.

9 Your Honor, may I approach?

10 THE COURT: You may.

11 Q. [Ms. Williams] Can you tell me what this is a
12 picture of?

13 A. That's a picture of Jennifer's house.

14 Q. And is that an accurate depiction of her house?

15 A. Oh, yes.

16 MS. WILLIAMS: Your Honor, at this time we would
17 offer State's Exhibit 2.

18 MR. BOSNAK: Without objection, Your Honor.

19 THE COURT: State's 2, without objection, into
20 evidence.

21 You may publish.

22 MS. WILLIAMS: Thank you, Your Honor.

23 [Whereupon, State's Exhibit Number 2 is admitted
24 into evidence by the Court]

25 Q. [Ms. Williams] What was the address of her

1 house, Mr. S. ?

2 A. [No response]

3 Q. What was her address?

4 A. [REDACTED], in Summerville.

5 Q. Is that in Berkeley County?

6 A. Yes.

7 Q. Now, when was the last time that you saw *VICTIM*
8 alive?

9 A. The Sunday before he died Jennifer called up the
10 house and asked for swimmie diapers. And we had some, so
11 I brought them over to the pool and walked up to the
12 fence. I didn't go inside. And she came over and *VICTIM*
13 came over, and I gave her the swimmie diapers and told him
14 that I couldn't come right now and he sort of I guess
15 understood and -- because he wasn't -- he was a very smart
16 child I think. And then I went ahead and went back home.

17 Q. Did he appear to be behaving normally at the
18 pool?

19 A. Yes.

20 Q. And who was at the pool with your daughter and
21 *JUSTIN*, if you remember?

22 A. Justin was there. Justin Hillerby.

23 Q. Okay. Do you remember anybody else?

24 A. No.

25 Q. And how long had you known Justin at this time?

1 A. I think a little over six months.

2 Q. How long had he lived with your daughter and
3 your grandchild?

4 A. About that same time.

5 Q. Six months?

6 A. About, yes.

7 Q. Do you see Justin Hillerby in the courtroom?

8 A. Yes, I do.

9 Q. Can you please point him out and tell us what
10 he's wearing?

11 A. He's wearing a suit with a black -- black suit
12 with the yellow and stripe tie, sitting between the two
13 other people.

14 Q. Thank you.

15 MS. WILLIAMS: Please -- Your Honor, please let
16 the record reflect that the witness has identified the
17 defendant, Justin Hillerby.

18 THE COURT: It will reflect.

19 Q. [Ms. Williams] So when you saw him at the pool,
20 was this a Sunday?

21 A. Yes.

22 Q. Okay. Was that the 14th of September?

23 A. Yes.

24 Q. And did you hear from your daughter on the 15th
25 of September?

1 A. I just finished cutting the grass and walked
2 inside. And my wife told me that Jennifer called and she
3 can't understand, she's hysterical, and something happened
4 over there. So I went ahead and put a shirt on, and
5 grabbed my keys and my wallet, and I drove over to see
6 what the problem was.

7 Q. And what happened when you got there? What did
8 you see?

9 A. Jennifer was sitting on the front lawn,
10 hysterical, crying. I asked her what happened and she
11 said, he's dead. And I said, who's dead. And she said,
12 VICTIM. And I just ran inside the house. The door was
13 open. I ran inside the house. To my recollection, Justin
14 was on the phone. And I just went into VICTIM s room. I
15 don't know why I knew he was in there, but I went in
16 there. And he was laying in his crib on his back --

17 Q. Do you need to take a minute, Mr. S ? There
18 are some tissues right here.

19 MS. WILLIAMS: Your Honor, may I approach?

20 THE COURT: You may.

21 MS. WILLIAMS: Some tissues right there.

22 A. I went ahead and I touched his chest to see if
23 he was breathing. And I didn't get anything there, so I
24 was going to pick him up and try to give him some CPR.
25 His arm was like this [indicates] on the mattress, so I

1 tried to move his arm. And his arm was stiff. And then I
2 touched his -- I touched his hand, and it was cold and
3 dry, and I knew he was dead.

4 Q. [Ms. Williams] What did you do next?

5 A. I started to walk out of the room and the
6 paramedics came down the hallway and asked where he was,
7 where the person was, the child was, and I just pointed at
8 the room and I walked out.

9 Q. And what happened after you walked out?

10 A. I was very upset. And my wife just got there
11 and she said, what happened, and either I or Jennifer, I'm
12 not sure, said that he's dead. And she dropped the phone
13 and went down to her knees. And we tried to help her a
14 little bit. And then the police came, and they went ahead
15 and said that nobody can go back into the house.

16 Q. And what was Justin doing? Were you -- did you
17 make any observations about his behavior? Do you remember
18 how he was acting?

19 A. I never saw him crying or anything. He sort of
20 just -- I think he was trying to help Jennifer a little
21 bit, but I didn't see any great emotions or anything like
22 that.

23 Q. Did he ever, to your knowledge, require any kind
24 of medical help or -- if you know.

25 A. Yes. What happened was, you know, the police

1 were there for a little bit, and then they went ahead and
2 they separated Jennifer and Justin. And he was standing
3 in front of his van in the driveway, and all of a sudden
4 he went down on his knees. The paramedics were still
5 there. In fact, I think they were just getting ready to
6 go. So they came over and asked if they could help him,
7 and I believe he just said that he wasn't feeling good
8 and, no, he didn't need any help.

9 Q. Okay. And at some point were Justin and
10 Jennifer both taken from the scene?

11 A. Yes.

12 Q. Okay. Now, what is your other grandchild's
13 name?

14 A. Serena.

15 Q. And how old is she?

16 A. She's nine years old.

17 Q. Did you see her that day?

18 A. Yes, I did.

19 Q. Can you tell me about that?

20 A. We asked Sargent Williams, because she was there
21 at the case, at the residence, if we could go pick her up.
22 And she said yes. My wife wanted to stick around to try
23 and see ~~VICTA~~ be taken out. So after a while I went ahead
24 and went back to the house and changed, put a shirt on,
25 actually.

1 Q. Why did you have to go put a shirt on?

2 A. When Justin came out of the house he didn't have
3 a shirt. And when they were going to take him down to the
4 police station I said, here, take my shirt, because he
5 didn't have a shirt. I figured it was the right thing to
6 do.

7 Q. So you -- Sargent Williams told you you could go
8 get Serena?

9 A. So I went back to the house and got a shirt.
10 And my wife went ahead and called the school and said that
11 I was picking her up. So I went ahead and went to the
12 school at Sangaree. And I walked in and signed her out.
13 And she said, what's going on, and I said, well, it's a
14 hot day and instead of riding on the hot bus I figured I
15 would pick you up and you can go ahead and come home in
16 the air-conditioned truck.

17 So -- and then we went ahead and we drove home.
18 And I got into the driveway, and the school called and
19 they told me that they wanted to have Serena brought back.
20 And I said why. And they said, the police are here. I
21 said, well, let me talk to the police. But they wouldn't
22 let me, as far as I remember, talk to the police or
23 anything. They just wanted the person at the school to go
24 ahead and talk to me.

25 My wife just drove into the driveway. So we

1 knew we had to take her back, but she didn't know her
2 brother was dead. So we took her -- we took her into the
3 house, and we sat down on the couch. And she could
4 already sense that something was wrong. And then we told
5 her God took ~~WOM~~ up to heaven. And she let out a
6 scream, so we comforted her. We let her go ahead and get
7 herself calmed down.

8 And then we told her that because of what
9 happened, the police want to talk to her back at school.
10 So we went ahead and we put her in the truck, my SUV, and
11 we drove out to school, myself and my wife and Serena.
12 And when we got there, we were escorted over to a
13 conference room. And inside the conference room was -- I
14 believe it was two people from DSS, and I think there was
15 two police, and somebody from the school.

16 Q. Did they take custody of Serena?

17 A. At first they went ahead and took her into
18 another room and they talked to us about that they had to
19 go ahead and take her, DSS had to take her.

20 Q. Because the investigation was still ongoing as
21 far as what happened to ~~VICTIM~~?

22 A. Yes.

23 Q. So how long was Serena in foster care?

24 A. About two weeks.

25 Q. Did you get to tell her that she would come back

1 home?

2 A. When they were walking her out, we all walked
3 together. And I got down on my knees and I promised her
4 that I would go ahead and get her back as soon as
5 possible; I didn't know if it was going to be tomorrow or
6 whatever; she would definitely come back to the house.

7 Q. So eventually did DSS do home studies or some
8 kind of evaluations to place the child back with you?

9 A. Yes.

10 Q. And Jennifer was actually charged criminally for
11 what happened at the pool; is that true?

12 A. Yes.

13 Q. And she's still facing charges with regard to
14 the events at the pool --

15 A. Yes.

16 Q. -- is that true?

17 To your knowledge, is Jennifer charged with
18 anything having to do with VICTIM's death?

19 A. No.

20 Q. So because Jennifer was charged criminally for
21 what happened to [phonetic] the pool, how long was Serena
22 out of her custody?

23 A. Serena couldn't talk, write, or see her mother
24 for almost a year. Yeah, it was just about a year.

25 Q. And you and your wife were the -- well, not the

1 foster parents. But you were the custodians --

2 A. The caretaker --

3 Q. -- at that time?

4 A. Yes.

5 Q. And did Jennifer have to complete a number of
6 classes and steps in order to get her back?

7 A. Yes.

8 Q. And did she get her back?

9 A. Yes.

10 Q. Now, getting back to the days following ^{Victim's}
11 death, did you have an opportunity to observe the
12 defendant, Justin Hillerby?

13 A. I saw him at the pool, yes.

14 Q. No. I mean the days after ^{VICTIM} died.

15 A. Oh. After the police were done with them,
16 I'm -- I don't know if the police were still at the house,
17 but they came back over to our house at some time and --

18 Q. Was anyone arrested on the day that ^{VICTIM} died?

19 A. Excuse me?

20 Q. Was anybody arrested on the day that ^{VICTIM} died?

21 A. No.

22 Q. Okay. So when you say they came back over to
23 your house, who are you referring to?

24 A. Jennifer and Justin.

25 Q. And what was the environment like at your house

1 at that time?

2 A. We were pretty much in shock. We had a grandson
3 that was dead, and we had a granddaughter that was taken
4 away.

5 Q. And were there people -- how many people would
6 you say were around the home and --

7 A. Monday is a bad time to go ahead and say ask any
8 questions. Really, Monday was -- I know some friends came
9 over and like brought some food and stuff like that.

10 Q. And what was -- how was Justin acting?

11 A. I never saw any emotions. Just -- he was just
12 pretty much sitting there, I guess, you know, with
13 Jennifer and trying to I guess console her.

14 Q. And did he ever tell you anything about how
15 ~~VICTIM~~ was injured?

16 A. On Monday, no.

17 Q. Did he tell you anything about how ~~VICTIM~~ was
18 injured the next day?

19 A. Well, first of all, they brought over some
20 paperwork on secondary drowning. I believe Justin got
21 that from somebody on his side of the family. And then
22 Tuesday they were over at the house, also. And people
23 were coming in and out, but I can't really remember
24 exactly who. But towards the end of the night, Justin
25 started to say that they were fooling around and ~~VICTIM~~

1 went ahead and ran into his knee.

2 Q. And did he say when ~~Victim~~ ran into his knee what
3 happened?

4 A. He went ahead and said that he fell backwards.
5 And I guess ~~victim~~ was looking at him -- up at him, or
6 something, and he said, suck it up, and then they just
7 went on from there.

8 Q. So he said suck it up when -- after the child
9 fell at that point?

10 A. That's what I heard, yes.

11 MS. WILLIAMS: Court's indulgence for just a
12 second.

13 [Whereupon, Ms. Williams and Ms. Biagianti
14 confer]

15 MS. WILLIAMS: No further questions. Please
16 answer any questions the defendant might have.

17 THE COURT: Mr. Bosnak?

18 MR. BOSNAK: Thank you, Your Honor.

19 Mr. S , do you need any water or anything?

20 THE WITNESS: No. I'm all right. Thank you.

21 CROSS-EXAMINATION

22 BY MR. BOSNAK:

23 Q. Mr. S , how many grandchildren do you have?

24 A. Nine.

25 Q. Nine.

1 In South -- they all live in South Carolina?
2 A. No. Two in Atlanta, four in Boca Raton, two in
3 Orlando.

4 Q. And Jennifer and her two children, they were the
5 only ones living in South Carolina with y'all?

6 A. Yes.

7 Q. And they were living four blocks away --

8 A. Yes.

9 Q. -- you said?

10 You love your daughter a great deal, don't you?

11 A. Yes.

12 Q. And you loved your grandchildren a great deal,
13 too, didn't you?

14 A. Yes.

15 Q. And you would do anything for them, wouldn't
16 you?

17 A. Take care of them in any way I can.

18 Q. That's what I was asking. Take care of them any
19 way you could.

20 And try to protect them in any way you could,
21 too, wouldn't you?

22 A. Yes.

23 Q. You wouldn't let anything harm them if you could
24 prevent it, would you?

25 A. I would not.

1 Q. The only other question is you did let Jennifer
2 and Justin come over to your house I think because of the
3 police and maybe there was a lot of news coverage about
4 this?

5 A. Yes.

6 Q. And Justin stayed with Jennifer, trying to
7 console her, until he was arrested for it. Wouldn't that
8 be correct?

9 A. He was with her, yes.

10 MR. BOSNAK: Thank you. No further questions
11 right now.

12 THE COURT: Ms. Williams?

13 MS. WILLIAMS: Nothing further, Your Honor.

14 THE COURT: Mr. S , you may step down.

15 Thank you.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

18 MS. WILLIAMS: Your Honor, we may -- may we
19 release Mr. S from his subpoena so he can remain
20 in the courtroom?

21 MR. BOSNAK: That's fine, Your Honor.

22 THE COURT: Mr. S , you may remain in the
23 courtroom, but you may not discuss your testimony.

24 Thank you.

25 Please call your next witness.

1 MS. WILLIAMS: Ms. Peck, if you could just come
2 up to here and sit in this chair up here.

3 [Whereupon, Ms. Peck comes forward]

4 THE CLERK OF COURT: Please raise your right
5 hand. Place your left hand on the Bible.

6 [Whereupon, Ms. Peck is duly sworn by the clerk
7 of court as follows: do you solemnly swear or affirm
8 the testimony you will give the Court in the trial of
9 this case will be the truth, the whole truth, and
10 nothing but the truth, so help you God]

11 THE WITNESS: Yes, ma'am.

12 THE CLERK OF COURT: Please be seated.

13 [Whereupon, Ms. Peck takes the witness stand]

14 THE CLERK OF COURT: State your full name for
15 the record, and spell your last name.

16 THE WITNESS: My name is Sheila Peck. P-E-C-K.

17 - - - - -

18 SHEILA PECK,

19 Having Been First Duly Sworn,
20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Ms. Peck, can you tell us your occupation?

24 A. I'm a 911 dispatcher for the town of
25 Summerville.

MIA PERRON, CCR, CVR-CM

-45-

1 Q. And were you a 911 dispatcher on September 15th,
2 2008?

3 A. Yes, ma'am.

4 Q. How long have you been there in Summerville?

5 A. Two years.

6 Q. What are all of your present duties? What do
7 you do as a dispatcher?

8 A. You answer calls and dispatch the calls to law
9 units and fire units.

10 Q. And did you get a call from [REDACTED]
11 on September 15th, 2008?

12 A. Yes, ma'am.

13 Q. Do you know what time the call came in?

14 A. It came around 10:45.

15 Q. What was the subject of the call? What kind of
16 call was it?

17 A. I got a call stating that there was an infant
18 and they needed help. And I then asked what was going on.

19 Q. And as a result of this call, did you take some
20 action?

21 A. Yes, ma'am.

22 Q. Okay. What was that?

23 A. I immediately dispatched out fire units, and
24 advised my supervisor that I needed law units in route, as
25 well.

1 MS. WILLIAMS: Your Honor, I'm going to show
2 Mr. Bosnak what has been previously marked as State's
3 Exhibit 19. It is a tape. May I approach?

4 THE COURT: You may.

5 Q. [Ms. Williams] Ms. Peck, have you ever seen
6 this before?

7 A. Yes, ma'am.

8 Q. Have you listened to this before today?

9 A. Yes, ma'am.

10 Q. Have you listened to this tape from beginning to
11 end?

12 A. Yes, ma'am.

13 Q. And what is it a tape of?

14 A. It's a tape of a 911 call that I received on
15 that date.

16 Q. And is it a fair and accurate recording of that
17 tape in its entirety?

18 A. Yes, ma'am.

19 Q. Has it been altered or changed in any way?

20 A. No, ma'am.

21 MS. WILLIAMS: Your Honor, at this time we would
22 offer State's Exhibit 19.

23 MR. BOSNAK: Without objection, Your Honor.

24 THE COURT: State's 19 into evidence without
25 objection.

1 [Whereupon, State's Exhibit Number 19 is
2 admitted into evidence by the Court]

3 MS. WILLIAMS: Permission to publish?

4 THE COURT: You may publish.

5 MS. WILLIAMS: Your Honor, at this time, while
6 Mr. Harp is getting the tape ready, I am going to hand
7 out transcripts of the tape to the jury, with the
8 Court's permission.

9 THE COURT: Mr. Bosnak, you have no objection to
10 the transcript?

11 MR. BOSNAK: No, ma'am. It's just a transcript.

12 THE COURT: All right. If you'll please hand it
13 to the bailiff.

14 MS. WILLIAMS: There should be fourteen copies.

15 [Whereupon, the bailiff proffers documents to
16 the jury]

17 MS. WILLIAMS: Tell us when you are ready,
18 Mr. Harp.

19 THE COURT: Do you have one for the Court,
20 Ms. Williams?

21 MS. WILLIAMS: Yes, Your Honor. May I approach?

22 THE COURT: You may.

23 [Whereupon, Ms. Williams proffers documents to
24 the Court]

25 MS. WILLIAMS: Since it's been stipulated to, I

1 was trying to open it for you but --

2 [Whereupon, State's Exhibit Number 19, 911 tape,
3 is played for the jury from 11:00 a.m. to 11:02 a.m.]

4 Q. [Ms. Williams] Ms. Peck, you said you
5 dispatched -- who specifically did -- what agencies,
6 specifically, did you dispatch to the scene?

7 A. We dispatched Summerville Police Department
8 officers, originally dispatched I think two units to begin
9 with because of the nature of the call, and then the other
10 dispatcher dispatched fire units for first responders.

11 Q. And why are fire units sometimes responded to
12 calls of this type? It's not fire.

13 A. They are first responders, so they were -- they
14 respond to all EMS calls to assist before the ambulance
15 gets there.

16 Q. Are they trained in CPR and other --

17 A. Yes, ma'am.

18 MS. WILLIAMS: No further questions. Please
19 answer any questions the defense might have.

20 MR. BOSNAK: Your Honor, no questions.

21 THE COURT: Thank you. Ms. Peck, you may step
22 down.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 MR. BOSNAK: Before we call the next witness,

MIA PERRON, CCR, CVR-CM

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1 may we approach without the jury being in here?

2 THE COURT: Approach.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 [Whereupon, Court's Exhibit Number 1 is marked
6 by the court reporter]

7 MS. WILLIAMS: Brandon Ha [REDACTED].

8 MR. BOSNAK: Your Honor, just on the record I
9 renew my objection.

10 THE COURT: And your objection is noted for the
11 record and --

12 MR. BOSNAK: Thank you, Your Honor.

13 THE COURT: -- and for the reasons articulated
14 pre-trial.

15 MR. BOSNAK: Thank you, Your Honor.

16 MS. WILLIAMS: Mr. Ha [REDACTED], if you could just come
17 through here and go up to the witness stand.

18 [Whereupon, Mr. Ha [REDACTED] comes forward]

19 THE CLERK OF COURT: Please raise your right
20 hand. Place your left hand on the Bible.

21 [Whereupon, Mr. Ha [REDACTED] is duly sworn by the clerk
22 of court as follows: do you solemnly swear or affirm
23 the testimony you will give the Court in the trial of
24 this case will be the truth, the whole truth, and
25 nothing but the truth, so help you God]

1 THE WITNESS: Yes, ma'am.

2 THE CLERK OF COURT: Please be seated.

3 [Whereupon, Mr. H [REDACTED] takes the witness stand]

4 THE CLERK OF COURT: State your full name, and
5 spell your last name for the record.

6 THE WITNESS: Brandon [REDACTED] H [REDACTED]. Last name,
7 H [REDACTED].

8

9

BRANDON M. H [REDACTED]

10

Having Been First Duly Sworn,

11

was Examined and Testified as Follows:

12

DIRECT EXAMINATION

13

BY MS. WILLIAMS:

14

Q. How old are you, Brandon?

15

A. I'm sixteen.

16

Q. Where do you go to school?

17

A. Cain Bay High School.

18

Q. Are you getting off of school a little bit

19

today?

20

A. Yes, ma'am.

21

Q. And do you know Courtney T [REDACTED]?

22

A. I do.

23

Q. Is she a friend of yours?

24

A. Yes, ma'am.

25

Q. Do you go to school with her?

1 A. Yes, ma'am.

2 Q. Where does she live?

3 A. In Weatherstone.

4 Q. And is there a pool in that neighborhood?

5 A. Yes, ma'am.

6 Q. And were you at that pool with her Sunday,
7 September 14th, 2008?

8 A. Yes, ma'am.

9 Q. Who else was there with y'all?

10 A. It was me, my friend Devin. Courtney, and his
11 girlfriend but I don't remember her name.

12 Q. Okay. And were -- did some of the people in the
13 group know Jennifer S. and Justin Hillerby?

14 A. I think so.

15 Q. And did you see Justin and Jennifer?

16 A. Yes, ma'am.

17 Q. Did you see a little boy with them?

18 A. Yes, ma'am.

19 Q. Was that *VICTIM*?

20 A. I didn't know his name.

21 Q. Okay. How old was the little boy?

22 A. I don't know.

23 Q. Was he like two, or was he -- was he a toddler?

24 A. He was really small, yes, ma'am.

25 Q. Did he have -- what did he -- what was he

1 wearing?

2 A. A bathing suit.

3 Q. And how was he acting?

4 A. Just like a normal little kid would act.

5 Q. Did he seem like he had any kind of injuries at
6 that time to you?

7 A. No, ma'am.

8 Q. Did you come into contact with the little boy?

9 A. Yes, ma'am.

10 Q. Can you tell me about that?

11 A. Me and my friends were coming out of the pool.
12 We were walking up the steps. And then the mom was like
13 running towards me. It was like, no, my baby.

14 Q. What -- was the mom Jennifer?

15 A. Yes, ma'am.

16 Q. Okay.

17 A. And by that time, I turned around and the little
18 boy was under his -- like the water was over his head. So
19 I reached in and picked him up and gave him to the mom.

20 Q. And was Justin there?

21 A. Yes, ma'am.

22 Q. And what did he say about that?

23 A. He was just like, you should have kept him in
24 there.

25 Q. So the mom came over and said -- was she

1 thanking you --

2 A. Yes, ma'am.

3 Q. -- for helping? And what did Justin say?

4 A. You should have left him in the pool.

5 Q. And at that time you said the little boy was
6 acting normally. Can you describe what that is?

7 A. Like just running around with his little sister,
8 and throwing the ball, and just trying to have a good time
9 I guess.

10 Q. Do you remember any other interaction between
11 Mr. Hillerby and how he was acting toward this little boy?
12 Nobody else, but toward this little boy?

13 A. Like he was being loud with him and like -- kind
14 of like yelling at him and stuff.

15 Q. Do you remember anything else that he said to
16 him?

17 A. Something about, you need to go stand in the
18 corner because nobody cares about you.

19 Q. Did y'all leave the pool before they did?

20 A. Yes, ma'am.

21 Q. How did that make you feel to watch the little
22 boy being treated that way?

23 A. I mean, it kind of bothered me a little bit
24 because me and Courtney were talking about it on the way
25 home.

1 MS. WILLIAMS: Court's indulgence.

2 THE COURT: Yes, ma'am.

3 [Whereupon, Ms. Williams and Ms. Biagianti
4 confer]

5 MS. WILLIAMS: Please answer any questions the
6 defense might have for you.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Mr. Bosnak?

9 CROSS-EXAMINATION

10 BY MR. BOSNAK:

11 Q. How long were you at the pool?

12 A. About an hour.

13 Q. Just an hour?

14 A. Yes, sir.

15 Q. Okay. And you don't know how long Justin and
16 the S family were there, do you?

17 A. No, ma'am [sic]. They were there before us.

18 Q. They were there before?

19 A. Yes, sir.

20 Q. Were they there when you left?

21 A. Yes, sir.

22 Q. Now, was the mother looking after the little
23 boy?

24 A. She was like laying on the bench reading a book,
25 and he was just running around the pool.

- 1 Q. The little boy was?
- 2 A. Yes, ma'am. Yes, sir.
- 3 Q. So she wasn't really supervising him?
- 4 A. No, ma'am. I mean, no, sir.
- 5 Q. That's all right. Was she drinking?
- 6 A. No, sir.
- 7 Q. Jennifer wasn't drinking --
- 8 A. No, sir.
- 9 Q. -- you didn't see any beer?
- 10 And who was looking after the little girl?
- 11 A. Nobody.
- 12 Q. Nobody was looking after either child?
- 13 A. No, sir.
- 14 Q. And Justin didn't touch the child in any way,
- 15 did he?
- 16 A. He kind of like yanked his arm a couple of
- 17 times, but that's it.
- 18 Q. And he just told him to go stand over in the
- 19 corner --
- 20 A. Uh-huh.
- 21 Q. -- nobody wanted to hear him cry?
- 22 A. Uh-huh.
- 23 Q. Okay. If something really bad would have
- 24 happened, would you have called the police?
- 25 A. Yes, sir.

1 MR. BOSNAK: Thank you. No further questions.

2 THE COURT: Ms. Williams?

3 MS. WILLIAMS: Just one.

4 REDIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. You did talk to the police, didn't you,

7 Mr. Ha [REDACTED]?

8 A. Yes, ma'am.

9 Q. When was that?

10 A. A couple of days after it happened.

11 MS. WILLIAMS: Nothing further.

12 THE COURT: Mr. Bosnak?

13 RECROSS-EXAMINATION

14 BY MR. BOSNAK:

15 Q. But there was nothing wrong to call the police
16 that day?

17 A. No, sir.

18 MR. BOSNAK: Okay. Thank you.

19 THE COURT: Sir, you may step down. You are
20 released from your subpoena. You are free to leave
21 the courtroom.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness.

25 MS. WILLIAMS: The State calls Courtney T [REDACTED].

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[Whereupon, Ms. T [REDACTED] comes forward]

MS. WILLIAMS: If you can just walk this way,
and sit in that orange chair up there.

MS. T [REDACTED]: This way?

THE CLERK OF COURT: Yes.

[Whereupon, Ms. T [REDACTED] comes forward]

THE CLERK OF COURT: Raise your right hand.
Place your left hand on the Bible.

[Whereupon, Ms. T [REDACTED] is duly sworn by the
clerk of court as follows: do you solemnly swear or
affirm the testimony you will give the Court in the
trial of this case will be the truth, the whole truth,
and nothing but the truth, so help you God]

THE WITNESS: Yes, ma'am.

THE CLERK OF COURT: Please be seated.

[Whereupon, Ms. T [REDACTED] takes the witness stand]

THE CLERK OF COURT: State your full name.
Spell your last name for the record.

THE WITNESS: Courtney T [REDACTED], T [REDACTED]

THE COURT: Ms. Williams?

- - -
- - -

1 COURTNEY T [REDACTED]

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Courtney, how old are you?

7 A. Sixteen.

8 Q. Are your parents here with you today?

9 A. Yes, ma'am.

10 Q. Where do you live?

11 A. [REDACTED].

12 Q. What neighborhood is that?

13 A. Weatherstone.

14 Q. And is there a pool in that neighborhood?

15 A. Yes, ma'am.

16 Q. And were you at that pool on September 14th,
17 2008?

18 A. Yes, ma'am.

19 Q. Do you know Brandon Ha [REDACTED]?

20 A. Yes, ma'am.

21 Q. Was he there with you?

22 A. Yes, ma'am.

23 Q. Who else was there with y'all at the pool?

24 A. Kayla D [REDACTED] and Dillon D [REDACTED] [phonetic].

25 Q. Are they friends of yours?

1 A. Yes, ma'am.

2 Q. Are they about your age?

3 A. Yes, ma'am.

4 Q. Where do you go to school?

5 A. Cain Bay.

6 Q. Now, did you see Justin Hillerby and Jennifer

7 S at the pool that day?

8 A. Yes, ma'am.

9 Q. How did you know it was them?

10 A. Ms. Jennifer asked me if I babysat, and she

11 introduced herself to me.

12 Q. Okay. Did she also introduce Mr. Hillerby?

13 A. Yes, ma'am.

14 Q. And have you ever seen them or their children

15 there before?

16 A. Probably, but I don't really remember.

17 Q. Do you know what her little boy's name was?

18 A. VICTIM.

19 Q. How do you know that?

20 A. She told me.

21 Q. And when she was asking you to babysit, did she

22 also say she had another child?

23 A. Yes, ma'am. But she never told me her name.

24 Q. Okay. What was the little boy doing at the

25 pool?

1 A. He was -- they took his little swimmyes off, and
2 he was jumping in the deep end of the pool.

3 Q. Okay. And did he go into the pool more than one
4 time?

5 A. Yes, ma'am.

6 Q. And did you come into contact with him?

7 A. Yes, ma'am.

8 Q. Tell me about that.

9 A. He was jumping in the deep end of the pool, and
10 me and Brandon were pulling him out.

11 Q. And what did the mom do when that happened?

12 A. The first three or four times she didn't do
13 anything, but the last time her and Mr. Justin came over
14 and got him.

15 Q. And what did Justin say to the boy, if anything?

16 A. Do you want me to say the bad word, too?

17 Q. You can say the bad word.

18 A. Okay. He called him a pussy, and told him to go
19 ahead and cry because nobody wanted him.

20 MS. WILLIAMS: No further questions. Please
21 answer any questions the defense may have.

22 THE COURT: Mr. Bosnak?
23
24
25

CROSS-EXAMINATION

1
2 BY MR. BOSNAK:

3 Q. Were you sitting right next to Mr. Hillerby and
4 Jennifer S ? Was your group sitting right next to
5 them?

6 A. No, sir. We were in the pool and they were over
7 in the corner.

8 Q. So they were farther away from y'all?

9 A. Yes, sir.

10 Q. About how far?

11 A. A couple of feet. Not too far, but --

12 Q. From me to you?

13 A. Yes, sir.

14 Q. Okay. Say ten feet?

15 A. Yes, sir.

16 Q. Okay. And were you over there about an hour?

17 A. We were there for probably about an hour or two.

18 Q. Okay. Did you know Jennifer S before you
19 met her at the pool that day?

20 A. No, sir.

21 Q. So you had never met her?

22 A. No, sir.

23 Q. And she just approached you?

24 A. Yes, sir. She came up and asked me if I babysat
25 and I told her, yes, sir [sic], and she asked me for my

1 phone number to babysit for her.

2 Q. Okay. And you said that she wasn't paying any
3 attention to the child?

4 A. No, ma'am [sic]. They were drinking over in the
5 corner and listening to music.

6 Q. Okay. And she wasn't paying any attention to
7 him at all?

8 A. No, ma'am. I mean, no, sir.

9 Q. And he kept jumping in the deep end?

10 A. Yes, sir.

11 Q. And nobody would do anything?

12 A. No, sir.

13 Q. Justin wasn't in the pool?

14 A. No, sir.

15 Q. Okay. And y'all would get him out?

16 A. Yes, sir.

17 Q. Did you go -- ever go by there and say y'all
18 need to watch out for --

19 A. No, sir.

20 Q. -- the child? Never did do that?

21 A. No, sir.

22 Q. Okay. And how many times did he jump in?

23 A. About four or five times.

24 Q. Okay. And you weren't concerned that nobody was
25 watching the child?

1 A. We kept pulling him out because nobody was
2 paying attention to him.

3 Q. But, I mean, you weren't concerned that nobody
4 was paying attention?

5 A. I was concerned, but we didn't say anything to
6 them.

7 Q. But you didn't go over there and say something
8 to her?

9 A. No, sir.

10 Q. Say you need to come get your child?

11 A. No, sir.

12 Q. Something like that to them?

13 A. [No response]

14 Q. Correct?

15 A. Yes, sir.

16 Q. You never did that?

17 A. No, sir.

18 Q. And finally what happened? Justin came and got
19 the child?

20 A. He came and pulled him up by his arm.

21 Q. Came and pulled him out of the pool by his arm?

22 A. Well, me and Brandon pulled him out the last
23 time, and Mr. Justin grabbed him by his arm and was like
24 dragging him over to where they were sitting at.

25 Q. Pulled him back out of the pool?

1 A. Yes, sir.

2 MR. BOSNAK: Okay. No further questions, Your
3 Honor.

4 THE COURT: Ms. Williams.

5 REDIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. And when he dragged him back out, is that when
8 he said he was a pussy?

9 A. Yes, ma'am.

10 Q. And nobody wants you anyway?

11 A. Yes, ma'am.

12 Q. And did you -- you did go to the police, did you
13 not?

14 A. Yes, ma'am.

15 MS. WILLIAMS: No further questions, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. BOSNAK:

18 Q. You went to the police after this -- after the
19 death of the child; correct?

20 A. Yes, sir.

21 Q. You didn't go that day?

22 A. No, sir.

23 MR. BOSNAK: Thank you.

24 THE COURT: Ms. T [REDACTED], you may step down. You
25 are excused.

1 [Whereupon, the witness is excused and exits the
2 witness stand].

3 MS. WILLIAMS: Your Honor, may we approach?

4 THE COURT: You may.

5 [Whereupon, an off-the-record bench conference
6 is held]

7 THE COURT: Ladies and gentlemen. this is an
8 appropriate time for us to take our mid-morning break.

9 Please remember my admonition. Do not begin
10 your deliberations, do not discuss this case amongst
11 yourselves.

12 Please rise for the jury.

13 [Whereupon, the jury exits the courtroom at
14 11:16 a.m.]

15 THE COURT: Thank you. Be seated.

16 We are in recess until 11:30. Thank you.

17 [Whereupon, a recess is taken from 11:17 a.m. to
18 11:30 a.m.]

19 THE COURT: Please bring in the jury.

20 Anything before we bring in the jury? From the
21 State?

22 MR. BOSNAK: Nothing, Your Honor.

23 MS. WILLIAMS: Nothing from the State.

24 THE COURT: Thank you.

25 Please rise for the jury.

1 [Whereupon, the jury enters the courtroom at
2 11:31 a.m.]

3 THE COURT: Please be seated.

4 That's why it's important for y'all to have
5 those assigned seats. We know who is missing.

6 [Whereupon, juror enters the courtroom]

7 THE COURT: Thank you. Call your next witness.

8 MS. WILLIAMS: Thank you, Your Honor. Sharon

9 S

10 [Whereupon, Ms. S comes forward]

11 MS. WILLIAMS: Ms. S , if you'll just walk
12 around this way -- and watch out for this -- and sit up
13 in that orange chair.

14 THE CLERK OF COURT: Raise your right hand.
15 Place your left hand on the Bible.

16 [Whereupon, Ms. S is duly sworn by the
17 clerk of court as follows: do you solemnly swear or
18 affirm the testimony you will give the Court in the
19 trial of this case will be the truth, the whole truth,
20 and nothing but the truth, so help you God]

21 THE WITNESS: I do.

22 THE CLERK OF COURT: Please be seated.

23 [Whereupon, Ms. S takes the witness stand]

24 THE CLERK OF COURT: State your full name.

25 Spell your last name for the record.

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THE WITNESS: Sharon S . S.

THE COURT: Ms. Williams?

SHARON S

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Ms. S , what is your relationship to the
victim in this case, VICTIM [REDACTED] ?

A. I'm his maternal grandmother.

Q. And so is Jennifer your daughter?

A. Jennifer is my daughter.

Q. And Leonard is your husband?

A. Yes.

Q. And when VICTIM was alive, how often would you
see him?

A. Five to six times a week.

Q. Was he an active child?

A. Yes.

Q. What kind of kid was he?

A. Made you laugh all the time. Just really
loving.

Q. Do you remember the morning of September 15th?

A. Yes.

1 Q. Can you tell us about that?

2 A. I was asleep, and the phone rang. I answered
3 it, and it was my daughter and all she was -- all I could
4 understand was her screaming. I got out of bed and walked
5 to the hallway. And as I walked to the hallway my husband
6 was walking into the same hallway from the laundry area,
7 and I said, you need to get over to Jennifer's right away;
8 she just called and she's upset; that I couldn't
9 understand what she was saying. And he said, I'll go.
10 And I got dressed and went over after him.

11 Q. And if you know, how much later did you go over
12 than your husband after he had left?

13 A. Possibly ten minutes.

14 Q. Okay. And what did you see when you got over
15 there?

16 A. Ambulance. My daughter sitting on the front
17 lawn.

18 Q. What was her demeanor like?

19 A. She was hysterical.

20 Q. And was law enforcement there?

21 A. They were just arriving.

22 Q. And did you see Mr. Hillerby?

23 A. Not at that moment.

24 Q. Did you see your husband?

25 A. My husband was walking out of the door of the

1 house.

2 Q. And did you learn what happened?

3 A. He was crying, and I said, what's the matter,
4 and he said, ~~VICTIM~~ is dead. And I fell to my knees, and
5 dropped my purse. We went over to Jennifer, and we cried.

6 Q. Were you allowed in the house?

7 A. My husband said I didn't need to go in and I
8 shouldn't go in and see him. And I said I wanted to. And
9 the police at that point closed everything off and no one
10 was allowed back in the house.

11 Q. Did you remain outside?

12 A. Yes, I did.

13 Q. Why?

14 A. Because I was hoping to get a glimpse of
15 when they brought him out, even though everyone was
16 telling me I wasn't going to be able to.

17 MS. WILLIAMS: Ms. : there are some
18 tissues there if you need them. Do you need us to
19 take a small break?

20 THE WITNESS: No. I'm all right.

21 Q. [Ms. Williams] Now, at some point did you see
22 Justin after you had been there?

23 A. Yes.

24 Q. And what did you observe about his demeanor?

25 A. He was just kind of wandering around. And then

1 he said he felt sick and dizzy.

2 Q. Okay. And how long had you known Justin at the
3 time?

4 A. Approximately about a year.

5 Q. And how long had -- if you know: how long had
6 he lived with your daughter?

7 A. Less than a year.

8 Q. And had he developed any kind of bond, from what
9 you saw, with VICTIM?

10 A. No. He was very indifferent with VICTIM.

11 Q. Now, the days following VICTIM's death, did you
12 ever get to see Mr. Hillerby again?

13 A. Yes. Him and Jen came over to the house for
14 dinner and drinks on Monday and Tuesday.

15 Q. Were there a lot of people in your home?

16 A. Coming and going.

17 Q. And how did he seem during those couple of days?

18 A. Very nervous, and couldn't understand what had
19 happened.

20 Q. How was your daughter?

21 A. Upset. We were all wondering what could have
22 happened.

23 MS. WILLIAMS: Court's indulgence for just a
24 second.

25 THE COURT: Yes, ma'am.

1 [Whereupon, Ms. Williams and Ms. Biagianti
2 confer]

3 MS. WILLIAMS: Nothing further. Please answer
4 any questions from the defense.

5 THE COURT: Mr. Bosnak?

6 MR. BOSNAK: Ms. S do you need any water
7 or anything?

8 THE WITNESS: No, thank you.

9 MR. BOSNAK: Are you okay? I'm just going to
10 ask a few questions.

11 CROSS-EXAMINATION

12 BY MR. BOSNAK:

13 Q. Everybody was upset. Wouldn't that be correct?

14 A. Our family was very upset. Justin didn't act
15 like he was upset. He was more angry.

16 Q. And he said -- but he told you that he was -- I
17 think the right words you used is that he was nervous,
18 sick -- sick and dizzy. I think that's the words you
19 used; correct?

20 A. Yes.

21 Q. And going through something like that could make
22 you sick and faint -- have a faint head, couldn't it?

23 A. I guess so.

24 MS. WILLIAMS: Objection. Calls for
25 speculation.

1 MR. BOSNAK: She's the one that --

2 THE COURT: Mr. Bosnak, no speaking --

3 MR. BOSNAK: I'll withdrawn it.

4 THE COURT: All right. Thank you.

5 Q. [Mr. Bosnak] And I think your last statement
6 was that everybody was upset and everybody was concerned
7 about what happened; correct?

8 A. Our family was, yes.

9 MR. BOSNAK: Yes, ma'am. Thank you.

10 THE COURT: Ms. Williams?

11 MS. WILLIAMS: Nothing further, Your Honor.

12 THE COURT: Ms. S. you may step down.

13 Is she released from her subpoena? Is she able
14 to stay in the courtroom?

15 MS. WILLIAMS: We would ask that she be. Do you
16 have any objection?

17 THE COURT: Mr. Bosnak, do you have any
18 objection?

19 MR. BOSNAK: No. No objections.

20 THE COURT: You may remain in the courtroom.
21 Thank you.

22 THE WITNESS: Thank you.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: Call your next witness.

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MS. WILLIAMS: Eric Riggins.

THE COURT: Please come forward.

MS. WILLIAMS: That's not Mr. Riggins.

THE COURT: All right.

MS. WILLIAMS: I think they have them in a jury room, Your Honor, which is a little bit down the hall.

[Whereupon, Mr. Riggins enters the courtroom]

MS. WILLIAMS: Mr. Riggins, if you could just come this way and then walk up to the witness chair, which is right over here.

[Whereupon, Mr. Riggins comes forward]

THE CLERK OF COURT: Please raise your right hand. Place your left hand on the Bible.

[Whereupon, Mr. Riggins is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you will give the Court in the trial of this case will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: Yes, ma'am.

THE CLERK OF COURT: Please be seated.

[Whereupon, Mr. Riggins takes the witness stand]

THE CLERK OF COURT: State your full name. Spell your last name for the record.

THE WITNESS: I am Eric Allen Riggins.

- - -

1 ERIC A. RIGGINS,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Mr. Riggins, where do you live?

7 A. I live at [REDACTED], Summerville,
8 South Carolina.

9 Q. Okay. And where do you work?

10 A. Doug and Dove [phonetic].

11 Q. What do you do there?

12 A. I'm a cook.

13 Q. How long have you worked there?

14 A. Since June of '08.

15 Q. And before that, where did you work?

16 A. Beef O'Brady's.

17 Q. Same kind of work?

18 A. Yes, ma'am. I was a cook.

19 Q. Do you like cooking?

20 A. Yes, I do.

21 Q. Do you remember where you were living back in
22 September of 2008?

23 A. Yes, ma'am. With Jennifer S

24 Q. And was that at [REDACTED]?

25 A. Yes, ma'am.

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1 Q. And did you live there with your girlfriend?

2 A. Yes, ma'am.

3 Q. What is her name?

4 A. Brandi Mihill.

5 Q. Were the two of you renting a room?

6 A. Yes, ma'am.

7 Q. And which of you knew Jennifer?

8 A. I did.

9 Q. Was she a friend of yours from before?

10 A. Yes, ma'am.

11 Q. Who lived in that home?

12 A. Jennifer and her two kids, Serena and ~~VICTIM~~

13 And Justin was -- lived there sometimes, on and off.

14 Q. Tell me about that.

15 A. When I had moved in, I hadn't really kept in
16 contact with her but when we were moving in, he was in the
17 process -- he moved out, and then came back. So he was
18 there and not there, you know.

19 Q. And when he moved out, where did he go?

20 A. I'm not positive, but I'm pretty sure it was
21 Melissa, his ex girlfriend, I guess.

22 Q. Is it fair to say he bounced between the two of
23 them pretty regularly?

24 A. Yes, ma'am.

25 Q. And if you remember, how long had you been

1 living there by the time -- by September of 2008?

2 A. I think it was a couple of months. A month or
3 two. I'm not exactly sure.

4 Q. Okay. And did you ever watch the kids for
5 Jennifer?

6 A. I had, one time before, looked after them for a
7 little while.

8 Q. What did you do with them?

9 A. We just -- normal stuff. Make sure -- you know,
10 watch TV, make sure they were fed, and just make sure they
11 were okay and try to keep them occupied and, you know, do
12 the best we could. I mean, they were sweet kids so, I
13 mean, it wasn't hard.

14 Q. What was Jen like around her kids? Honestly.

15 A. I mean, she meant well. You know, she loved her
16 kids. But I think honestly, just overwhelmed and the
17 stress, she couldn't pay as much attention as she would
18 like to, you know, as she should have, to the kids. But,
19 you know, she wasn't very attentive around her kids.

20 Q. Okay. And did you ever have an opportunity to
21 observe Justin around ~~UICPA~~ ?

22 A. Yes, ma'am.

23 Q. And how did he act around ~~Justin~~ ?

24 A. He -- his approach was like tough love without
25 the love. You know, he was -- I don't know how to -- he

1 just was more like suck-it-up be-a-man-type emphasis on
2 the child, on ~~them~~. He -- I mean, he really wasn't like
3 nurturing him like a coach, how you should be maybe with
4 your own son. Just more of like, you know, telling him he
5 needs to get over it, and stand up, and stuff like that.

6 Q. Did you ever hear him say to suck it up?

7 A. Yeah. He said -- he would be like, suck it up,
8 no crying. You know, he didn't really like to see him
9 cry.

10 Q. Okay. And getting back to the evening of
11 September 14th, do you remember what you and your
12 girlfriend did that night?

13 A. Yes, ma'am. We went to Logan's I'd say in the
14 evening. Around six o'clock we went and ate and had
15 dinner over there.

16 Q. What is Logan's? Is that --

17 A. Oh. It's a restaurant that's right walking
18 distance from the house. So we walked there and went and
19 ate, had a meal.

20 Q. And what time did you think you left?

21 A. I would say about 6:00, maybe.

22 Q. When you left, who was home?

23 A. There was nobody at the house at this time.

24 Q. Okay. And when did you get back?

25 A. I would say it would have to be maybe quarter to

1 7:00, seven o'clock. I'm not exactly sure, but I know it
2 was around then.

3 Q. Okay. And what was your plan for the evening?

4 A. We were walking home. At first we were just
5 going to go to the house, but my girlfriend's sister had
6 called and asked if we wanted to hang out. We said sure.
7 You know, we didn't have nothing planned except to sit at
8 the house. So she came over to come and get us. And she
9 actually broke down in the front pulling in, and coasted
10 in. So --

11 Q. You mean her car?

12 A. Yeah. Her truck had broke down coming in. So
13 we kind of stayed out there for a minute playing with her
14 engine and seeing what we could do, you know, to figure it
15 out. But, yeah. But we never made it to her house
16 because the car had broke down. So she eventually left,
17 and we went back to the -- back inside the house.

18 Q. Did she get a ride from someone else?

19 A. Yeah. Her friend came and picked her up, and we
20 went back inside.

21 Q. And when you first got back to the house, did
22 you go in the house at all?

23 A. I think we -- we went in originally, and Justin
24 was there. I believe Serena was in her room. And I'm not
25 quite sure on if I saw Blaze. I really honestly wasn't

1 paying attention. But I know he was there, I just didn't
2 see him --

3 Q. Okay.

4 A. -- remember seeing him.

5 Q. Would it refresh your memory if you reviewed
6 your statement?

7 A. Yes, ma'am.

8 MS. WILLIAMS: I'm going to show Mr. Bosnak.
9 I'm just going to show him a copy.

10 [Whereupon, Ms. Williams proffers documents to
11 Mr. Bosnak]

12 [Whereupon, Mr. Bosnak reviews documents]

13 MR. BOSNAK: Okay.

14 MS. WILLIAMS: May I approach?

15 THE COURT: You may.

16 [Whereupon, Ms. Williams proffers documents to
17 the witness]

18 [Whereupon, the witness reviews documents]

19 A. Okay. Yeah. I remember -- yeah. Serena was in
20 her room and, yeah -- I'm not possibly -- I could have
21 been mistaken about him walking around, but I do remember
22 seeing him now that we came back. We just came in a
23 couple of times, and I know one of those times I did see
24 him. The other couple of times he could have been in
25 Jennifer's room. But I did see him out of those couple of

1 times.

2 Q. [Ms. Williams] Okay. So you were in and out of
3 the house --

4 A. Yeah.

5 Q. -- because of the car and --

6 A. Yes, ma'am.

7 Q. When you did see him -- and you're saying this
8 is sometime around 7:00?

9 A. Yes, ma'am.

10 Q. Okay. When you did see him, how did he appear
11 to you? Did he seem like he was fine?

12 A. He looked kind of just wore out from the pool,
13 you know, like he had been sunburned, or he might have
14 been just -- you know, being cranky from -- because a lot
15 of kids don't want to go to sleep when they should. So it
16 might have -- it could have been either one of those
17 things. But he just looked exhausted, or like he had
18 maybe been crying.

19 Q. Okay. But did he seem injured? Did he seem
20 like he was okay?

21 A. I mean, as far as I -- I didn't -- you know, I
22 wasn't in contact with him to really know, I mean, as far
23 as I could tell. But, I mean, honestly, I couldn't say if
24 he was perfectly fine or he wasn't. But, I mean, he just
25 looked exhausted. And, I mean, as far as I -- you know,

1 from what I saw, he was okay.

2 Q. Okay. And when you came into the house for the
3 evening finally --

4 A. Uh-huh.

5 Q. -- was it -- what was it like outside? Was it
6 getting dark? Was it still light?

7 A. Yeah, I think it was -- because we had been
8 messing around with the truck for a minute. I think it
9 was about that time that it was -- you know, the street
10 lights were coming on and it was getting -- the sun was
11 going down. So, yeah. I would say yeah.

12 Q. And what did you do when you came into the house
13 for the final time?

14 A. We just -- I usually just go in my room, watch
15 TV, because I was so full, I had ate so much, and I just
16 wanted to go to sleep. So we went in the room and turned
17 on the TV, went to bed.

18 Q. And when the two of you go to bed, do you turn
19 the TV off or do you keep the TV on?

20 A. We most of the time keep the TV on. We just
21 like to fall asleep watching TV.

22 Q. And your room is where in relation to Blaze's
23 room?

24 A. If you're like this, like there's a hallway.
25 Our room -- our door is facing outward like this way. And

1 his room is right here next to ours.

2 Q. Okay. And is it fair to say that the living
3 room is down the hall?

4 A. Yeah. It's not a long hall, but it's, you know,
5 down the hall a little ways away.

6 Q. And the kitchen is a little bit farther?

7 A. Yes, ma'am.

8 Q. Okay. And when did you sleep until?

9 A. I think -- I'm not exactly sure of the times.
10 Give or take, you know, fifteen minutes on either side.
11 It was around two o'clock that Jen had came home and had
12 opened our door. We were sleeping in the room, and she
13 come in pretty upset. She was upset about the rent and
14 mentioning that, you know, we hadn't -- needed to pay
15 rent. And she was upset, and wanted us to leave, and, you
16 know --

17 Q. Was that a pretty startling event for you?

18 A. Yeah. Because the door was locked, and she
19 unlocked the door. And she was pretty intoxicated from
20 what I could tell. I mean, I don't -- like I said, I
21 don't -- you know, I wasn't all up in her face. You know,
22 I didn't have a meter to read. But she looked -- from
23 what I could tell, she was intoxicated and was pretty
24 upset and -- over the rent.

25 Q. And then did you go back to sleep?

1 A. Yes, we fell back to sleep.

2 Q. And what is the next time that you remember
3 waking up?

4 A. Like, again, I'm not sure exactly of the time.
5 But it was maybe 10:30, 11:00, we woke up, heard Jennifer.
6 She was pretty hysterical, screaming. And we heard her
7 saying that -- she said, he's dead, he's dead, meaning
8 Blaze.

9 Q. Eric, did you ever at any time during that night
10 hurt that child?

11 A. No, ma'am.

12 Q. Did you ever touch that child?

13 A. During that night, no, ma'am.

14 Q. Did you ever, the whole time you lived there,
15 hurt that child?

16 A. No, ma'am.

17 Q. What did you do after you heard her screaming?

18 A. I heard her screaming and after she said that,
19 you know, he's dead, he's dead, I went up, you know,
20 to go see what was going on to see if, you know, really
21 that was the case, if it was that severe. Maybe he
22 just -- you know, something else, because you didn't want
23 to believe that.

24 And I went in there and he was -- I guess
25 she had rolled him over on his back, and he was stiff and

1 he had -- he had blood smeared on his face, and he was
2 like purple.

3 MS. WILLIAMS: There are some tissues there.

4 Q. [Ms. Williams] What was she doing?

5 A. Jennifer was pretty hysterical. She -- I
6 remember she kept screaming that, you know, he's dead,
7 he's dead. And Justin, he was like -- all I can remember
8 him saying, no, he's not; no, he's not. And, you know, I
9 don't really --

10 It's hard for me to remember everything, but
11 that's pretty much what happened. And we ran out the
12 front door. And I think Justin called 911 after that.

13 Q. Did you see Justin on the phone with 911?

14 A. Yes, ma'am.

15 Q. What did you and Brandi do after that? Did the
16 police come?

17 A. Yes, ma'am, the police came. We were across the
18 street and they I guess proceeded inside the house to do
19 their investigation, and they questioned everybody and,
20 you know, trying to figure out what's going on because, I
21 mean, we didn't -- you know, we had no idea how -- you
22 know, we were in shock. I mean, we just didn't -- could
23 not believe, you know, what was going on. It was pretty
24 scary.

25 Q. Was it a pretty shocking sight to see the baby?

1 A. Yeah. I close my eyes and I lay down at night
2 and I see that a lot, and it's something that lasts in
3 your head, and it's, I mean --

4 Q. When was the next time you remember seeing
5 Jennifer and Justin?

6 A. We came back later that night to the house, when
7 we were allowed in, when they were all done. So it was
8 later that night.

9 Q. And what did you observe them doing at that
10 time?

11 A. Jennifer was on the computer on the floor. I
12 think she had the laptop by the printer because she was
13 printing out stuff I think about secondary drowning and
14 about what -- you know, I guess trying to figure out what
15 could have happened. And Justin was there with her.

16 Q. Okay. And did you hear Justin -- how was he
17 acting? What was he doing?

18 A. Honestly, I mean, he seemed -- what's the
19 word -- like nervous, like, you know, he was in shock but
20 not in shock of being like, oh, my God, you know,
21 something happened, like, oh, you know, something --
22 they're going to blame me. You know, because he said, you
23 know, I'm just waiting for them to come get me; they blame
24 the boyfriend, you know, all the time or whatever. He was
25 more like nervous than anything.

1 Q. Did you think that was odd that he would say
2 that the day the child was --

3 A. At the time I really didn't -- so much was going
4 on, I didn't really process it. But now, over the events,
5 I mean, I look back and that was -- you know, it really
6 makes sense now like saying that stuff doesn't -- you
7 know, it doesn't seem right. You know, something -- I
8 kind of knew kind of then that there was something else to
9 this whole situation.

10 MS. WILLIAMS: Court's indulgence for just a
11 second.

12 THE COURT: Yes, ma'am.

13 [Whereupon, Ms. Williams and Ms. Biagianti
14 confer]

15 MS. WILLIAMS: Nothing further. Please answer
16 any questions the defense may have.

17 THE COURT: Mr. Bosnak?

18 MR. BOSNAK: Mr. Riggins, how are you?

19 THE WITNESS: Good. How are you, sir?

20 CROSS-EXAMINATION

21 BY MR. BOSNAK:

22 Q. Mr. Riggins, the thing I'm going to do is try to
23 go back over these times and see if we can narrow these
24 times down.

25 You stated that you and your girlfriend came

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1 back in you think around 7:00? 6:45 to 7:00?

2 A. Yes, sir. I mean, I'm not positive, but --

3 Q. Just an approximate.

4 A. Yeah, approximately.

5 Q. Okay. And you got back from Logan's?

6 A. Yes, sir.

7 Q. And when you left to go to Logan's, what time
8 did you leave to go to Logan's?

9 A. I mean, considering their -- we were there for a
10 good minute [phonetic]. I mean, probably it could be
11 between 5:30 and 6:00. I mean, I'm not -- like, again,
12 I'm not sure. I don't -- it's been a while since that --
13 you know, that night, so --

14 Q. Okay. And Justin and Jen and ~~Justin~~ and Serena,
15 they weren't home when y'all left, were they?

16 A. No, sir.

17 Q. Okay. And I want to go back about the car
18 breaking down. And y'all were going outside trying to fix
19 the car and that kind of stuff. Do you know about what
20 time that was?

21 A. Again, I'm not positive. Probably around 7:00,
22 7:30, in there, in that time area, give or take.

23 Q. Do you have any idea how long you were outside?

24 A. We didn't mess with it long. I mean, maybe
25 thirty minutes.

1 Q. So could have been out there from 7:00 to 7:30?

2 A. Yeah.

3 Q. You said it's starting to get a little dark?

4 A. Yes. Yes, sir.

5 Q. Now, tell me, your bedroom -- you and your
6 roommate's bedroom from ~~VICTIM~~'s bedroom, how far are the
7 door apart?

8 A. Not -- I mean, --

9 Q. From me to you? Or closer?

10 A. Closer. I mean --

11 Q. Here?

12 A. -- I'm trying to think exactly.

13 Well, if this was our door -- say this is our
14 door, right here. All right? Our door -- our door is
15 here, his door is like pretty -- adjacent. You know what
16 I'm saying? But there's still some space for the trim
17 and all that, so it's over a little bit. But it's pretty
18 much -- they're very close.

19 Q. Very close?

20 A. Yes, sir.

21 Q. You ever hear him cry?

22 A. Yes, sir, I've heard him cry before.

23 Q. So you could hear him cry through there?

24 A. [Indicates affirmatively]

25 Q. The night that we're talking about, did you ever

1 hear him cry?

2 A. No, sir.

3 Q. Even after Jennifer S came in and unlocked
4 your door, and intoxicated and started yelling at you, did
5 you hear him cry then?

6 A. No. No, sir.

7 Q. Didn't hear him cry then.

8 That night ~~VICTIM~~ seemed to be fine; correct?

9 A. I mean, for the most part. Like I said, I
10 wasn't up close to him. You know, sometimes I talk to him
11 and, you know, play with him and stuff. I wasn't -- but
12 from what I could see, you know, he just looked exhausted
13 like he had been at the pool all day.

14 Q. Well, that would make sense --

15 A. Yeah.

16 Q. -- wouldn't it?

17 A. Yeah.

18 Q. The little boy had been at the swimming pool all
19 day, and it's 7:30, eight o'clock, a two-year-old. He
20 would be tired, wouldn't he?

21 A. I would imagine so.

22 Q. Be about time to go to bed, wouldn't it?

23 A. Yes, sir.

24 Q. And most of the time, two years old -- two-year-
25 olds run around until they just wear out and then they

1 just fall out, don't they?

2 A. Yes, sir.

3 Q. Did you ever see Justin Hillerby hit that child?

4 A. No, sir.

5 Q. Did you ever see Justin do anything like that?

6 A. Not that I can recall, no, sir.

7 Q. Okay. And but what he would do is tell him to
8 shake it off, get up, don't cry --

9 A. Right.

10 Q. -- that kind of stuff --

11 A. Yes, sir.

12 Q. Right?

13 Now, I want to go back. Do you remember after
14 they discovered ~~VICTIM~~ --

15 A. Uh-huh.

16 Q. -- y'all went outside? Everybody in the house
17 went outside?

18 A. Yes, sir.

19 Q. Do you remember talking to a Jennifer A-M-I-C-O,
20 Amico; do you remember her?

21 A. No, sir.

22 Q. You don't remember her coming up to you when you
23 were outside and asking you what was going on?

24 A. No. Was that a neighbor?

25 Q. Yeah.

1 A. Maybe. Could have. I mean, it was -- a lot
2 happened that day. I mean --

3 Q. And do you remember telling this neighbor that
4 you thought that ~~Victim~~ had choked on something and he was
5 blue?

6 A. I mean, at the time I could have said that.
7 But, I mean, I'm not a doctor. I'm not -- I was in so
8 much shock that I was just trying to put a reason to
9 something. I mean, it doesn't necessarily mean that
10 that's what happened. I mean, I just -- you know, you --
11 something happens and you're just trying to figure out
12 what could go wrong. But, I mean, I very well could have
13 said that, yes, sir.

14 Q. And did you tell her this was the second time
15 that this had happened?

16 A. That he had choked on something?

17 Q. Yeah, that this is the second time the child
18 choked on something and turned blue.

19 A. No. I don't remember saying that.

20 Q. You don't remember saying that?

21 A. No, sir, I don't remember.

22 Q. Okay. Now, you said everybody was shocked.
23 Everybody was shocked, weren't they?

24 A. Yes, sir.

25 Q. And that night Jennifer and Justin came back to

1 the home; correct?

2 A. Yes, sir.

3 Q. Did Justin tell you that the police had
4 questioned him?

5 A. I'm trying to remember. I think the police
6 questioned everybody, I would imagine. I mean, I don't
7 think he told me directly that he was questioned. But I
8 had assumed that everybody was questioned. I mean, a
9 little boy, you know, just had died, so I would imagine
10 that they would try to find out and talk to everybody and
11 see what happened.

12 Q. You think the police questioned everybody --

13 A. Yeah. I assume so.

14 Q. If the police had questioned everybody, that
15 might be one of the reasons why Justin was nervous and
16 said, I felt like the police were going to pin this -- try
17 to pin this on me; correct?

18 A. I mean, if you didn't do anything wrong, why
19 would you be nervous? I mean --

20 Q. Well, I understand that. But if the police
21 think that you -- like you said, think that he did it, you
22 would be nervous?

23 A. Well, I guess so. But, I mean, I don't think
24 the police would think that he would do it if they didn't
25 have some kind of evidence or suspicion that he did do it.

1 They wouldn't just accuse him. I mean, we all -- they
2 could have all said that we all had a hand in it. But
3 obviously they had some physical evidence, or something
4 they knew that we didn't, to assume that he was -- could
5 have done it.

6 Q. So you -- your belief is that the police had
7 some type of physical evidence that day that would point
8 towards Justin?

9 A. Maybe not physical, but maybe more on -- because
10 if he was questioned, he might -- we don't know what he
11 said to the police, so maybe he said something to them
12 that gave them -- you know, they have -- they're the
13 experts. They know what's going on. They can detect if
14 somebody is lying or telling the truth or something
15 doesn't add up. They had more other pieces of the story.

16 So I figured, you know, if you didn't do nothing
17 wrong, and they're experts, they would know, you know,
18 what's true and what's not. If you didn't have anything
19 to do with it, I think that standard questioning is
20 standard questioning. They want to find out, get
21 everybody's story. So obviously they thought there was
22 more in his role in the whole situation. That's just my
23 opinion. That is -- you know, I'm not stating facts. I'm
24 just saying that's coming from me.

25 Q. Well, you were in the house; correct?

1 A. Yes, sir.

2 Q. And ~~victim~~'s blood was found on your door;
3 correct?

4 MS. WILLIAMS: Objection, Your Honor. First of
5 all, that's not true.

6 THE COURT: Counsel, approach.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 THE COURT: Ladies and gentlemen, I have
10 determined that the last question asked by defense
11 counsel is not appropriate -- please strike that from
12 any notes -- as well as the response from the witness.

13 That question and the answer of that question
14 cannot be discussed by you at all in your jury room,
15 Mr. Foreman. Thank you.

16 Mr. Bosnak, you may continue.

17 MR. BOSNAK: Thank you. No further questions.

18 THE COURT: Ms. Williams?

19 MS. WILLIAMS: Nothing further, Your Honor.

20 THE COURT: Mr. Riggins, you may step down.

21 Thank you.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 MS. WILLIAMS: Do you want us to call our next
25 witness, Your Honor?

1 THE COURT: Yes, ma'am.

2 MS. WILLIAMS: Brandi Mihill.

3 Can this witness be released from his subpoena
4 and remain in the courtroom?

5 THE COURT: Any objection to this --

6 MR. BOSNAK: No.

7 THE COURT: -- witness --

8 MR. BOSNAK: No, Your Honor.

9 THE COURT: -- being released? Thank you.

10 Mr. Riggins, you may remain with us in the
11 courtroom. Do not discuss your testimony with any of
12 the previous witnesses or the remaining witnesses.
13 Thank you.

14 MS. WILLIAMS: Your Honor, may I remove the --

15 THE COURT: You may.

16 MS. WILLIAMS: -- previous --

17 THE COURT: Ms. Mihill, please come forward up
18 to the witness stand. Thank you.

19 [Whereupon, Ms. Mihill comes forward]

20 THE CLERK OF COURT: Please raise your right
21 hand. Place your left hand on the Bible.

22 [Whereupon, Ms. Mihill is duly sworn by the
23 clerk of court as follows: do you solemnly swear or
24 affirm the testimony you will give the Court in the
25 trial of this case will be the truth, the whole truth,

1 and nothing but the truth, so help you God]

2 THE WITNESS: Yes, ma'am.

3 THE CLERK OF COURT: Please be seated.

4 [Whereupon, Ms. Mihill takes the witness stand]

5 THE CLERK OF COURT: State your full name, and
6 spell your last name for the record.

7 THE WITNESS: Brandi Lynn Mihill. M-I-H-I-L-L.

8 THE COURT: Ms. Williams?

9 - - - - -

10 BRANDI L. MIHILL,

11 Having Been First Duly Sworn,

12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MS. WILLIAMS:

15 Q. Ms. Mihill, where do you live right now?

16 A. You want me to give you my address?

17 Q. Who do you live with?

18 A. Oh. My aunt and uncle.

19 Q. And who were you living with your before?

20 A. Eric.

21 Q. What is his last name?

22 A. Riggins.

23 Q. And were you living with Eric in September of
24 2008?

25 A. Yes.

- 1 Q. Where did you live?
- 2 A. We lived at Jen's house.
- 3 Q. Okay. And is that Jennifer Si ?
- 4 A. Uh-huh.
- 5 Q. Is that [REDACTED] ?
- 6 A. Yes.
- 7 Q. How long did you live there, if you remember, by
- 8 September?
- 9 A. About three months.
- 10 Q. Okay. And who lived in that home with you?
- 11 A. Jennifer, Justin, Serena, ~~USIA~~ and Eric.
- 12 Q. And was Justin there all -- did he live there
- 13 continuously during that time?
- 14 A. No.
- 15 Q. Where else did he live?
- 16 A. With Melissa.
- 17 Q. Who is Melissa?
- 18 A. His ex-girlfriend. I'm not completely sure.
- 19 Q. Does he have a child with her?
- 20 A. Yes.
- 21 Q. So did he go back and forth between the two
- 22 homes?
- 23 A. Yes.
- 24 Q. Just in the three months that you were there?
- 25 A. Uh-huh.

1 Q. And what was Jen like around the kids?

2 A. [No response]

3 Q. Just from your observations.

4 A. I mean, she -- she was a good mother, for the
5 most part.

6 Q. And did you ever get to observe -- would you say
7 that she was the disciplinarian --

8 A. No.

9 Q. -- between her and Justin?

10 A. No.

11 Q. Who was more the disciplinarian?

12 A. Justin.

13 Q. And what was Justin like around the kids?

14 A. It didn't seem like he cared very much for them
15 but he had to put up with them.

16 Q. And do you remember the evening of September
17 14th?

18 A. Yes.

19 Q. What did you and Eric do that night, if you
20 remember?

21 A. We went to dinner at Logan's.

22 Q. And do you remember about what time you left?

23 A. Probably around 6:00, I would say.

24 Q. What time did you get back?

25 A. Approximately 7:30, eight o'clock. I'm not real

1 sure on the time.

2 Q. And what was your plan for the evening?

3 A. My sister was coming over to pick me and Eric
4 up. We were going to go to her house.

5 Q. Had you and Eric, up unto this point, ever
6 babysat for the kids or been around the kids?

7 A. Yes. A few times.

8 Q. What was *Justin* like?

9 A. He was happy when he was around me.

10 Q. Was he active?

11 A. Uh-huh.

12 Q. When you got back to the house, was your sister
13 there yet or --

14 A. No. She showed up not too long after we got
15 back.

16 Q. Okay. And did you go to her house?

17 A. No. Her truck broke down right at the stop
18 sign. She kind of coasted in front of the house.

19 Q. And when that happened, did you enter the house
20 at all?

21 A. Yes.

22 Q. Did you go in and out of the house, or did you
23 stay in the house?

24 A. If we stayed in the house, it wasn't but a few
25 minutes before we went back outside.

1 Q. And when you went back in and out of the house,
2 did you see Mr. Hillerby or the children at all?

3 A. Yes.

4 Q. And what did you -- tell us -- tell me what you
5 saw.

6 A. I believe it was the first time we walked in the
7 house I saw -- I think Justin was sitting on the couch,
8 and I think ~~victim~~ was standing on the other couch.

9 Q. And what did -- what did you observe about
10 Blaze?

11 A. It looked like he had been crying, or maybe he
12 was just really exhausted. Looked like he was tired.

13 Q. And did Mr. Hillerby tell you anything about why
14 he was in the corner?

15 A. No. Not until the next morning did I hear him
16 make a comment about that.

17 Q. What did he say?

18 A. I believe when the family -- or the police were
19 on the way, I -- from what I can remember, I believe Jen
20 asked if she hit him -- or if he hit ~~victim~~ or anything the
21 night before, and he said no, he put him in the corner.

22 Q. Did he say why?

23 A. For spilling a beer or a drink.

24 Q. Okay. Getting back to that night: so he said
25 he did not hit him?

- 1 A. Correct.
- 2 Q. That's what he told Jen?
- 3 A. [Indicates affirmatively]
- 4 Q. Getting back to that night: so did you
5 eventually come in the house for good?
- 6 A. Uh-huh. Yes.
- 7 Q. And did you decide not to go to your sister's
8 house?
- 9 A. Yes. Her friend picked her up.
- 10 Q. Do you remember what time that was?
- 11 A. Not exactly, but I would say around maybe
12 between 8:00 and 9:00.
- 13 Q. Okay. Was it getting dark out?
- 14 A. Yeah. By the time she got picked up, I think it
15 was pretty much dark outside.
- 16 Q. Okay. And what did you do when you came in the
17 house?
- 18 A. I went straight to the room.
- 19 Q. Is that what you ordinarily do?
- 20 A. Yes.
- 21 Q. And do y'all watch TV in that room?
- 22 A. Yes.
- 23 Q. Did you go to sleep?
- 24 A. We went to sleep not too long after we got --
25 went in the room.

1 Q. Do you turn the TV off when you go to sleep?

2 A. No. We sleep with the TV on.

3 Q. And when was the next time that you were
4 awakened?

5 A. When Jennifer came into the room probably
6 sometime between 1:30 and 2:00 in the morning.

7 Q. Tell me about that.

8 A. She came in the room, and woke us up, and was
9 yelling at Eric about not paying the rent.

10 Q. Was she intoxicated?

11 A. Yes.

12 Q. And did you eventually go back to sleep after
13 that episode?

14 A. Yes.

15 Q. And when was the next time you remember waking
16 up?

17 A. To her screaming the next morning.

18 Q. And tell me about that.

19 A. She started screaming, he's dead. We jumped out
20 of the bed and ran in the hallway.

21 Q. What was Eric doing?

22 A. I believe he was telling Justin to get her out
23 of the room.

24 Q. Was she -- what was her demeanor like?

25 A. She was hysterical.

- 1 Q. Did you go into the room?
- 2 A. Yes.
- 3 Q. What did you see?
- 4 A. Blaze in the crib, and blood everywhere.
- 5 MS. WILLIAMS: Do you need a glass of water?
- 6 THE WITNESS: [Indicates affirmatively]
- 7 MS. WILLIAMS: Okay.
- 8 [Off the record momentarily]
- 9 MS. WILLIAMS: Your Honor, may I approach?
- 10 THE COURT: You may.
- 11 THE WITNESS: Thank you.
- 12 Q. [Ms. Williams] Had you ever seen anything like
- 13 that before?
- 14 A. No.
- 15 Q. Who was on the phone -- who called 911?
- 16 A. Justin.
- 17 Q. And what was Jennifer doing?
- 18 A. I think we were all running around just not
- 19 knowing what to do, in shock, pretty much running in
- 20 circles.
- 21 Q. And eventually did law enforcement come?
- 22 A. Yes.
- 23 Q. And where did y'all go?
- 24 A. We were outside.
- 25 Q. And at some point did Justin and Jennifer leave

1 to go to the police station? If you know.

2 A. I believe we were all there for a good while. I
3 think they did leave -- they did leave before me and Eric
4 left with my sister.

5 Q. And you were interviewed? You gave a statement
6 to the police; right?

7 A. Yes.

8 Q. And Eric gave a statement, too?

9 A. Yes.

10 Q. And when is the next time that you remember
11 seeing Justin and Jennifer?

12 A. Later on that night when we were allowed back to
13 the house.

14 Q. And tell me about that.

15 A. We came in and sat on the couch. They were in
16 the living room. She was on the computer.

17 Q. Do you know what she was doing on the computer?

18 A. Looking up secondary drowning. The kid -- not
19 too long before that, a kid in Moncks Corner I believe
20 died from secondary drowning.

21 Q. So was she just trying to figure out what
22 happened to her child?

23 A. I mean, basically -- yes.

24 Q. And what was Justin's demeanor like?

25 A. Now that I look back, he seemed nervous.

1 Q. Was he saying anything? If you remember.

2 A. Yes.

3 Q. What was he saying?

4 A. I don't remember exactly what he was saying, but
5 something along the lines of he thought they were coming
6 to get him or they were trying to pin this on him.

7 Q. And do you remember telling Officer Sloan that
8 the drink that he spilled was a beer? that ~~VICTIM~~ had
9 spilled his beer? If you don't remember, it's okay.

10 A. I don't remember.

11 MS. WILLIAMS: Court's indulgence.

12 THE COURT: Yes, ma'am.

13 [Whereupon, Ms. Williams and Ms. Biagianti
14 confer]

15 MS. WILLIAMS: Nothing further.

16 THE COURT: Mr. Bosnak?

17 MS. WILLIAMS: Wait, wait, one -- one more. I'm
18 sorry, Your Honor.

19 Q. [Ms. Williams] Brandi, did you hurt ~~VICTIM~~ that
20 night?

21 A. No.

22 Q. Did you do anything to harm that child that
23 night?

24 A. No.

25 MS. WILLIAMS: Nothing further. Please answer

1 any questions the defense might have for you.

2 THE COURT: Mr. Bosnak.

3 MR. BOSNAK: Brandi, just a few questions.

4 CROSS-EXAMINATION

5 BY MR. BOSNAK:

6 Q. Do you know if Justin -- when you came in and
7 out of the house around 7:00, 7:30, was Justin feeding the
8 children or anything?

9 A. No.

10 Q. Nobody was eating or anything?

11 A. They were eating --

12 Q. They were eating?

13 A. -- but I didn't see him feed them, no.

14 Q. But they had food?

15 A. Yes. But Serena got food by herself all the
16 time.

17 Q. Okay. But you don't know who --

18 A. No.

19 Q. -- gave the food to them?

20 A. No.

21 Q. But they were eating; correct?

22 A. Yes.

23 Q. And everybody seemed to be okay in the house
24 except they were just tired?

25 A. From what I saw walking in and out, yes. I

1 didn't think anything was wrong at the time.

2 Q. And until Jennifer S came in your room
3 fussing, did you hear anything?

4 A. No.

5 Q. Did you hear ~~VIOLA~~ crying?

6 A. No.

7 Q. Hear Serena cry?

8 A. No.

9 Q. And have you heard ~~VIOLA~~ cry before?

10 A. Yes.

11 Q. Because the rooms are so close together?

12 A. Yes.

13 Q. When did y'all move out of the house? Because
14 she wanted you out. When did y'all move out?

15 A. The day after -- well, that night that it
16 happened, we stayed there. And I couldn't stay there. I
17 had nightmares, and I couldn't go back there so the day
18 after, we went to my sister's.

19 Q. So you found the child on the 15th, so y'all
20 moved out on the 16th? Would that be --

21 A. We didn't move all of our stuff out, no. We
22 just stayed at my sister's for a few days until we found a
23 permanent place and then got all of our stuff out.

24 Q. But would it be fair to say that you ever spent
25 the night at that house again?

1 A. No. Yeah. That's correct.

2 MR. BOSNAK: No further questions, Your Honor.

3 Thank you.

4 THE COURT: Ms. Williams?

5 MS. WILLIAMS: Nothing further, Your Honor..

6 THE COURT: Ms. Mihill, you may step down.

7 THE WITNESS: Thank you.

8 MS. WILLIAMS: May we excuse her from her
9 subpoena?

10 THE COURT: Any objection, Mr. Bosnak?

11 MR. BOSNAK: No, Your Honor.

12 THE COURT: Ms. Mihill, you are excused from
13 your subpoena. You may remain in the courtroom.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: Ladies and gentlemen of the jury,
17 this is an appropriate time for us to take our lunch
18 break.

19 As I indicated before, do not discuss this case
20 amongst yourselves. Do not talk about this case with
21 any individual. Do not read, watch, listen to any news
22 accounts regarding this case, should there be any. Do
23 not do any independent investigation regarding this
24 matter.

25 Please be back in your jury room at 2:00 p.m.

1 We will begin promptly at that time.

2 Please rise for the jury.

3 [Whereupon, the jury exits the courtroom at
4 12:21 p.m.]

5 THE COURT: Please be seated.

6 Anything before we recess for lunch? From the
7 State?

8 MS. WILLIAMS: No, Your Honor.

9 MR. BOSNAK: No. Nothing, Your Honor.

10 THE COURT: Thank you. Be back here at 2:00.
11 Thank you. We're in recess.

12 [Whereupon, a recess is taken from 12:21 p.m. to
13 2:00 p.m.]

14 THE COURT: Anything before we bring in the
15 jury?

16 MS. WILLIAMS: Nothing from the State, Your
17 Honor.

18 MR. BOSNAK: Nothing from the defense, Your
19 Honor.

20 THE COURT: All right. Let's bring in the jury.

21 [Off the record momentarily]

22 THE BAILIFF: It will be a minute, Your Honor.

23 THE COURT: All right. Y'all may be seated.

24 [Off the record momentarily]

25 THE BAILIFF: All rise.

1 [Whereupon, the jury enters the courtroom at
2 2:07 p.m.]

3 THE COURT: Thank you. Be seated.

4 Ms. Williams, call your next witness.

5 MS. WILLIAMS: Thank you, Your Honor. The State
6 calls Jennifer Angel.

7 [Whereupon, Ms. Angel comes forward]

8 MS. WILLIAMS: Ms. Angel, if you could just walk
9 this way, and then just take the seat up there.

10 [Whereupon, Ms. Angel takes the witness stand]

11 THE CLERK OF COURT: Please raise your right
12 hand. Place your left hand on the Bible.

13 [Whereupon, Ms. Angel is duly sworn by the clerk
14 of court as follows: do you solemnly swear or affirm
15 the testimony you will give the Court in the trial of
16 this case will be the truth, the whole truth, and
17 nothing but the truth, so help you God]

18 THE WITNESS: Yes.

19 THE CLERK OF COURT: Please be seated.

20 [Whereupon, Ms. Angel takes the witness stand]

21 THE CLERK OF COURT: State your full name for
22 the record, and spell your last name.

23 THE WITNESS: Jennifer Angel. A-N-G-E-L.
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JENNIFER ANGEL,
Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Ms. Angel, do you know Justin Hillerby?

A. Yes.

Q. How long have you known him?

A. About six years.

Q. And on September the 14th, 2008, how long had
you known Jennifer ?

A. I met her -- that was the second time I met her.

Q. Okay. And on that evening, did you call Justin
Hillerby?

A. Uh-huh. I did.

Q. What was the purpose of that call?

A. To see if he wanted to go out with me.

Q. Okay. And did someone intercept that call?

A. Jen.

Q. And what did she say?

A. She said he couldn't go, that she would go.

Q. She said it was her turn to go out?

A. Yes.

Q. And that he had to stay home with the kids?

MR. BOSNAK: Your Honor, excuse me. I don't

1 mean to -- I need to object. These are leading
2 questions. The witness can't answer --

3 THE COURT: Sustained. Sustained as to leading.
4 Thank you.

5 MS. WILLIAMS: I'll reword the question.

6 THE COURT: Thank you.

7 Q. [Ms. Williams] Who did you go out with that
8 night?

9 A. Jen.

10 Q. And what time did you pick her up?

11 A. Probably maybe around 7:00, 7:30.

12 Q. Was that Sunday night?

13 A. Yes.

14 Q. The 14th?

15 A. [Indicates affirmatively]

16 Q. Where did y'all go?

17 A. We went to the bowling alley.

18 Q. What bowling alley is that?

19 A. Dorchester Lanes.

20 Q. About how far away is that from her home?

21 A. Probably like five, ten minutes.

22 Q. Did you pick her up?

23 THE COURT: I'm going to need you to speak into
24 the microphone and speak very loudly. Perhaps if you
25 sat forward that would be better. Thank you.

- 1 A. Probably about five, ten minutes away.
- 2 Q. [Ms. Williams] Okay. How did y'all get there?
- 3 A. I drove.
- 4 Q. And whose car did -- did both of you go in --
- 5 A. Yes. We both went in my car.
- 6 Q. And how long did you stay at that bowling alley?
- 7 A. Probably maybe two hours.
- 8 Q. So what time did you say you arrived at the
- 9 bowling alley?
- 10 A. Maybe 8:00, 8:30.
- 11 Q. And what time did you leave the bowling alley?
- 12 A. Probably by 10:00.
- 13 Q. And during the time that you were there, did she
- 14 receive any phone calls?
- 15 A. Yes. She said Justin had been calling her.
- 16 Q. Were there -- how many?
- 17 A. It was a couple of times. I don't really know.
- 18 Q. Was it more than two?
- 19 A. I think so.
- 20 Q. More than three?
- 21 A. I don't --
- 22 Q. Where did you go next?
- 23 A. We went to the Ice House.
- 24 Q. And how far away is the Ice House?
- 25 A. Probably five minutes.

1 Q. And did you go to the Ice House with her?

2 A. I walked in with her, but I didn't stay.

3 Q. So what time did you leave her at the Ice House?

4 A. Probably 10:30. I was home by 11:00, 11:30.

5 Q. You were home by 11:00 or 11:30?

6 A. Probably about 11:00. I went to my mom's house.

7 Q. So as far as you knew, she was at the Ice House
8 by 10:30?

9 A. Yes.

10 Q. Did you see *UICIM* that evening when you picked
11 up Jennifer?

12 A. Yes.

13 Q. How was he acting?

14 A. He was fine.

15 Q. Did he seem like he was acting normally?

16 A. Uh-huh.

17 Q. And that was at what time did you say?

18 A. Probably about 7:00, 7:30.

19 MS. WILLIAMS: Nothing further. Please answer
20 any questions the defense might have.

21 THE COURT: Mr. Bosnak?

22 MR. BOSNAK: No questions, Your Honor.

23 THE COURT: Ma'am, you may step down.

24 [Whereupon, the witness is excused and exits the
25 witness stand]

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THE COURT: Call your next witness.

MS. WILLIAMS: Jennifer S

[Whereupon, Ms. S comes forward]

THE CLERK OF COURT: Please raise your right hand. Place your left hand on the Bible.

[Whereupon, Ms. S is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you will give the Court in the trial of this case will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: Yes.

THE CLERK OF COURT: Please be seated.

[Whereupon, Ms. S takes the witness stand]

THE CLERK OF COURT: State your full name, and spell your last name for the record.

THE WITNESS: Jennifer S. S.

JENNIFER S

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Ms. S, what is your relationship to the victim in this case, *victim* [REDACTED]?

A. I'm his mother.

1 Q. Do you have other children?

2 A. Yes, I do.

3 Q. And who is that?

4 A. Serena.

5 Q. And how old is Serena?

6 A. She'll be ten in April.

7 Q. And where did you live with VICTIM?

8 A. I lived at [REDACTED].

9 Q. Do you still live there?

10 A. Yes.

11 Q. And who else lives near you and your family?

12 A. My parents live a couple of blocks away.

13 Q. And what kind of relationship do y'all have?

14 Like daily.

15 A. We interact daily. We talk on the phone. I see
16 them at least six days a week.

17 Q. Do they help care for the children?

18 A. Yes.

19 Q. In September of 2008, who lived in your home?

20 A. It was me, Serena, VICTIM, Brandi, Eric, and
21 Justin.

22 Q. And when you say Brandi and Eric, do you
23 remember their last names?

24 A. Eric Riggins and Brandi Mihill.

25 Q. And how were they in the home? Were they

1 renting?

2 A. They were renting a room.

3 Q. And how long had Justin lived in the home?

4 A. He had been off and on for six-plus months.

5 Q. When you say off and on, during the off times
6 where was he?

7 A. Most of the time he was at Melissa's house. He
8 had told me other places other times, but I found out that
9 he was more or less always there.

10 Q. And who is Melissa?

11 A. His baby's mother.

12 Q. And how did Justin act around your children?

13 A. He seemed to be what I thought was okay until,
14 you know, about a week before my son died.

15 Q. And then what did you observe?

16 A. He just was disciplining him more than I had
17 seen. I, at that time, took it as he was trying to be the
18 father figure.

19 Q. And what did he call *VICTIM* when he got angry
20 with him?

21 A. I hadn't noticed anything until at the pool when
22 he had called him a pussy.

23 Q. Did you do anything about that?

24 A. I told Justin not to do that, that that wasn't
25 the way I discipline my children.

1 Q. Did Eric and Brandi ever watch the kids?

2 A. I know Eric did once. Brandi was in the house
3 so I'm sure she had come out of the room once or twice.

4 Q. What did Eric do with the kids?

5 A. He was really interactive with them. I know
6 when I had come home he said that they baked cookies.

7 Q. Now, at the -- around the time of September
8 14th, was Justin seeing anyone else besides you?

9 A. Not to my knowledge.

10 Q. Did you learn sometime on that day that he might
11 have been?

12 A. Yeah. I got -- I got told that he was at
13 Melissa's house, but after questioning him he had told me
14 that it was just to see his son.

15 Q. So where did he say he spent the night on
16 Saturday, September 13th?

17 A. He said he had gone over to Melissa's house and
18 then went back to the house party that he was at and slept
19 there.

20 Q. And was that true?

21 A. No.

22 Q. Where did he actually spend the night?

23 MR. BOSNAK: Your Honor --

24 A. He spent the night at Melissa's --

25 MR. BOSNAK: -- I'm going to object.

1 THE COURT: Hold on one second.

2 Basis?

3 MR. BOSNAK: Relevance.

4 THE COURT: Counsel approach.

5 [Whereupon, an off-the-record bench conference
6 is held]

7 THE COURT: Sustained.

8 Q. [Ms. Williams] Okay. On Sunday, September
9 14th, did you -- what did you do that day?

10 A. Well, I woke up and we -- after Justin came back
11 to the house -- he had left and then came back, and we all
12 went to the pool.

13 Q. And when you say all of you, who is that?

14 A. It was me -- me and Serena had walked down;
15 Justin had taken ~~Victor~~ in his car prior to us leaving.

16 Q. How far ahead?

17 A. Ten, fifteen minutes.

18 Q. And who else met you at the pool, if anyone?

19 A. Rory was with us.

20 Q. Who is Rory? What's his last name?

21 A. Shoup.

22 Q. And whose friend is he?

23 A. He was a mutual friend of both of ours. But I
24 guess he would be more of Justin's friend. I mean, they
25 grew up together.

1 Q. Anyone else?

2 A. Amy Summers joined us there. Another girl,
3 Beth, I can't remember her last name, met us there.

4 Q. And right now you are currently facing felony
5 charges for what happened at the pool, are you not?

6 A. Yes, ma'am.

7 Q. And has the State promised you anything in
8 exchange for your testimony?

9 A. No.

10 Q. You're facing how much time, if you know?

11 A. Ten years.

12 Q. And you have no guarantees of anything --

13 A. No, ma'am.

14 Q. -- because of this testimony?

15 And did you sign a proffer agreement with the
16 State?

17 A. Yes, I did.

18 Q. And in that statement did you agree to tell the
19 truth about everything regarding the case involving the
20 death of your son?

21 A. Yes.

22 Q. And after that time, did you turn over some
23 letters that Mr. Hillerby had written to you?

24 A. Yes, I did.

25 Q. Now, after the pool incident, did you -- where

1 were you working before the day at the pool?

2 A. I was a professional photographer.

3 Q. And who was usually the subject of your --

4 A. It was children.

5 Q. So after you were charged with neglect for what
6 happened at the pool, were you still able to work there?

7 A. No. They suspended me, pending trial.

8 Q. And what happened with your other child?

9 A. She was taken into protective custody.

10 Q. And how long did you lose her for?

11 A. Almost a year.

12 Q. And did you have to do certain things to get her
13 back?

14 A. I had about five different things they required
15 me to do.

16 Q. Do you remember any of them?

17 A. Yeah. I had to do a psych test, counseling,
18 alcohol and drug treatment, parenting classes. And I'm
19 not positive on the other one. It's just another test.

20 Q. Did you do everything that was required of you
21 by DSS in order to get your child back?

22 A. Yes, I did.

23 Q. And are you working now?

24 A. Yes, I am.

25 Q. And are you doing anything else?

1 A. I'm going to school.

2 Q. Now, getting back to the pool: what time,
3 about, did you arrive at the pool?

4 A. It was about noonish.

5 Q. And then what time did you come home after the
6 pool?

7 A. It was between 6:00 and 6:30.

8 Q. And where did you go after that?

9 A. I went into the shower. Is that what you're
10 talking about?

11 Q. After your shower.

12 A. Oh. Well, Jennifer Angel came, and we went to
13 the bowling alley.

14 Q. And how long were you out of your home for the
15 evening?

16 A. Four to five hours.

17 Q. What time did you get home, if you remember.

18 A. It was after 1:00.

19 Q. So you were out of your home from 6:30 or 7:00
20 until 1:00 in the morning?

21 A. It was after 7:00 that I left.

22 Q. And when you left, did you see your son?

23 A. Yes, I did.

24 Q. Did he have any bruising all over his face?

25 A. No. He was eating in his highchair.

1 Q. And was he behaving the way he ordinarily
2 behaves?

3 A. Yeah.

4 Q. What time does Serena usually go to sleep?

5 A. At that time it was between 8:00 and 8:30. She
6 usually started getting ready after 8:00.

7 Q. And is she -- how would she characterize her
8 sleep? Is she a light sleeper or a heavy sleeper?

9 A. She's a heavy sleeper.

10 Q. And where is her room in relation to VICTIM's
11 room?

12 A. It's on the other side of the house.

13 Q. Is there a baby monitor in VICTIM's room?

14 A. There is. There was.

15 Q. What volume do you keep it on?

16 A. I kept it pretty loud, almost to the extent
17 enough where I could hear him breathing, more or less,
18 most of the time.

19 Q. Would you hear if someone were to go into his
20 room?

21 A. Definitely.

22 Q. Now, when you got home on I guess the early-
23 morning hours of the 15th, what did you do?

24 A. I had woken up Justin. He was on the couch
25 sleeping. And there was Jennifer -- no. I'm sorry. Amy

1 had come in with me with another girl who had woken up
2 Justin. And I went into my bedroom, dropped off my purse,
3 looked at the monitor, and then walked back to Eric and
4 Brandi's room.

5 Q. When you say you looked at the monitor, where
6 did you look at the monitor?

7 A. It was in my bedroom on my dresser.

8 Q. And what did -- why would you do that?

9 A. That's the way I checked on him. To open his
10 door would have woken him up.

11 Q. So did you go in and look -- did you look at
12 ~~VIOLM~~ that night?

13 A. I did not.

14 Q. Then what did you do?

15 A. I argued with them about rent.

16 Q. With who?

17 A. Brandi and Eric. And after I was finished, I
18 walked back into my bedroom and Justin was already in bed.

19 Q. Were you intoxicated?

20 A. I was.

21 Q. And when was the next time that you woke up?

22 A. I woke up about 6:15 or so to get my daughter
23 ready for school and I stayed awake with her until about
24 7:00 when she walked to the bus, which is right outside
25 the door.

1 Q. And then what?

2 A. And I went back into bed.

3 Q. And then when was the next time you got out of
4 bed?

5 A. I got out of bed about ten o'clock, with Justin,
6 and we were going to go make something to eat and realized
7 that, you know, ~~JUSTIN~~ hadn't woken up yet. So I walked
8 down the hallway, with Justin pretty much close behind me.

9 Q. Did Justin say anything about you going into the
10 room?

11 A. Not until I opened the door, and then he said,
12 oh, he's still sleeping, let's keep him sleeping, keep the
13 door open, maybe when we make noise that he'll wake up on
14 his own. And as I was going to shut the door, I realized
15 there was something on his face. And I opened the door
16 back. And the night before he had messed his -- in his
17 diaper, and some babies -- he did -- smeared it all over
18 the place. So I assumed that maybe he had done it and I
19 didn't hear him wake up. So I went over to the crib and
20 realized that it wasn't feces.

21 Q. And where was he lay -- how was he laying when
22 you saw him?

23 A. He was laying on his stomach with his head
24 turned like this [indicates].

25 Q. And did you touch him?

1 A. I touched his back and he was cold to the touch,
2 so I thought he was just cold because he didn't have any
3 blankets on. He didn't have any sheets on his crib. And
4 I was rubbing his back trying to find a warm spot, because
5 I just didn't think that -- and then I went to turn him
6 over and he just turned over like a board.

7 Q. What was ~~VICTIM~~ wearing?

8 A. He was wearing a tan one-piece pajama.

9 MS. WILLIAMS: Court's indulgence for just a
10 second.

11 THE COURT: Yes, ma'am.

12 MS. WILLIAMS: Your Honor, I'm going to show
13 this to Mr. Bosnak. This is State's 24.

14 [Whereupon, Ms. Williams and Mr. Bosnak confer]

15 MS. WILLIAMS: May I approach?

16 THE COURT: You may.

17 Q. [Ms. Williams] Do you recognize this? Is this
18 what your child was -- what is this?

19 A. The pajamas he died in.

20 Q. And do you know, if you know, what these -- what
21 this is?

22 A. It's the blood I wiped on him.

23 Q. And where was the blood?

24 A. It was coming out of his nose, and it was on the
25 crib mattress.

1 MS. WILLIAMS: Your Honor, at this time we would
2 offer State's 24 into evidence.

3 MR. BOSNAK: Without objection.

4 THE COURT: State's 24 into evidence without
5 objection.

6 [Whereupon, State's Exhibit Number 24 is
7 admitted into evidence by the Court]

8 Q. [Ms. Williams] What happened next?

9 A. I went hysterical. I know that I was being
10 pulled away from him. I know that Justin called 911. I
11 saw Brandi and Eric run into the room. I don't really
12 know in what sequence and when. It was kind of all
13 clumped together. I know I called my mom. I know my dad
14 showed up. I know the EMS showed up. I know -- and like
15 I said, I don't know when this all happened.

16 Q. Did your dad go in the house?

17 A. He did.

18 Q. Can you describe his demeanor when he exited the
19 house?

20 A. He was in shock. He was tearing.

21 Q. Who called 911?

22 A. Justin did.

23 Q. Was there any other person that was on the phone
24 besides him?

25 A. As far as I know, just me calling my mom.

1 Q. At some point do you remember law enforcement
2 arriving?

3 A. They arrived after the EMS was there. I
4 remember that.

5 Q. And did you leave the scene at some point?

6 A. Yeah. The officer took me and Justin down to
7 the station in the back of her car.

8 Q. And did you cooperate?

9 A. Yes, I did.

10 Q. At first did you think -- what did you think
11 happened?

12 A. I had no idea. I had no idea. And I just
13 was -- I questioned Justin if anything had happened, and I
14 just got no answers. I wondered if he knew what could it
15 be.

16 And after I gave my statement and came back to
17 the house, he had talked to his brother and his brother
18 had offered us the secondhand drowning. And that's when
19 we started researching.

20 Q. And at what point -- you just testified about
21 your daughter being taken away. At what point was your
22 daughter taken away?

23 A. While I was being questioned.

24 Q. So how would you characterize your initial
25 relationship with the police regarding this whole case?

1 A. Not very good.

2 Q. Were you defensive of Mr. Hillerby at first?

3 A. I was --

4 Q. Were you supportive?

5 A. I was supportive.

6 Q. At some point did Mr. Hillerby's story change?

7 A. Not really to me. He told me that he did hit
8 him but he said that he knew that it couldn't have been
9 him that had done this to him.

10 Q. Did he originally tell you that he didn't hit
11 him?

12 A. I don't remember him telling me he didn't or he
13 did at that -- at first. I don't remember hearing that he
14 did hit him, at first, and I don't remember an answer when
15 I had asked him if anything had happened the night before.

16 Q. Did he call you from the jail?

17 A. Several times.

18 Q. And did you have an opportunity --

19 MS. WILLIAMS: Your Honor, I'm showing Mr.
20 Bosnak State's 20.

21 [Whereupon, Ms. Williams and Mr. Bosnak confer]

22 Q. [Ms. Williams] Have you ever heard this tape
23 before?

24 A. Yes, ma'am.

25 Q. Have you heard it from beginning to end?

1 A. Yes, ma'am.

2 Q. And is it an accurate depiction of the
3 conversation that you had with Justin Hillerby?

4 A. Yes, it is.

5 Q. Has it been altered in any way? Changed?

6 A. No.

7 MS. WILLIAMS: Your Honor, at this time we would
8 offer State's 20 into evidence.

9 MR. BOSNAK: Without objection.

10 THE COURT: State's 20 into evidence without
11 objection.

12 [State's Exhibit Number 20 is admitted into
13 evidence by the Court]

14 MS. WILLIAMS: Permission to publish?

15 THE COURT: You may.

16 MS. WILLIAMS: Your Honor, while Mr. Harp is
17 loading, may I give the jury the transcript so that
18 they can follow along?

19 THE COURT: Any objection?

20 MR. BOSNAK: None, Your Honor.

21 MS. WILLIAMS: I'll hand these to the bailiff.

22 [Whereupon, the bailiff proffers documents to
23 the jury]

24 MS. WILLIAMS: Your Honor, may I approach with
25 the Court's copy?

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THE COURT: You may.

[Whereupon, Ms. Williams proffers documents to the Court]

[Whereupon, State's Exhibit Number 20, jail tape, is played for the jury]

THE COURT: Ms. Williams, can you turn it up?

MS. WILLIAMS: Can you turn it up a little?

THE COURT: Ms. Williams.

MR. BOSNAK: Your Honor, we need to be able to hear that.

MS. WILLIAMS: We just --

THE COURT: Well, then, turn it off, Ms. Williams.

[Whereupon, State's Exhibit Number 20, jail tape, is paused]

MS. WILLIAMS: Just turn it off, and we'll just approach.

[Whereupon, an off-the-record bench conference is held]

THE COURT: Ladies and gentlemen, we are going to take a short break. We are having some technical difficulties hearing the audio, and so we're going to take a short break and make some adjustment. And so instead of you sitting here --

And, Bailiff, I'm going to need you to collect

1 the transcripts at this time.

2 [Whereupon, the bailiff complies]

3 THE COURT: Ms. Williams, if you'll just verify
4 that there are fourteen handed --

5 MS. WILLIAMS: Oh. Yes, Your Honor.

6 THE COURT: -- back to you.

7 [Whereupon, Ms. Williams complies]

8 THE COURT: Ladies and gentlemen, do not discuss
9 this case. Do not begin your deliberations.

10 We'll receive you back momentarily. Thank you.

11 Please rise for the jury.

12 [Whereupon, the jury exits the courtroom at
13 2:40 p.m.]

14 THE COURT: Thank you. Be seated.

15 Anything before we break, Ms. Williams?

16 MS. WILLIAMS: No, Your Honor. Can the witness
17 be --

18 THE COURT: She may.

19 Anything before we break?

20 MR. BOSNAK: Nothing, Your Honor.

21 THE COURT: Ms. S do not -- I'm going to
22 allow you to step down.

23 Do not discuss this case with anyone, your
24 previous -- anybody that has testified before or who
25 plans to testify.

1 You may step down. Thank you.

2 [Whereupon, the witness is excused and exits the
3 witness stand].

4 THE COURT: We'll be at ease.

5 [Off the record momentarily]

6 THE COURT: We'll be at ease. Let me know when
7 you are ready, Ms. Williams.

8 MS. WILLIAMS: Thank you, Your Honor.

9 [Whereupon, a recess is taken from 2:42 p.m. to
10 2:50 p.m.]

11 THE COURT: Anything before we bring in the
12 jury?

13 MS. WILLIAMS: Do you want me to give these to
14 the bailiff before they come in, Your Honor, so that
15 they're ready to hand them out?

16 THE COURT: They can hand them as they're
17 walking in.

18 Ms. S ?

19 [Whereupon, Ms. S re-takes the witness
20 stand].

21 THE COURT: Ms. S , I remind you that you
22 are still under oath. Thank you.

23 [Whereupon, the jury enters the courtroom at
24 2:53 p.m.]

25 THE COURT: Thank you. Be seated.

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Ms. Williams?

MS. WILLIAMS: Thank you, Your Honor.

[Whereupon, State's Exhibit Number 20, jail tape, is played for the jury]

[Whereupon, Court's Exhibit Number 2 is marked by the court reporter]

THE COURT: Ladies and gentlemen of the jury, if you will pass your transcripts down, the bailiffs will collect them. Thank you.

Ms. Williams, if you'll just make sure there are fourteen.

[Whereupon, Ms. Williams complies]

MS. WILLIAMS: Yes, Your Honor.

THE COURT: Thank you.

Q. [Ms. Williams] Now, Jennifer, even after this tape, what did you think happened to your child?

A. I still didn't know. I thought -- I knew he had hit him, he told me he hit him, but I didn't believe that he killed him.

Q. Were you in denial?

A. Probably more than that. I mean, I was in love with him. I didn't want to believe it.

MS. WILLIAMS: Court's indulgence.

THE COURT: Yes, ma'am.

MS. WILLIAMS: Please answer any questions the

1 defense might have.

2 CROSS-EXAMINATION

3 BY MR. BOSNAK:

4 Q. Jennifer, one of the reasons -- isn't it true
5 that one of the reasons that you and Justin were looking
6 at this drowning case, or case where a baby fell in the
7 pool and ingested some water and died later, because the
8 child had actually died like that in Summerville?

9 A. It was an eight-year-old kid in Goose Creek.

10 Q. Okay. Goose Creek.

11 Had died about six months before this happened
12 to Blaze, wasn't it, or sometime around that period?

13 A. Something like that.

14 Q. And they thought it had been a homicide by child
15 abuse; correct?

16 A. They didn't arrest the guy until after Justin
17 got arrested, so it was still counted as secondhand
18 drowning syndrome.

19 Q. Right. But originally they thought there might
20 be foul play, and basically what they found out is that
21 the child had ingested some water at the swimming pool
22 because --

23 A. I don't know very much about that case. All I
24 know is that -- what was on the media and what in the
25 media was a secondhand drowning. I don't know anything

1 about the legality of it.

2 Q. Okay. But that's what y'all were looking at
3 when you went online; correct?

4 A. We were looking at the symptoms. We never found
5 that case.

6 Q. Okay. But what you were looking at, that's why
7 you thought about looking for those particular symptoms;
8 right?

9 A. His brother brought it up to us and when we
10 looked into it, some of the symptoms was bleeding out of
11 the mouth, and aspirating blood, and also foaming at the
12 mouth, and stuff like that.

13 Q. And your child ~~ITM~~ had trouble with asthma;
14 isn't that correct?

15 A. Yes, he did.

16 Q. Had bad trouble with asthma, didn't he?

17 A. It was off and on. At that period of time he
18 wasn't -- it wasn't acting up.

19 Q. Isn't that one reason you had the baby monitor
20 where you could listen in on his sleeping and wheezing and
21 things like that?

22 A. Yeah. More or less when he was sick, though,
23 not on an everyday basis.

24 Q. But that's why you had the baby monitor?

25 A. Well, I had a baby monitor because he was a

1 baby.

2 Q. Okay. Now, who's the father of that child? of
3 ~~VICTIM~~

4 MS. WILLIAMS: Objection. Relevance.

5 THE COURT: Counsel approach.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: Rephrase your question, Mr. Bosnak.

9 MR. BOSNAK: Jennifer, let me rephrase my
10 question.

11 Q. [Mr. Bosnak] Justin is not the father of ~~VICTIM~~:
12 correct?

13 A. Correct.

14 Q. Now, you had been dating Justin about the six
15 months y'all had been living together?

16 A. We had been dating over a year.

17 Q. Now, y'all first met each other through like a
18 dart team? Would that be correct?

19 A. Yes.

20 Q. And you both started off as friends?

21 A. Yes, we did. He was dating Melissa at the time.

22 Q. Right. But you both -- you two became very good
23 friends?

24 A. I became very good friends with everybody on the
25 dart league.

1 Q. Justin didn't ever refer to you as his best
2 friend?

3 A. After his girlfriend left the situation, yeah,
4 we became best friends.

5 Q. Okay. That's what I was asking.

6 And after the friendship developed, you decided
7 that you wanted to go out with each other and become
8 romantically involved?

9 A. Right.

10 Q. Okay. And so about a year went by. He decided
11 to move in with you.

12 A. That sounds about right.

13 Q. Okay. And he never -- you never saw him strike
14 your children, did you?

15 A. No.

16 Q. He didn't discipline that way, did he?

17 A. I think he followed my discipline procedures at
18 first.

19 Q. Please answer my question. He did not strike
20 your children?

21 A. He never struck my child, no, as far --

22 Q. Your children.

23 A. -- as I see.

24 Q. Your children.

25 A. My children.

1 Q. Okay. And wasn't his discipline procedure to
2 put them in time out and put them in the corner?

3 A. That's what we practiced, yes.

4 Q. Okay. You and him both practiced that?

5 A. Right.

6 Q. When the children were acting up, go to the
7 corner?

8 A. Well, we couldn't always tell them to go to the
9 corner. Serena was put into her room; VICTIM was put into
10 the corner. He never voluntarily walked there.

11 Q. So you would have to lead him to the corner?

12 A. More or less.

13 Q. Okay. But that was your way of disciplining?

14 A. Most of the time.

15 Q. What other way was there to discipline the
16 children?

17 A. Bedtime.

18 Q. Put them to bed early?

19 A. Right. Sit down like in one spot and don't
20 move. It wasn't always the corner, but it was usually
21 sitting in a spot without movement.

22 Q. So it would be fair to say that no type of
23 corporal punishment was used by Justin or you on your
24 children?

25 A. I know I've spanked my daughter before. And I'm

1 sure Justin had seen me do that, but I -- there was some
2 spankings on the bottom of ~~JUSTIN~~ but it was not enough to
3 create anything because he was wearing a diaper anyway.

4 Q. But Justin never did that?

5 A. I'm -- I know both of us have given him a little
6 swift spanking as he was walking.

7 Q. Just a little pat?

8 A. Exactly.

9 Q. Okay. But no hard blow or anything like that?

10 A. There was never any hard blows.

11 Q. And you loved Justin?

12 A. Yes.

13 Q. And you thought he loved you?

14 A. I thought I knew I -- he loved me.

15 Q. Okay. And he worked?

16 A. Yes.

17 Q. And he tried to help you with bills and things
18 like that?

19 A. Yep.

20 Q. And even to this -- up until a couple of months
21 ago, he was writing you letters?

22 A. He's still writing me letters.

23 Q. And he professes his love to you, doesn't he?

24 A. Not anymore.

25 Q. None of his letters say I love you --

1 A. Of course they did at first, but not anymore.

2 Q. The last letters don't say I love you?

3 A. No.

4 Q. Now, just a few things. When VICTIM -- when you
5 would feed VICTIM, how would -- where would you feed him?

6 A. In his highchair.

7 Q. So that was par, to put him in the highchair --

8 A. Yes.

9 Q. -- to feed him.

10 And that's where he wouldn't get food all over
11 the house; correct?

12 A. Right. I mean, he --

13 Q. And be dropping food on the floor and picking it
14 up and eating it and stuff; right?

15 A. Well, he was allowed to walk around with a
16 cookie or so. But dinner was always sat at the table.

17 Q. At the high -- he sat in his highchair?

18 A. Right.

19 Q. Where you could feed him?

20 A. Yeah.

21 Q. Okay. And, also, in the living room there's a
22 changing area, right, where you change his diapers?

23 A. We just changed them on the floor, usually.

24 Q. But in the living room?

25 A. Uh-huh.

1 Q. And Justin would change him at times?

2 A. Yeah.

3 Q. Okay. So Justin helped in the duties there?

4 A. Yeah.

5 Q. Okay. Now, I want to go back a minute to the
6 point about when you came in that night. You said you
7 came in what time? probably one o'clock?

8 A. It was 1:15 or so. Right around that time.
9 1:30.

10 Q. And you were upset?

11 A. No, I wasn't upset. I was happy. I had just
12 gotten home from being out. I was out with friends. I
13 hadn't done that in a long time.

14 Q. Okay. And that was one reason Justin agreed to
15 keep the children, wasn't it, where you could go out and
16 have fun?

17 A. And that he had gone out the night before, yes.

18 Q. Right. But he wanted you to go out; right?

19 A. We discussed it and it came down to that I was
20 allowed to go, yeah.

21 Q. Well, not allowed to go: that he wanted you to
22 go out, correct, and he would keep the children?

23 A. No. It was more like I was allowed to go.

24 Q. Allowed to go. Okay.

25 A. Uh-huh.

1 Q. Now, you got back in at one o'clock. You were
2 with two other girls when you came in?

3 A. Yes.

4 Q. And y'all woke Justin up because he was asleep
5 on the couch?

6 A. Yes.

7 Q. And what did he have on?

8 A. He had clothes on. He didn't change or anything
9 yet. He still had shorts and a tee-shirt on. Maybe not
10 even a tee-shirt. I'm not sure.

11 Q. He didn't have any blood or anything on him, did
12 he?

13 A. I didn't look enough.

14 Q. Okay.

15 A. But I -- not as far as I saw.

16 Q. Okay. Didn't see any on him?

17 A. Huh-uh.

18 Q. And you got him up and told him to go into the
19 room and go to bed; right?

20 A. No. I left him and the two girls in the living
21 room and went and put my purse into the bedroom, and then
22 talked to the roommates.

23 Q. Okay. So you went in and unlocked their door
24 and went in and talked to the roommates?

25 A. I don't remember unlocking it. But, I mean,

1 it's just a fingernail to unlock it, so I'm not -- I
2 wouldn't be surprised if I did it. But, yeah, I went in
3 there not angry but going to confront them because they
4 had only paid one month rent after three months of being
5 there, and I had heard that they had just gone out to, you
6 know --

7 Q. Logan's?

8 A. -- Logan's. And they're always spending money.
9 Why can't they pay for the rent. So I went in there
10 asking them. And after, you know, us volley -- you know,
11 talking back and forth, it got louder and then to the fact
12 where we were just both like, what; just get out. And I
13 left.

14 Q. Okay. And was -- where was Justin when you left
15 the roommates' room?

16 A. He was in bed.

17 Q. He was in the bed.

18 A. Uh-huh.

19 Q. And then you went in and got in the bed with
20 him?

21 A. Yeah.

22 Q. Now, wasn't he supposed to do a job, a roofing
23 job, the next day?

24 A. That's what he did for a living. But he had his
25 own hours so I'm not too positive that he was going to go,

1 because it changed daily. But it's safe to say he did.
2 It was Monday.

3 Q. You don't know. But you don't know?

4 A. I don't remember.

5 Q. Okay. Don't remember.

6 So Monday got -- Monday came around. Did you
7 get your daughter up, or did she get up?

8 A. I got my daughter up.

9 Q. You got your daughter up. Did you dress her?

10 A. She could dress herself.

11 Q. Did you give her breakfast?

12 A. She eats breakfast at school.

13 Q. Okay. So you just got her up, and then she
14 found her way outside to the bus? Is that how she gets to
15 school?

16 A. No. She watched TV on the couch. I waited for
17 her to go to leave, and then gave her a kiss and went back
18 into my bedroom.

19 Q. Okay. So you were up for a certain period of
20 time?

21 A. Half an hour, tops.

22 Q. Okay. So you were up for half an hour, and then
23 you went back and you went back to bed?

24 A. Yes.

25 Q. So when you came in about one o'clock, you

1 didn't check on ~~VICTA~~?

2 A. I checked the baby monitor. I didn't physically
3 go into his bedroom.

4 Q. Well, how can you check what's going on with the
5 baby monitor?

6 A. Because it was loud enough that if he were
7 stirring, I would have seen it or heard it.

8 Q. Did you hear him sleeping?

9 A. I didn't hear anything. And the little dial on
10 it wasn't moving. It wasn't -- it wouldn't move when he
11 was breathing, and I didn't check. I didn't check to see
12 if he was breathing. That's not one of the things I did.
13 I didn't assume anything had happened.

14 Q. Okay. And the next morning when you got up to
15 get your daughter, you didn't go check on him, did you?

16 A. No. The baby monitor is still, you know, silent
17 so everything seemed to be normal. I mean, that's --
18 there was nothing to -- for me to assume that something
19 was wrong.

20 Q. What time does he usually get up in the morning?

21 A. Between 10:00 and 10:30.

22 Q. He sleeps that late?

23 A. Uh-huh.

24 Q. Okay. 10:00, 10:30.

25 So it's nothing unusual for him not to be up

1 that early in the morning?

2 A. Not really.

3 Q. And when you went into his room, was the light
4 on in his room?

5 A. I think it was. I remember when I was turning
6 around to close the door, the light was on. I don't
7 remember turning it on. So it was on, but I don't
8 remember turning it on.

9 Q. Okay. So when you went in in the morning, the
10 light was on in the room?

11 A. Right.

12 Q. Did you notice the light on in the room when you
13 went to Brandi and those room [phonetic]?

14 A. No.

15 Q. So you didn't notice if the light was on in
16 Victim's room then?

17 A. No.

18 MR. BOSNAK: No further questions, Your Honor.

19 THE COURT: Ms. Williams?

20 REDIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. When you say light, we're talking about what
23 kind of light?

24 A. His bedroom light.

25 Q. Is it a lamp?

1 A. It was a ceiling light.

2 Q. And how often did the defendant, Mr. Hillerby,
3 babysit ~~UOTM~~ and Serena --

4 A. That was the --

5 Q. -- without you there?

6 A. -- first time he had done it at night.

7 Q. So this was the first time he had ever had the
8 children alone?

9 A. At night. I mean, he had watched him if I ran
10 to the store or if I went out for half an hour. He never
11 had watched them alone like that before.

12 Q. For a period of time?

13 A. Right.

14 Q. And how long had he lived there before September
15 14th?

16 A. Off and on for about six months.

17 Q. Whose phone did you have that night?

18 A. I had his phone.

19 Q. Why?

20 A. Since I had caught him in a lie the night
21 before, I had told him that I was taking his phone so he
22 couldn't call her anymore and that I could trace the phone
23 calls he used from the house phone. So I took his phone.

24 Q. So you left that night, and you took his phone?

25 A. Yes.

1 Q. And it was the first time he had ever been with
2 the kids for any length of time?

3 A. [Indicates affirmatively]

4 Q. And you took his phone because you were angry at
5 him?

6 A. I took his phone because I didn't want him -- or
7 her to call him, or him to call her, because he kept on
8 telling me that we were getting so good and that we were
9 going to finally work things out the right way and have a
10 family and -- and I figured if he didn't talk to her, that
11 it would work that way, I guess.

12 Q. Did you hurt your child that night?

13 A. No, I didn't.

14 Q. Did you hurt your child that morning?

15 A. No, I didn't.

16 Q. Was your child okay when you left?

17 A. Yes, he was.

18 MR. BOSNAK: Just a few follow-up questions.

19 THE COURT: Yes, sir.

20 RE-CROSS-EXAMINATION

21 BY MR. BOSNAK:

22 Q. That night when you were out, you and Justin
23 talked on the phone three or four times, didn't you?

24 A. Yes.

25 Q. And a couple of times he called you and asked

1 you if you wanted to come home, he would get somebody to
2 bring you home, didn't he?

3 A. I don't remember him asking me that, but I guess
4 he could have.

5 MR. BOSNAK: Okay. Thank you.

6 MS. WILLIAMS: Nothing further, Your Honor.

7 THE COURT: You may step down.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: Call your next witness.

11 MS. WILLIAMS: Melissa Georgoulis.

12 MR. BOSNAK: Your Honor, we need to talk to you,
13 please.

14 THE COURT: You may approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 [Whereupon, Ms. Georgoulis comes forward]

18 THE CLERK OF COURT: Raise your right hand.
19 Place your left hand on the Bible.

20 [Whereupon, Ms. Georgoulis is duly sworn by the
21 clerk of court as follows: do you solemnly swear or
22 affirm that the testimony you will give the Court in
23 the trial of this case will be the truth, the whole
24 truth, and nothing but the truth, so help you God]

25 THE WITNESS: I do.

1 THE CLERK OF COURT: Please be seated.

2 [Whereupon, Ms. Georgoulis takes the witness
3 stand]

4 THE CLERK OF COURT: State your full name, and
5 spell your last name for the record.

6 THE WITNESS: Melissa Valerie Georgoulis.

7 THE COURT: Would you spell your last name,
8 please.

9 THE WITNESS: G-E-O-R-G-O-U-L-I-S.

10 THE COURT: Ms. Williams?

11 MS. WILLIAMS: How do you pronounce your last
12 name? I think I've been mutilating it.

13 THE WITNESS: Georgoulis.

14 MS. WILLIAMS: Georgoulis. Okay. Thank you,
15 Ms. Georgoulis.

16 - - - - -

17 MELISSA GEORGOULIS,

18 Having Been First Duly Sworn,

19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. How do you know the defendant, Justin Hillerby?

23 A. He's the father of my son.

24 Q. And did you see him the evening of September
25 13th?

1 A. Yes.

2 Q. And --

3 MR. BOSNAK: I'm going to object, on relevancy,
4 any further line of questioning about what happened the
5 day before.

6 THE COURT: I overrule your objection. I'm
7 going to allow it.

8 Q. [Ms. Williams] Where did you see him?

9 A. At my house.

10 Q. And how long was he there?

11 A. [No response]

12 Q. Did he spend the night?

13 A. The 13th?

14 Q. Yes.

15 A. Saturday?

16 Q. Yes.

17 A. Yes.

18 Q. And what time did he leave?

19 A. Approximately 10:00 a.m.

20 Q. What was his mood like when he left?

21 MR. BOSNAK: Objection, Your Honor.

22 Again, I don't see any relevance of what his
23 mood was at ten o'clock the day before.

24 THE COURT: Overruled. I'm going to allow it.

25 A. He was upset.

1 Q. [Ms. Williams] I'm sorry?

2 A. He was upset.

3 MS. WILLIAMS: Can you talk into the microphone,
4 Ms. Georgoulis.

5 A. He was upset.

6 Q. [Ms. Williams] And what had happened to make
7 him upset?

8 A. I don't recall.

9 Q. Would it refresh your memory to review your
10 statement, perhaps? If you read this statement that you
11 wrote, would it refresh your memory?

12 A. We can.

13 Q. Ms. Georgoulis, who is staying with you right
14 now at your home?

15 A. Pardon?

16 Q. Who is staying -- do you have any houseguests --
17 MR. BOSNAK: Objection, again --

18 Q. [Ms. Williams] -- right now?

19 MR. BOSNAK: -- Your Honor.

20 I don't see what relevance that has about who is
21 staying in the home now.

22 MS. WILLIAMS: It goes to bias, Your Honor.

23 THE COURT: Counsel approach.

24 [Whereupon, an off-the-record bench conference
25 is held]

1 Q. [Ms. Williams] Ms. Georgoulis, who is staying
2 with you right now at your home?

3 A. Me and my children.

4 Q. Is Justin Hillerby's mother staying with you?

5 A. Yes.

6 MS. WILLIAMS: Can you please speak into the
7 microphone.

8 A. Yes.

9 Q. [Ms. Williams] And you're under subpoena to be
10 here; is that right?

11 A. Yes.

12 Q. Okay. Now, I asked you a question about why
13 Mr. Hillerby was upset when he left your home. Would it
14 refresh your memory to review the statement that you wrote
15 and gave to the police?

16 A. Okay.

17 MS. WILLIAMS: May I approach, Your Honor?

18 THE COURT: You may.

19 Q. [Ms. Williams] Don't read it out loud, but if
20 you could read it to yourself and see if that helps you
21 answer the question.

22 [Whereupon, Ms. Williams proffers documents to
23 the witness]

24 [Whereupon, the witness reviews documents]

25 Q. [Ms. Williams] Does that help you?

1 A. Repeat the question, please.

2 Q. Why was he upset when he left your home?

3 A. He was upset because I had a former friend come
4 to my house and accuse me of something.

5 Q. What did the former friend accuse you of?

6 A. She accused me of something that was untrue.

7 MS. WILLIAMS: I'm sorry, Ms. Georgoulis. Could
8 you please try to speak -- would it help if we move the
9 microphone closer? Or maybe if you could bend over.
10 It's just very difficult to hear you.

11 [Off the record momentarily]

12 Q. [Ms. Williams] Go ahead.

13 A. She accused me of sleeping with her husband.

14 Q. And did he try to get back together with you
15 that morning?

16 A. [No response]

17 Q. Would it refresh your memory to look at page 3
18 of your statement?

19 [Whereupon, the witness reviews documents]

20 A. Yes.

21 MS. WILLIAMS: Thank you. Please answer any
22 questions from the defense.

23 THE COURT: Mr. Bosnak?

24

25

CROSS-EXAMINATION

1
2 BY MR. BOSNAK:

3 Q. Melissa, you were subpoenaed by the solicitor's
4 office?

5 A. Yes.

6 Q. What type of contact have you had with the
7 solicitor's office?

8 A. She called me and told me to come in, that she
9 needed to visit with me.

10 MR. BOSNAK: Speak up.

11 Q. [Mr. Bosnak] She called you and told you to
12 come in and visit with her?

13 A. Yeah. That I needed to come talk to her.

14 Q. And anything else?

15 A. No.

16 Q. Did she say anything to you if you didn't come
17 in she was going to have you arrested?

18 MS. WILLIAMS: Objection, Your Honor --

19 A. Said she would have me subpoenaed.

20 THE COURT: Hold on one second.

21 What's the basis, Ms. Williams?

22 MS. WILLIAMS: It's just not -- he's just asking
23 questions with untruths. I mean, he's getting a
24 statement --

25 THE COURT: Overruled. You may ask the

1 question.

2 Q. [Mr. Bosnak] Did the solicitor's office tell
3 you that if you didn't come in on their subpoena, that
4 they would have you arrested?

5 A. No.

6 Q. They didn't tell you that?

7 A. No. She said that if I didn't come talk -- I
8 can either come talk to her in her office or I can talk to
9 her on the stand.

10 Q. Okay.

11 A. And then when I came in, I was subpoena.

12 Q. Okay. So nothing about arrest? I was wrong
13 about that?

14 A. Yes.

15 Q. Okay. I stand corrected.

16 Now, does Mr. Hillerby's mother, does she live
17 in Charleston?

18 A. No.

19 Q. Where does she live?

20 A. At Guantanamo Bay, Cuba.

21 Q. Guantanamo Bay, Cuba.

22 A. She's --

23 Q. Go ahead. I'm sorry.

24 A. She's stationed there.

25 Q. Stationed there.

1 And she came in not only to see Justin's trial,
2 but also to see her grandbaby, didn't she?

3 A. Yes.

4 Q. Okay. And is that why she is staying at your
5 house?

6 A. Yes.

7 Q. And she didn't get in until, what, last night?

8 A. Last night. Yes.

9 Q. All right. So she's only been there, what, one
10 day?

11 A. Yes.

12 Q. And what -- and she's leaving on Thursday?

13 A. No. No.

14 Q. Okay. She's been with you one day?

15 A. Yes.

16 Q. But she's got to get an operation or something
17 this week; correct?

18 A. Yes.

19 Q. Okay. Now, Justin was mad with you that day?

20 A. Yes.

21 Q. And you were mad with him, too, weren't you?

22 A. Yes.

23 Q. And you were mad with him because he was going
24 to go back with Jen; right?

25 A. I was mad because he was leaving.

1 Q. You were mad because he was leaving?

2 A. [Indicates affirmatively]

3 Q. That's why you were mad?

4 A. Yes.

5 MR. BOSNAK: Okay. No further questions.

6 MS. WILLIAMS: Nothing further, Your Honor.

7 THE COURT: Ma'am, you may step down. You are
8 released from your subpoena. Thank you.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 THE COURT: Mr. Foreman, do y'all need a mid-
12 afternoon break?

13 [Whereupon, the jury confers]

14 THE FOREPERSON: No. We're fine.

15 THE COURT: All right. Call your next witness,
16 Ms. Williams.

17 MS. BIAGIANTI: Your Honor, the State would call
18 Jason Workman to the stand.

19 [Whereupon, Mr. Workman comes forward]

20 THE CLERK OF COURT: Please raise your right
21 hand. Place your left hand on the Bible.

22 [Whereupon, Mr. Workman is duly sworn by the
23 clerk of court as follows: do you solemnly swear or
24 affirm the testimony you will give the Court in the
25 trial of this case will be the truth, the whole truth,

1 and nothing but the truth, so help you God]

2 THE WITNESS: Yes, ma'am, I do.

3 THE CLERK OF COURT: Please be seated.

4 [Whereupon, Mr. Workman takes the witness stand]

5 THE CLERK OF COURT: State your full name.

6 Spell your last name for the record.

7 THE WITNESS: Jason L. Workman. Last name is
8 spelled W-O-R-K-M-A-N.

9 MS. BIAGIANTI: Good afternoon, Officer Workman.

10

11

JASON L. WORKMAN,

12

Having Been First Duly Sworn,

13

was Examined and Testified as Follows:

14

DIRECT EXAMINATION

15

BY MS. BIAGIANTI:

16

Q. Can you tell us where you are employed, in what
17 capacity, and for how long you've been employed there.

18

A. I work for the Summerville Police Department.
19 I've been there for approximately three and a half years.

20

Q. Okay. And what is your current rank at the
21 Summerville --

22

A. Patrolman first class.

23

Q. Now, tell our jury some of your duties and
24 responsibility as patrolman first class.

25

A. As a patrolman first class I respond to calls of

1 service, take incident reports, take written statements,
2 work traffic, work accidents, and protect life and
3 property.

4 Q. Now, officer, directing your attention to
5 September 15th, 2008, approximately 10:45 in the morning,
6 were you on duty that morning?

7 A. Yes, ma'am, I was.

8 Q. And did you get a call regarding a suspicious
9 death?

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

11 Q. Tell us where you responded to, the address.

12 A. I believe it was -- is it [REDACTED] in
13 Weatherstone.

14 Q. If I showed you an incident report, would that
15 refresh your memory?

16 A. Yes, ma'am, it would.

17 [Whereupon, Ms. Biagianti proffers documents to
18 the witness]

19 [Whereupon, the witness reviews documents]

20 A. [REDACTED]. Yes, ma'am.

21 Q. [Ms. Biagianti] Thank you.

22 [REDACTED]. Where is -- what city is that?

23 A. It's in the town of Summerville, county of
24 Berkeley.

25 Q. And tell us what happened when you responded,

1 what you saw, who already was there.

2 A. Patrolman First Class Laura Sloan was there
3 before I. She was the initial responding officer. I was
4 a backup officer. Responded to [REDACTED] [REDACTED] in reference
5 to a suspicious death.

6 Upon entering the residence, I was checking on
7 the safety of Officer Sloan. She advised me that she was
8 fine and the scene was secure.

9 Q. Who was there when -- besides Officer Sloan when
10 you arrived?

11 A. Jennifer and Justin.

12 Q. Jennifer being the mother of the child?

13 A. Yes, ma'am.

14 Q. And Justin being the defendant?

15 A. Yes, ma'am.

16 Q. And where were they located when you arrived?

17 A. They were in the living-room area.

18 Q. And how -- tell us how Jennifer was acting at
19 that moment.

20 A. She was hysterical. She was crying. When I
21 arrived, she said, he's back there. And then, you know,
22 just covering her face a lot, crying.

23 Q. And how was the defendant acting at this point?

24 A. His head -- I remember his head being hung low
25 and he was telling Jennifer he was sorry.

1 Q. How many times did he say he was sorry?

2 A. He uttered it over and over again while I was
3 there.

4 Q. Now, after you heard that, what did you proceed
5 to do?

6 A. I was instructed by my lieutenant, who had just
7 came on scene after me, to go ahead and start a crime
8 scene log.

9 Q. And for our jury, tell us what that entails and
10 what do you do to protect the scene at that point.

11 A. Basically I sit at the front door, don't allow
12 anybody else into the residence. Anybody that goes in
13 there has to sign in there. Their name is printed, and
14 from the time they arrived to the time they leave the
15 scene, dated, and signed out.

16 Q. Were Jennifer and Justin, were they escorted out
17 of the residence before that log was started?

18 A. I do not recall.

19 Q. Well, when you were standing at the front door,
20 did you let anyone go in and out who were not law
21 enforcement agents?

22 A. No, ma'am.

23 MS. BIAGIANTI: Please answer any questions the
24 defense may have for you.

25 The witness: Yes, ma'am.

1 THE COURT: Mr. Bosnak?

2 CROSS-EXAMINATION

3 BY MR. BOSNAK:

4 Q. Officer Workman, they had called and said that
5 the child was dead; correct?

6 A. I recall as dispatch gave it out as a twenty-
7 two-month old with -- and there was blood everywhere.

8 Q. Didn't say the child was dead?

9 A. I don't recall.

10 Q. Okay. But Jennifer thought the child was dead?

11 A. Yes, sir.

12 Q. And Justin, you don't know what he's saying I'm
13 sorry for, do you?

14 A. Not at that time.

15 Q. You don't have any idea what he's saying he's
16 sorry for at all, do you?

17 A. That's all I -- that's all I heard him say was
18 I'm sorry.

19 MR. BOSNAK: Okay. Thank you.

20 THE COURT: Ms. Biagianti.

21 MS. BIAGIANTI: Nothing further, Your Honor.

22 Can he be released?

23 THE COURT: Officer Workman, you may step down.

24 Thank you. Feel free to remain with us. You are

25 released from your subpoena.

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Call your next witness.

4 MS. BIAGIANTI: Your Honor, the State would call
5 Officer Sloan, Laura Sloan.

6 [Whereupon, Ms. Sloan comes forward]

7 THE CLERK OF COURT: Raise your right hand.
8 Place your left hand on the Bible.

9 [Whereupon, Ms. Sloan is duly sworn by the clerk
10 of court as follows: do you solemnly swear or affirm
11 that the testimony you will give the Court in the trial
12 of this case will be the truth, the whole truth, and
13 nothing but the truth, so help you God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: Please be seated.

16 [Whereupon, Ms. Sloan takes the witness stand]

17 THE CLERK OF COURT: State your full name, and
18 spell your last name for the record.

19 THE WITNESS: My name is Laura K. Sloane.
20 S-L-O-A-N-E.

21 MS. BIAGIANTI: Good afternoon, Officer Sloane.
22
23
24
25

1 LAURA K. SLOAN,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. BIAGIANTI:

6 Q. Can you tell us where you are employed, in what
7 capacity, and for how long you've been employed there.

8 A. I'm employed with Summerville Police Department.
9 I've been there for almost three years. I'm a patrol
10 officer.

11 Q. And do you have any prior law enforcement
12 experience before coming to Summerville?

13 A. Yes, ma'am. I was priorly -- prior employed by
14 North Charleston Police Department for eight years.

15 THE WITNESS: And excuse me. I'm getting over
16 being sick, and my voice comes and goes.

17 MS. BIAGIANTI: Can I get you some water?

18 THE WITNESS: No, I'm good. But I just -- if I
19 sound crazy.

20 MS. BIAGIANTI: Yes, ma'am.

21 Q. [Ms. Biagianti] And what is your rank again?

22 A. PFC.

23 Q. Patrolman first class?

24 A. Yes, ma'am.

25 Q. Describe for our jury some of the duties and

1 responsibilities you have as a patrolman first class.

2 A. Patrolling the neighborhoods, answering calls,
3 checking on businesses.

4 Q. A little of everything?

5 A. Yes, ma'am.

6 Q. Now, directing your attention to September 15th,
7 2008, at approximately 10:45. Were you on duty that
8 morning?

9 A. Yes, ma'am.

10 Q. And did you -- were you dispatched to a
11 suspicious death call?

12 A. Yes, ma'am.

13 Q. And tell us where you proceeded for that call.

14 A. We responded to [REDACTED], which is in
15 Weatherstone subdivision, Berkeley County, Town of
16 Summerville.

17 Q. And tell us what happened when you arrived, who
18 else was there if anyone else was there.

19 A. When I arrived, the fire department was there;
20 the child's mother was there, Jennifer; and her boyfriend,
21 Justin; and the maternal grandfather was there; and
22 the -- excuse me -- two roommates were outside the
23 residence.

24 Q. Were you the first law enforcement officer
25 there?

1 A. Yes, ma'am.

2 Q. And tell us what you did when you got to that
3 residence.

4 A. When I got there, the grandfather and fire
5 department were coming from the bedroom area of the house.
6 I was informed by fire that the child was deceased. And I
7 went back just to check and make sure everybody was out of
8 the room. The child was in the bed, in the crib. I stood
9 in the room between the living room and the hallway to
10 keep anybody from going back there, just to kind of secure
11 that area of the house.

12 Q. And where was -- if you recall, where was the
13 defendant and the mother of the victim at this point?

14 A. The mother of the victim was sitting in a chair
15 in the living room. The defendant was kneeled down in
16 front of the chair, facing the defendant -- I mean, the
17 victim's mother. I'm sorry.

18 Q. And describe for us how each one of them were
19 acting.

20 A. The mother was hysterical, crying. The
21 defendant was kneeling down just trying to calm her down
22 stating, you know, oh, I'm sorry, I'm so sorry and, you
23 know, trying to comfort her.

24 Q. And at some point in time did other law
25 enforcement individuals arrive?

1 A. Right. Shortly after I was there, Officer
2 Workman came. He got the crime scene log and secured the
3 residence to start a crime scene log.

4 Q. And what did you do then, after a crime scene
5 log was instituted?

6 A. Well, shortly thereafter, Sargent Williams
7 appeared; Sargent Olsen from crime scene.

8 Q. And when you say Sargent Williams, do you see --
9 is that the lady sitting at our table?

10 A. That's correct.

11 Q. Okay.

12 A. Sargent Olsen from crime scene, Corporal Jones,
13 Captain Rogers, all arrived on scene.

14 Q. And what's the next thing that you did?

15 A. Basically turned it over to the detectives.
16 Just stood by. I also interviewed --

17 Q. Did you interview one of the roommates?

18 A. Right. Brandi Mahill, Mihill.

19 Q. And she gave you a written statement that day?

20 A. That's correct.

21 Q. And after that, what did you do?

22 A. Sargent Williams, from the detectives, asked me
23 to go to -- let me --

24 Q. Is it refreshing your memory to look at your
25 report, ma'am?

1 A. Yes. I'm sorry. I'm trying to think of the
2 school, name of the school.

3 Q. That's fine.

4 [Whereupon, the witness reviews documents]

5 A. Sangaree Intermediate School, because the
6 victim's older sister attended the school and Sargent
7 Williams wanted us to take the child into emergency
8 protective custody.

9 MS. BIAGIANTI: Thank you. Please answer any
10 questions the defense might have for you.

11 MR. BOSNAK: No questions, Your Honor.

12 THE COURT: Officer Sloan, you may step down.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness.

15 MS. BIAGIANTI: Your Honor, can we approach on
16 scheduling?

17 THE COURT: You may.

18 [Whereupon, an off-the-record bench conference
19 is held]

20 THE COURT: Ladies and gentlemen, we are now
21 going to take a short recess.

22 Do not begin your deliberations. Do not discuss
23 this case amongst yourselves.

24 Please rise for the jury.

25 [Whereupon, the jury exits the courtroom at

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3:48 p.m.]

THE COURT: Be seated.

Three minutes, counselor. Be in recess.

[Whereupon, a recess is taken from 3:50 p.m. to
3:54 p.m.]

THE COURT: Anything before we bring in the
jury?

MS. BIAGIANTI: Nothing from the State, Your
Honor.

MR. BOSNAK: Nothing from the defense, Your
Honor.

THE COURT: Please bring in the jury.

THE BAILIFF: We need a minute.

THE COURT: Y'all be seated.

[Off the record momentarily]

THE COURT: Please rise.

[Whereupon, the jury enters the courtroom at
3:56 p.m.]

THE COURT: Please be seated.

Call your next witness.

MS. BIAGIANTI: Your Honor, the State would call
Sargent Randy Olsen.

[Whereupon, Mr. Olsen comes forward]

THE CLERK OF COURT: Please raise your right
hand. Place your left hand on the Bible.

1 [Whereupon, Mr. Olsen is duly sworn by the clerk
2 of court as follows: do you solemnly swear or affirm
3 that the testimony you will give the Court in the trial
4 of this case will be the truth, the whole truth, and
5 nothing but the truth, so help you God]

6 THE WITNESS: I do.

7 THE CLERK OF COURT: Please be seated.

8 [Whereupon, Mr. Olsen takes the witness stand]

9 THE CLERK OF COURT: State your full name, and
10 spell your last name for the record.

11 THE WITNESS: It's Randal George Olsen.
12 O-L-S-E-N. And Randal has one L.

13 MS. BIAGIANTI: Good afternoon.

14 - - - - -

15 RANDAL G. OLSEN,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MS. BIAGIANTI:

20 Q. Can you please tell us where you are employed,
21 in what capacity, and for how long you've been employed
22 there.

23 A. I work for the town of Summerville Police
24 Department. I'm the crime scene investigator, evidence
25 custodian, and I've worked there for about eighteen years

MIA PERRON, CCR, CVR-CM

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1 now.

2 Q. And tell us some of your present duties or
3 responsibilities as crime scene and evidence custodian.

4 A. I do go -- most of the major crimes, I go to the
5 scene and process the scene to collect evidence --
6 fingerprints, DNA -- any evidence that might be pertaining
7 to the crime. I take it into the evidence room, get it
8 ready, prepared, take it to SLED for evaluation. And I
9 also take stuff to AFIS, which does your fingerprints.

10 Q. And when you say SLED, what is SLED?

11 A. State Law Enforcement Division. We don't have a
12 crime lab in Summerville. We take all our stuff to the
13 state crime lab.

14 Q. And were you working as -- you're a sargent; is
15 that correct?

16 A. Yes, I'm a sargent.

17 Q. You were working as sargent over crime scene on
18 September 15th, 2008?

19 A. Yes.

20 Q. And tell us, did you have occasion to become
21 involved in a homicide case?

22 A. Yes, I was.

23 Q. Tell us: where did you respond to that day?

24 A. It was -- I can't remember the exact -- [REDACTED]

25 [REDACTED]. [REDACTED].

1 The scene was already taped off and they had
2 secured it, and I waited outside for a search warrant.

3 Q. And tell us what other officers were there prior
4 to you -- when you got there.

5 A. There were some patrol officers. I can't
6 remember off the top of my head who was there.

7 Q. And you alluded to it earlier, but did you have
8 to wait for something before you entered the house?

9 A. Yes. We waited -- I got there and waited until
10 my captain showed up and had a search warrant in-hand.

11 Q. And once you had the search warrant in-hand,
12 tell us what you did.

13 A. I did an initial walkthrough. The deputy
14 coroner was with me, because he had arrived on scene at
15 that time, and he asked to go in with me.

16 Q. Was there anyone else in the house when you and
17 the deputy coroner went in?

18 A. No, there was nobody. They had already been in
19 the house and cleared the house.

20 Q. Okay.

21 A. We walked in and I did the initial walkthrough
22 with my camera, taking pictures as I went into the house,
23 going into the bedroom to see where the boy was at. And
24 the coroner wanted to look at stuff at the same time, and
25 I believe he was taking some pictures at the same time

1 behind me.

2 MS. BIAGIANTI: Your Honor, can I approach the
3 witness?

4 THE COURT: You may.

5 MS. BIAGIANTI: Showing counsel State's Exhibits
6 Number 3 through 11.

7 [Whereupon, Mr. Bosnak reviews documents]

8 Q. [Ms. Biagianti] Now, Sargent, I am showing you
9 what's been pre-marked as State's Exhibit Numbers 3
10 through 11. Can you please look at these. And we'll go
11 over them individually in a minute. But if you could just
12 look at them.

13 [Whereupon, the witness reviews documents]

14 Q. [Ms. Biagianti] Do you recognize each one of
15 those photos?

16 A. Yes.

17 Q. Who took those photos?

18 A. I took them as I did my walkthrough. And then I
19 believe the last one was taken a little bit later on --

20 Q. And generally --

21 A. -- while I was processing.

22 Q. Excuse me. Generally, what are they photos of?

23 A. The residence at [REDACTED].

24 MS. BIAGIANTI: Your Honor, at this time the
25 State would move State's Exhibits 3 through 11 into

1 evidence and ask that they be published.

2 MR. BOSNAK: Your Honor, without objection.

3 THE COURT: State's 3 through 11 into evidence
4 without objection. You may publish.

5 [Whereupon, State's Exhibit Numbers 3 through 11
6 are admitted into evidence by the Court]

7 Q. [Ms. Biagianti] Now, Sargent, we're going to go
8 through them individually. And I'm going to give you the
9 photo, but they're also going to be up on the PowerPoint
10 so we're going to refer to them by number.

11 State's Exhibit Number 3: tell our jury what
12 that is.

13 A. That's the hallway as you're coming in from the
14 living room. The living room was actually at my back.
15 The first door on your left is to the laundry room, and
16 the next door down is the boy's room. And the door open
17 at the far end is the roommates, where they are at.

18 MS. BIAGIANTI: Officer, let me give you this.
19 That's a laser point, so the red button --

20 A. Okay. That's the bathroom. That's the boy's
21 room. And this is where the roommates are staying.

22 Q. [Ms. Biagianti] Thank you.

23 Showing you State's Exhibit Number 4. Can you
24 please describe that for the jury.

25 A. That's coming in the front door.

1 MS. BIAGIANTI: Hold on one second.

2 A. That's coming in the front door of the
3 residence. The -- this right here is the girl's room, the
4 little girl that lived there, and that's the living room
5 in here.

6 Q. [Ms. Biagianti] And where are the other
7 bedrooms that you referred to?

8 A. They would be to the right as you went over --
9 just off the living room to the right, over here on this
10 side over here.

11 Q. Okay. Now showing you State's Exhibit Number 5.

12 A. That's another picture of the living room.
13 Basically, the living room is still here -- and the
14 kitchen area, and the back sliding-glass door.

15 Q. And where would the front door be in this
16 photograph?

17 A. Be still behind me. This is the -- this is
18 still the hallway next to where the girl's -- that's part
19 of the girl's room there.

20 Q. And so the bedrooms would be down --

21 A. Yes.

22 Q. -- to the right?

23 A. And to the right. Almost behind me, to the
24 right.

25 Q. Now, showing you State's Exhibit Number 6.

1 A. That's the --

2 Q. One second.

3 A. This is the other half of the living room,
4 fireplace, TV stand. And this here is the doorway that
5 goes -- not door, but an archway that goes into the
6 hallway where all the rest of the bedrooms are at the
7 residence.

8 Q. And so where would the kitchen be in reference
9 to this?

10 A. To the left side over here.

11 Q. And the front door would be where?

12 A. Still behind me.

13 Q. Okay. State's Exhibit Number 7.

14 A. This is the boy's room. The boy's room. Here's
15 the dresser. The crib is right here. And then there was
16 a set of bunk beds just inside the door. And the
17 roommates' room was over here. And the living room was
18 back behind me.

19 Q. Okay. And State's Exhibit Number 8.

20 A. This is another angle of inside the boy's room.
21 That's the crib right down here, a window, and then the
22 bunk beds.

23 Q. Now, when -- where was the child laying in the
24 crib? What position was he in?

25 A. He was laying in the crib here face up, with --

1 his head would be at this end right down here where the
2 dot is.

3 Q. So his head would be closer to the doorway?

4 A. Yes.

5 Q. And showing you State's Exhibit Number 9. What
6 is that?

7 A. This is back again in the entrance to the
8 hallway. And that's the boy's room right here. And this
9 is just the laundry room, just before his room, washing
10 machines and all that. And the parent's room was right in
11 here.

12 Q. Okay. And State's Exhibit Number 10?

13 A. This is -- took me an overall picture of the
14 living room, with the back door to my back. And there's
15 more of the living room, and the kitchen, and the back
16 door.

17 Q. So, again, where would the hallway be going
18 toward the bedrooms?

19 A. Just over here on this side over here.

20 Q. Okay. And the last pictures, State's Number 11.
21 Whose door is that?

22 A. That's the door to the roommates' bedroom.

23 Q. And there are some -- if the jury can see, there
24 are some numbers on that door. Who placed those numbers
25 there?

1 A. I put them there.

2 Q. Okay. And why did you do that?

3 A. They were -- the spots right there underneath on
4 both of them, possible bloodstains. And I had already
5 taken long photos of the door, and there's photos of the
6 closeup to show what they were, and I put the stickers on
7 there. And when I collected the swabs of those two
8 stains, I also numbered the swabs number 5 and number 6.

9 Q. And you said possibly blood a second ago. Did
10 you test them presumptively for blood at that time?

11 A. No, I did not.

12 Q. So when you say blood, that was just an opinion?

13 A. Yes.

14 Q. Okay. Now, before I show you the next two
15 photographs, where else did you think that you saw blood
16 at the scene?

17 A. There were -- the other place I saw the blood
18 would have been on the mattress where the boy was laying.

19 Q. Did you presumptively test that for blood?

20 A. No, I did not.

21 Q. And let me show you --

22 MS. BIAGIANTI: Can I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 MS. BIAGIANTI: Showing to counsel 12 and 13.

1 [Whereupon, Ms. Biagianti proffers documents to
2 Mr. Bosnak]

3 [Whereupon, Mr. Bosnak reviews documents]

4 Q. [Ms. Williams] Showing you State's Exhibit
5 Number 12 and 13, Sargent. Do you recognize those photos?

6 A. Yes.

7 Q. And what are they of?

8 A. Number 12 is of the boy laying on his back in
9 the crib; and number 13 is another picture of the boy,
10 closeup of his face.

11 MS. BIAGIANTI: Your Honor, at this time we
12 would move State's Exhibit Number 12 and 13 into
13 evidence.

14 MR. BOSNAK: Without objection.

15 THE COURT: State's 12 and 13 into evidence
16 without objection.

17 [Whereupon, State's Exhibit Number 12 is
18 admitted into evidence by the Court]

19 [Whereupon, State's Exhibit Number 13 is
20 admitted into evidence by the Court]

21 Q. [Ms. Biagianti] Did you -- now showing you
22 State's Exhibit Number 12. Did you take this photograph?

23 A. Yes, I did.

24 Q. Is this how the child was when you entered the
25 room?

1 A. Yes. That's the position he was in.

2 Q. And if you can show us: where was -- in
3 relation to the room, where is the doorway?

4 A. The doorway would be off in this direction here.
5 And that's the outer wall. And down this direction is
6 where that -- the bedroom window was. And he was laying
7 there in the -- like that.

8 Q. And when you spoke of possible blood on the
9 mattress earlier, does that show up anywhere in this
10 photo?

11 A. That's this area right here, possible blood.
12 And when I arrived, it was still -- still wet in one area.

13 Q. And eventually you swabbed that area?

14 A. Yes.

15 Q. Now, State's Exhibit Number 13. Please describe
16 to the jury what that is.

17 A. This is the little boy here, a close-up of his
18 face, and you can see where -- the depression down here
19 where he would have been laying -- at one time been laying
20 face down.

21 Q. Did you come to find out during your crime scene
22 collection that the mom had actually turned over the
23 little boy?

24 A. Yes. They said that she had picked him up or
25 turned him over or -- I'm not sure which one it was.

1 Q. Now, going back to Number 12, Sargent: where
2 else was there -- was there -- tell us where blood was, or
3 what you thought was blood, on this photo.

4 A. Okay. There's -- right here in the crib, there
5 was some in here. And you also can notice a couple of
6 spots here, and I believe right here, stains that looked
7 like they may have been blood on the pajamas.

8 Q. Was there -- did you see any blood coming from
9 his mouth or nose area?

10 A. Yes. I'm sorry. There was -- right up in here
11 from where he was laying face down in that little spot
12 there, there was -- around his face and mouth, nose and
13 mouth.

14 Q. And you did a thorough search of this house?

15 A. Yes.

16 Q. Is it fair to say that you did not find any
17 blood anywhere else, or what you thought was blood?

18 A. No, I did not see anything at all anywhere in
19 the rest of the residence that had anything that looked
20 like that.

21 Q. So the only place would be the areas that you
22 just spoke of?

23 A. Yes, ma'am.

24 MS. BIAGIANTI: Mr. Bosnak: showing him State's
25 Exhibit Number 24.

1 [Whereupon, Mr. Bosnak reviews documents]

2 Q. [Ms. Biagianti] Argent, I'm showing you what's
3 already in evidence as State's Exhibit Number 24. Is this
4 the item that you spoke about in State's Exhibit Number 12
5 and 13?

6 A. Yes, ma'am. It's the boy's pajamas.

7 Q. And describe for the jury what -- describe for
8 us the pajamas.

9 A. Right now there's still a little spot here I can
10 see. There's a cutting out here that's marked 6.1, and a
11 cutting down in the leg marked 6.2, which is what the --
12 I'm sorry -- there's also one on the back here, which is
13 6.4. I see also they did a cutting from up on top, 6.3.

14 Q. Did you do those cuttings?

15 A. No. That was done at State Law Enforcement
16 Division.

17 Q. But this is how the child was?

18 A. That's -- those are the pajamas he was wearing,
19 yes.

20 Q. Now, generally, Sargent, tell us a little bit
21 about crime scene collection, and the purpose of it, and
22 what your duties are when you go to a crime scene:

23 A. I go there to look to see what -- to document
24 and identify anything that is possible evidence, what
25 occurred or took place, to try to help the detectives

1 figure out what -- you know, when they do their
2 investigations. And what I do is I go and I photograph it
3 and document it, and then collect it and bring it back to
4 the station so it can be processed for whatever we need to
5 try to process it for.

6 Q. Now, when you're collecting material from a
7 possible crime scene, do you err on the side of more --
8 collecting more items or collecting less items? And
9 educate us about that.

10 A. You want to try to collect more, anything that
11 you think might be involved. And any way, because most of
12 the time I don't even know what happened, so I just look
13 for anything that might be out of -- you know, might be of
14 something that looked -- may have -- could have caused the
15 death of the boy or whatever happened. And it's easier to
16 collect it then because if you don't get it then, you
17 can't go back and do it again later on.

18 Q. Now, Officer, I'm going to show you some items
19 that you collected.

20 MS. BIAGIANTI: Showing counsel State's 21 and
21 22.

22 [Whereupon, Mr. Bosnak reviews]

23 Q. [Ms. Biagianti] Showing you, Officer, State's
24 Exhibit Number 21 and Number 22. Tell us, if you could --
25 do you recognize State's Exhibit Number 21?

1 A. I've got it labeled as a point -- a paint-roller
2 handle that was on the floor.

3 Q. Is that your writing?

4 A. Yes, ma'am.

5 Q. Okay. And if you could, did you write anything
6 else on this bag?

7 A. I wrote number one, which was a -- later on in
8 my photos you'll see the same stickers. Like five and six
9 would be on the floor where I found the paint roller, the
10 handle, and number one the sticker would be with it so I
11 can -- so I can identify photos.

12 Q. And where did you collect this from?

13 A. It was on the floor in the boy's room, just a
14 few feet from the crib.

15 Q. And for the record, it's been packaged again?

16 A. Yes, it has.

17 Q. What did you do with this item once you
18 collected it?

19 A. I put it in that bag at the scene, and I left it
20 in that bag, and that's when I transported it to SLED that
21 way.

22 Q. Did you tamper with this item in any way, shape,
23 or form before it was taken to SLED?

24 A. No. And I picked it up with rubber gloves on,
25 latex gloves on.

1 MS. BIAGIANTI: Your Honor, at this time we
2 would admit State's Exhibit Number 21 into evidence.

3 MR. BOSNAK: Without objection.

4 THE COURT: State's 21 into evidence without
5 objection.

6 [Whereupon, State's Exhibit Number 21 is
7 admitted into evidence by the Court]

8 Q. [Ms. Biagianti] Showing you State's Number 22.
9 Do you recognize what that is?

10 A. I've got it labeled as number two, and it's a
11 carpet with possible bloodstain.

12 Q. And tell us a little bit about that and where
13 you found that.

14 A. Just underneath the head of the -- where the
15 head of the boy was at in the crib and the dresser on the
16 carpet was a small spot. And beings as I couldn't tell
17 what it was, the light or anything, so I cut -- I took a
18 picture of it, put the sticker on it, cut it out, and
19 collected it the same way in the bag, just to see what it
20 was. I didn't know for sure what it was, so I collected
21 it just in case.

22 Q. So you didn't do any type of presumptive blood
23 test on it?

24 A. No, ma'am. It was just a small spot, so --

25 Q. And tell us -- educate our jury on when I say

1 presumptive test, why you would do that, if you can do
2 that, and how you do that.

3 A. It's -- you just take a swab. You use distilled
4 water. You wet it. And there's a couple of different
5 chemicals you put on it, depends on which one you use, and
6 it'll change color of the little stain to tell you if it's
7 blood or not. It's just presumptive. It could be animal
8 blood, it could be human blood. It's not specific,
9 certain words that we have.

10 Q. And why did you not do that in any of the items
11 you collected in this case?

12 A. They were -- the other -- the door, the carpet
13 was all small items. And if I had tested it for
14 presumptive, it would have been -- you know, there would
15 have been nothing left to test at SLED. They're pretty
16 particular on how much of a sample they get.

17 Q. So based on your experience and training, you
18 know that SLED has to have a certain quantity of material
19 that they can test?

20 A. Yes, ma'am. They like to have a good sample.

21 Q. And it could potentially be used up if you --

22 A. If I --

23 Q. -- tested it presumptively for blood?

24 A. Some of the tests can interfere with any DNA
25 that's on it.

1 Q. And for the record, Number 22 has been
2 repackaged?

3 A. Yes.

4 Q. What did you do with this item once you cut it
5 out?

6 A. I placed it, again, in that bag. And when I
7 took it to the station, I finished labeling it and sealed
8 it up and took it -- transported it to SLED.

9 Q. Did you tamper with it at any time?

10 A. No, ma'am.

11 MS. BIAGIANTI: Your Honor, at this time we move
12 State's Exhibit Number 22 into evidence.

13 MR. BOSNAK: Without objection.

14 THE COURT: State's 22 into evidence without
15 objection.

16 [Whereupon, State's Exhibit Number 22 is
17 admitted into evidence by the Court]

18 MS. BIAGIANTI: Showing State's Exhibit Number
19 23 to counsel.

20 [Whereupon, Mr. Bosnak reviews]

21 Q. [Ms. Biagianti] Sargent, I'm showing you
22 State's Exhibit Number 23. Do you recognize what that is?

23 A. It's an envelope and it's marked items three,
24 five and six. Five and six are on the door.

25 Q. Looking at your report would refresh your

1 memory?

2 A. Yes.

3 Number three I wasn't -- I couldn't remember
4 exactly. But number three was the swab from the mattress.

5 Q. Okay. And is that your writing?

6 A. Yes, ma'am.

7 Q. Now, tell us individually what you did to get
8 those swabs. So number three you said was a swab from the
9 mattress?

10 A. Yes.

11 Q. Tell us a little bit about that.

12 A. I have -- you have little packets of distilled
13 water that come individually sealed. Companies actually
14 make it now. And you just break the package off and you
15 wet a swab and then you just take the swab which comes
16 in -- I'm sorry. Let me back-step a little. It comes in
17 a sealed paper envelope-like thing. So each swab is
18 sterile. You take it out, you swab it, and then you put a
19 cap back on it, and then you -- I put them in that -- back
20 in their little holder and I label those swabs whichever
21 number it was I took it from, and I put it in a bag.

22 Q. And number three you said was from the mattress?

23 A. Is from the mattress.

24 Q. And is that what you described earlier on the
25 photo where there was a --

1 A. A big pool --

2 Q. -- pool of blood?

3 A. Yes.

4 Q. And when you collected that, did you secure it?

5 A. Yes, I secured it. It stayed in the residence
6 with me until I took everything out, and then I took it to
7 the station and locked it up. Once I get to the station,
8 I take and -- there's a -- they have small boxes that you
9 can store them in. And you put it in the box. Then you
10 take --

11 I've got tamper-proof tape. The easy way to
12 show you is this tamper-proof tape. I seal both ends of
13 the box with the tamper-proof tape and then I put the case
14 number and the item where it came from usually written on
15 the outside of the box on a spot so when they get it to
16 the lab they know where I took it from.

17 Q. And did you tamper with this item at all before
18 it was taken to SLED?

19 A. No.

20 Q. Now, tell us about I believe your item number
21 five, is it?

22 A. Yes. Item number five was a -- the middle mark
23 on the door. I did the same thing with the distilled
24 water. Took the swab, put it back in the container, put
25 the container -- then marked the container, put it back in

1 my bag. And then when I got to the station I put it in a
2 box, sealed it up separately, and then got it ready for
3 SLED.

4 Q. Is that the same thing you did for item number
5 six?

6 A. Yes, same thing for number six.

7 Q. Can you tell us again where item five and six
8 came from?

9 A. Five and six were on the bedroom door for the
10 roommates.

11 Q. And how would you describe them?

12 A. Just small -- they were small smears.

13 Q. And, again, did you test those presumptively for
14 blood?

15 A. No, I did not.

16 Q. And what did you do with the item once you
17 collected it?

18 A. Once I collect it, I put it in a paper bag. And
19 I kept it in the residence with me until I was done. And
20 then I carried them out to my car, took them to the
21 station, and locked them up in the evidence room.

22 Q. And did you tamper with that item at all before
23 taking -- before it going up to SLED?

24 A. No, ma'am.

25 Q. Now, tell us: did you do an inspection of the

1 exterior of the house, Sargent?

2 A. Yes. I took a walk around of the residence, and
3 I also photographed the entire outside of the residence.

4 Q. Did you notice anything suspicious about the
5 outside of the residence, specifically the windows or
6 doors?

7 A. No, ma'am. All the screens were still on and
8 all the windows were intact.

9 Q. So which led you to believe what?

10 A. That I did not observe any type of forced entry
11 into the residence.

12 Q. Now, you also -- did you go to the autopsy in
13 this case, as well?

14 A. Yes, ma'am.

15 Q. And tell us what you did at the autopsy.

16 A. We went to MUSC. And their autopsy room has --
17 the room is separate from a waiting area. And most of the
18 time we stay in the -- wait in the waiting area to stay
19 out of their way as they're doing the autopsy. And there
20 was actually another autopsy going on at the same time, so
21 they were kind of busy. So we stayed in there until they
22 had anything of -- as they were cleaning him up and
23 getting him ready to do their stuff they have to do for an
24 autopsy, periodically we would go in and take pictures,
25 along with what pictures they were also taking.

1 Q. And did you -- is it protocol that an officer
2 attend an autopsy when there is an autopsy being performed
3 for law enforcement?

4 A. Yes. The officer and the detective are just --
5 at least the crime scene officer, one of the two --

6 Q. And did you collect or take anything from the
7 autopsy?

8 A. I collected the boy's pajamas and a vial of his
9 blood to take to SLED for DNA testing.

10 Q. And I'm sorry, you might have already stated --
11 said this. But did you also take some photographs?

12 A. Yes, I took photographs.

13 Q. Who else takes photographs in the autopsy?

14 A. The medical examiners, when they're in there.
15 They have someone that takes all the photographs and they
16 document that with their files.

17 Q. Now, officer, you did a report, a supplementary
18 report, as to what your involvement was at the crime
19 scene?

20 A. Yes.

21 Q. In your report you talk about their being blood
22 smears. Is that incorrect?

23 A. It's presumpt -- I presumed there was blood
24 smears. I didn't do --

25 Q. But, again --

1 A. -- I didn't test them.

2 Q. Okay. Again, you never tested --

3 A. No.

4 Q. -- them for blood?

5 [Whereupon, Ms. Biagiанти and Ms. Williams
6 confer]

7 MS. BIAGIANTI: Thank you. Please answer any
8 questions that the defense might have for you.

9 CROSS-EXAMINATION

10 BY MR. BOSNAK:

11 Q. Detective Olsen, I think you stated a little
12 earlier in your direct examination that you don't really
13 know -- you don't even know what's gone on?

14 A. In the overall of the what happened in the case,
15 no. I'm just there to document the scene.

16 Q. Right. Just there's a murder and you're asked
17 to document the scene?

18 A. Yes.

19 Q. You don't have any facts of what might or might
20 not have happened?

21 A. No.

22 Q. Okay. Seeing the blood smeared on the pajamas,
23 did you look for any towels or anything like that in the
24 house that might have blood on them?

25 A. Yes, I did. I didn't --

1 Q. You didn't find --

2 A. I didn't find anything, no.

3 Q. Did you check any bed linens? The bed linen?

4 A. Yes.

5 Q. No blood on it?

6 A. I didn't see anything anywhere else.

7 Q. Did you check any of the clothing of Mr.

8 Hillerby?

9 A. No.

10 Q. Of Ms. S ?

11 A. No.

12 Q. Of the roommates?

13 A. No.

14 Q. Also, sometimes when there's a death, maybe a
15 beating death, do you photograph people's hands for any
16 bruising or cuts?

17 A. You can, yes. I don't usually get -- I don't --
18 I'm not sure what you're trying to --

19 Q. Well, that would be important if there was -- if
20 there was somebody that had possibly punched somebody,
21 beat somebody, especially in the skull and head area, they
22 could have cut their hands or bruised their hands from
23 doing that, couldn't they?

24 A. Yes.

25 Q. And it would be important to take pictures of

1 the hands to see if there were any bruising or any cuts on
2 the hand?

3 A. Yes.

4 Q. Wouldn't that be correct?

5 And nobody did that, did they?

6 A. I don't know.

7 Q. Okay. You didn't do it?

8 A. I didn't do it, no. I just processed the scene.
9 I didn't -- I never talked to anybody that was involved as
10 a witness or anything else.

11 Q. Okay. And one other thing. If somebody had
12 been rough with a person, with a child, and maybe grabbed
13 the child and maybe, you know, put their fingernails in
14 the child pretty good, there would possibly be skin tissue
15 underneath the fingernails; correct?

16 A. Yes.

17 Q. Possibly blood?

18 A. Yes.

19 Q. Possibly DNA?

20 A. Yes.

21 Q. Did anybody scrape Mr. Hillerby's fingernails or
22 bag his hands to check for that type of thing?

23 A. I don't know.

24 Q. You didn't?

25 A. I didn't.

1 Q. Okay. Another thing I want to ask about is you
2 did take a few more things. You took a -- I think it is a
3 paint-roller kit?

4 A. Yes.

5 Q. Why did you take a paint-roller kit?

6 A. The paint-roller handle was on the floor. So I
7 just didn't know for sure how it would be involved, so I
8 took that -- the roller handle. I went ahead and took the
9 kit, that was on top, with it.

10 Q. Now, we're talking about a paint roller like one
11 that you would roll the wall with?

12 A. Yes.

13 Q. Metal --

14 A. Yes.

15 Q. -- handle?

16 A. It had the whole kit like you would buy at
17 Lowe's, where you had the tray, the roller, the roll, the
18 handle, and the small handle -- the small wood handle that
19 was with it, about like that [indicates].

20 Q. And since it was there in the room, you thought
21 that it might have been used?

22 A. Yes.

23 Q. Okay. And that's why you took it?

24 A. And I just took it.

25 MR. BOSNAK: Thank you, sir. No further

1 questions.

2 MS. BIAGIANTI: Just two, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. BIAGIANTI:

5 Q. Mr. Bosnak asked you about wouldn't it be a good
6 idea to bag someone's hands. Was Mr. Hillerby a suspect
7 at the time?

8 A. I have no idea, to be honest. I don't know who
9 was suspect and who wasn't. When I got there, they --
10 there was members -- people outside crying and stuff, and
11 I processed the scene, and that's all I did.

12 Q. But if he were a suspect and someone asked you
13 to swab his hands, you certainly would have done that?

14 A. I have, yes.

15 MS. BIAGIANTI: Thank you.

16 MR. BOSNAK: No further questions, Your Honor.

17 THE COURT: You may step down. Thank you.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 MS. BIAGIANTI: Can he be released from his
21 subpoena?

22 THE COURT: Any objection?

23 MR. BOSNAK: Without objection, Your Honor.

24 THE COURT: You are released from your subpoena.
25 Thank you.

1 Ladies and gentlemen, as I indicated to you,
2 we will break as close to 5:00 as possible, and so we
3 are -- without getting into an additional witness, we
4 are going to recess for the evening hour.

5 Please do not discuss this case amongst
6 yourselves. Or when you get home, your people at home
7 are probably going to wonder what you've done all day.
8 You may not discuss this case with anyone.

9 Do not begin your deliberations. Do not read,
10 watch, listen to, any news accounts regarding this case
11 should there be any. Do not do any independent
12 investigation.

13 Please be back in your jury room tomorrow at
14 9:00. We will begin promptly once all fourteen of you
15 are here. Have a wonderful and restful evening.

16 Please rise for the jury.

17 [Whereupon, the jury exits the courtroom at
18 4:31 p.m.]

19 THE COURT: Please be seated. Anything before
20 we recess for the evening? Ms. Williams?

21 MS. WILLIAMS: No, Your Honor.

22 MR. BOSNAK: Nothing, Your Honor.

23 THE COURT: See you back at 9:00 in the morning.

24 And how many more witnesses do you anticipate,
25 Ms. Williams, just for scheduling?

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MS. WILLIAMS: Court's indulgence for just a second.

[Whereupon, Ms. Williams and Ms. Biagianti confer]

MS. WILLIAMS: Six more witnesses, Your Honor.

THE COURT: Mr. Bosnak, you're anticipating -- of course, I will not hold you to this at this time, but --

MR. BOSNAK: Your Honor, we're probably going to be finished in two days. It might not take that long.

THE COURT: Mr. Bosnak, do you wish for me to advise your client of his right to testify so that you may discuss that with him over the evening hour?

MR. BOSNAK: Yes, ma'am, if you would.

- - - - -

DEFENDANT'S RIGHTS

THE COURT: Please swear the defendant.

THE CLERK OF COURT: Please raise your right hand.

[Whereupon, Mr. Hillerby complies]

[Whereupon, Mr. Hillerby is duly sworn by the clerk of court as follows: do you solemnly swear or affirm that the testimony you will give the Court in this matter will be the truth, the whole truth, and nothing but the truth, so help you God]

1 MR. HILLERBY: I do.

2 THE COURT: Mr. Hillerby, what I am going to do
3 this evening is advise you of certain rights that you
4 have so that you may spend the evening hour, since
5 we're recessing before 5:00 today, so that you may
6 discuss that with your attorney. I am not going to
7 require that you answer to me whether or not you wish
8 to testify at that time.

9 Do you understand that?

10 MR. HILLERBY: Yes, ma'am.

11 THE COURT: And, Mr. Hillerby, I need you to
12 speak very loudly.

13 Mr. Hillerby, I am going to explain to you
14 certain of your rights. If you do not understand
15 anything that I say, I need for you to let me know so
16 that I may explain it to you in further detail.

17 Do you understand?

18 MR. HILLERBY: Yes, ma'am.

19 THE COURT: Tomorrow we will likely reach the
20 stage of the trial where you may present your defense.
21 You have the right to claim the protections given to
22 you by the fifth amendment of the constitution of our
23 United States. That amendment states in part that no
24 person shall be compelled in any criminal case to be a
25 witness against himself. This means that you cannot be

1 required to testify in this case.

2 You have the right to testify in this case on
3 your own behalf; however, no one can make you testify.
4 This is a personal right, Mr. Hillerby, and no one can
5 waive that right except for you. If you decide to
6 testify, you will be subject to the same rules that
7 govern other witnesses and you may be examined and
8 cross-examined on any relevant issue in this case.

9 In addition, if you have any convictions
10 involving dishonesty or false statement, or for crimes
11 punishable by imprisonment for more than one year and I
12 determine that their probative value outweighs its
13 prejudicial effect to you, the solicitor will be able
14 to use your prior convictions to attack your
15 credibility.

16 Ms. Williams, Ms. Biagianti, are there prior
17 convictions that you plan to introduce?

18 MS. WILLIAMS: Your Honor, he has prior
19 convictions. I don't think he has anything that
20 would be permissible for us to use.

21 THE COURT: Thank you.

22 Mr. Hillerby, if you decide to testify, this
23 decision on your part must be freely, voluntarily, and
24 intelligently made with the knowledge of the
25 protections given to you by the fifth amendment and the

1 consequences of your decision to testify.

2 If you decide not to testify, Mr. Hillerby, I
3 will instruct the jurors that they cannot give the fact
4 that you did not testify any consideration whatsoever
5 and there is to be absolutely no prejudice to you
6 because you did not testify. I further instruct the
7 jury that they cannot even discuss the fact that you
8 did not testify during their deliberation.

9 It is left entirely up to you whether or not you
10 testify. You may talk with your attorney, your
11 friends, your family, or anyone else, but the final
12 decision will be left up to you.

13 Do you understand what I have explained to you?

14 MR. HILLERBY: Yes, ma'am.

15 THE COURT: Do you have any questions about what
16 I have explained to you?

17 MR. HILLERBY: No, I do not.

18 THE COURT: And, Mr. Hillerby, you may be
19 seated.

20 [Whereupon, Mr. Hillerby complies]

21 THE COURT: At the appropriate time, Mr.
22 Hillerby, the question that I will have is have you
23 decided whether or not you wish to testify.

24 Anything further, Mr. Bosnak?

25 MR. BOSNAK: Nothing, Your Honor.

1 THE COURT: Anything further?

2 MS. WILLIAMS: Just briefly. And maybe we can
3 take this up tomorrow.

4 At some point when the State rests, we have
5 experts who would like to be in the courtroom when
6 Mr. Bosnak's experts are testifying. And if we could
7 just get some idea of scheduling, because they're in
8 Columbia.

9 I mean, if he's going to call a DNA expert, we
10 would like to have Robin Taylor, SLED lab, be here. So
11 as we get closer, if we could just get an idea so that
12 she could drive down to be in the courtroom when that
13 testimony is being given. She's going to be here to
14 testify, but she'll probably go back. We don't know
15 if he's going to put his DNA expert up first and we
16 can't --

17 If he could just give us an idea of when.

18 MR. BOSNAK: When do -- we've got to get them
19 in. When do y'all anticipate that you'll close?

20 THE COURT: All right. The two of you can work
21 this out.

22 MR. BOSNAK: Okay. Thank you, Your Honor.

23 THE COURT: You do not need me to assist you in
24 that scheduling.

25 MR. BOSNAK: Thank you, Your Honor.

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MS. WILLIAMS: Thank you, Your Honor.

THE COURT: Anything other --

MS. WILLIAMS: No.

MR. BOSNAK: Nothing, Your Honor.

THE COURT: Anything?

MS. WILLIAMS: Nothing from the State.

THE COURT: All right. We're in recess until
9:00. Thank you.

[JURY TRIAL ADJOURNS AT 4:25 P.M.]

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Tuesday, February 23, 2010.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 21st day of August, 2010.

Mia Perron
Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

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THE COURT: Please be seated.

Anything before we bring in the jury?

MS. WILLIAMS: Nothing from the State, Your Honor.

THE COURT: Mr. Bosnak?

MR. BOSNAK: Nothing, Your Honor.

THE COURT: All right. And just for the record, Mr. West called in. I spoke with him this morning. He is not feeling well.

We are going to fill in the alternate, and alternate -- Ms. Spells will be part of the jury, the twelve, with Ms. Bagan as the remaining alternate.

Any objection or comment on that procedure? From the State?

MS. WILLIAMS: No objection from the State.

MR. BOSNAK: Nothing from the defense, Your Honor.

THE COURT: All right. Let's bring in the jury.

[Whereupon, the jury enters the courtroom at 9:03 a.m.]

THE COURT: Thank you. Be seated.

Good morning, ladies and gentlemen of the jury.

Ms. Bagan, you now have the unique position that you get to sit where you are, or the seat in front of

1 you, as you are the remaining alternate. But I need
2 you to remain either in your seat or the one in front
3 of you so that I know that you are there.

4 Call your next witness.

5 MS. WILLIAMS: Thank you, Your Honor. The State
6 calls Engineer Jacob Evans.

7 THE COURT: Please come forward.

8 [Whereupon, Mr. Evans comes forward]

9 THE CLERK OF COURT: Please raise your right
10 hand. Place your left hand on the Bible.

11 [Whereupon, Mr. Evans is duly sworn by the clerk
12 of court as follows: do you solemnly swear or affirm
13 the testimony you will give the Court in the trial of
14 this case will be the truth, the whole truth, and
15 nothing but the truth, so help you God]

16 THE WITNESS: I do.

17 THE CLERK OF COURT: Please be seated.

18 [Whereupon, Mr. Evans takes the witness stand]

19 THE CLERK OF COURT: State your full name, and
20 spell your last name for the record.

21 THE WITNESS: Jacob Evans. E-V-A-N-S.
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JACOB EVANS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Mr. Evans, what is your occupation?

A. I'm an engineer of the Summerville Fire Department.

Q. And how long have you been there?

A. Eight years.

Q. What are your present duties?

A. I'm an engineer, so I act as the officer sometimes on our engines when our officer has taken off.

But my normal duties are driving the apparatus to and from scenes, training, just general, you know, maintenance duties on the trucks and the stations.

Q. And when you say apparatus, are you talking about a fire truck?

A. Yes, ma'am. A fire engine.

Q. And besides fires, what types of calls do y'all respond to?

A. We respond to everything from hazardous materials calls, first responder. When you say fire calls: vehicle accidents, cats in the trees. Pretty much anything they call us for, we're there to do.

MIA PERRON, CCR, CVR-CM

1 Q. And are you trained in CPR and other types of
2 things besides just responding to fires?

3 A. Yes, ma'am. CPR, AED, first aid.

4 Q. Were you working in your present capacity on
5 September 15th of 2008?

6 A. Yes, ma'am.

7 Q. And did you respond to a call at [REDACTED]

8 [REDACTED]?

9 A. Yes, ma'am.

10 Q. Who was there when you arrived?

11 A. When we first pulled up there was, I mean, a
12 crowd of people, numerous people outside, in the driveway,
13 on the sidewalk. I mean, there was just a big crowd of
14 people.

15 Q. And were you the first law enforcement personnel
16 to respond or to get there?

17 A. Yes, ma'am.

18 Q. Was anyone in the home when you got there?

19 A. No, ma'am.

20 Q. What did you personally do once you got there?

21 A. I drove the apparatus, got off the truck, and
22 followed my captain, which was directed inside. And he
23 actually went in the room, and I just stayed in the
24 doorway. And then we exited the building after he did
25 what he needed to.

1 Q. And were you aware of what type of call you were
2 responding to?

3 A. Yes, ma'am.

4 Q. And what was that?

5 A. An infant unresponsive in the crib.

6 Q. And did you have the opportunity to observe the
7 mother of this child, Jennifer S ?

8 A. Yes, ma'am.

9 Q. What was her demeanor like at the scene?

10 A. Very upset. Kind of hysterical, I guess you --

11 Q. And did you observe her boyfriend, Justin
12 Hillerby, at the scene?

13 A. Yes, ma'am.

14 Q. How would you describe his demeanor?

15 A. No emotion whatsoever. Really -- I mean, no
16 emotion at all.

17 Q. And did you hear him say anything?

18 A. I did not.

19 MS. WILLIAMS: Okay. No further questions.

20 Please answer any questions from the defense.

21 THE COURT: Mr. Bosnak.

22 CROSS-EXAMINATION

23 BY MR. BOSNAK:

24 Q. There's no right emotion, is it?

25 A. No, sir.

1 Q. I mean, he wasn't laughing or anything like
2 that, was he?

3 A. No, sir.

4 Q. And people grieve and are upset, they show it in
5 different ways. Wouldn't that be correct?

6 A. Yes, sir.

7 Q. So you can't really tell if somebody is hurting
8 or what's going on inside of them sometimes by just
9 looking at them, can you?

10 A. Yes, sir.

11 Q. Did Mr. Hillerby complain, when you were there,
12 of having chest pains and being dizzy?

13 A. Not that I heard.

14 MR. BOSNAK: Okay. Thank you.

15 THE WITNESS: Yes, sir.

16 THE COURT: Ms. Williams?

17 MS. WILLIAMS: Nothing further, Your Honor.

18 THE COURT: You may step down. You are released
19 from your subpoena.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: Call your next witness.

23 MS. WILLIAMS: The State calls Captain Ploth.

24 [Whereupon, Mr. Ploth comes forward]

25 MS. WILLIAMS: Just step right up to that chair,

1 sir.

2 THE CLERK OF COURT: Please raise your right
3 hand. Place your left hand on the Bible.

4 [Whereupon, Mr. Ploth is duly sworn by the clerk
5 of court as follows: do you solemnly swear or affirm
6 the testimony you will give the Court in the trial of
7 this case will be the truth, the whole truth, and
8 nothing but the truth, so help you God]

9 THE WITNESS: So help me God.

10 THE CLERK OF COURT: Please be seated.

11 [Whereupon, Mr. Ploth takes the witness stand]

12 THE CLERK OF COURT: State your full name, and
13 spell your last name for the record.

14 THE WITNESS: My name is George Frank Ploth, Jr.
15 P-L-O-T-H.

16 MS. WILLIAMS: Thank you, sir.

17 - - - - -

18 GEORGE F. PLOTH,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Where are you employed?

24 A. I work for the Town of Summerville.

25 Q. And what do you do?

- 1 A. I'm a firefighter.
- 2 Q. And what is your rank?
- 3 A. I'm a captain.
- 4 Q. And were you -- how long have you been there?
- 5 A. I started the 1st of July, 1997.
- 6 Q. And what are your duties?
- 7 A. My duties -- some of my duties are station
- 8 management, fire-scene management, any kind of medical-
- 9 scene management; I make sure all apparatus are checked
- 10 off daily; any kind of equipment that is broken, I ensure
- 11 that it gets fixed; and training of my personnel that fall
- 12 under me.
- 13 Q. And do you frequently get calls from dispatch?
- 14 A. Yes, ma'am.
- 15 Q. And did you get such a call on September the
- 16 15th of 2008?
- 17 A. Yes, ma'am.
- 18 Q. What type of call was that?
- 19 A. It was an emergency medical call stating that a
- 20 child was in a crib bleeding.
- 21 Q. And was that at [REDACTED]?
- 22 A. Yes, ma'am.
- 23 Q. And do you have training in other things besides
- 24 putting out fires?
- 25 A. Yes, ma'am. We're trained in BLS, Basic Life

1 Support. We do medical calls. CPR.

2 Q. And when you arrived at this location, who was
3 there that you observed?

4 A. There were several people there. There were
5 several cars parked in the front of the yard and people
6 gathered in front of the cars to the point where we
7 couldn't pull the truck to the house itself. And there
8 were several people at the front of the house itself, too.

9 Q. Were you the first law enforcement vehicle to
10 arrive?

11 A. We were the first fire personnel, yes, ma'am.

12 Q. Was it -- who else was there in terms of law
13 enforcement? Was there anybody else there?

14 A. No, ma'am, no one was there yet.

15 Q. Okay. What did you do when you got there?

16 A. First and foremost, we asked where the child
17 was, and we went into the room and verified that the child
18 was deceased.

19 Q. And who was with you?

20 A. It was Firefighter Smart who was with me. And
21 Engineer Evans came directly after that.

22 Q. Okay. And how many of you actually went into
23 the home?

24 A. Fire personnel? It was three.

25 Q. And did you observe the child?

1 A. Yes, ma'am.

2 Q. What did you observe about the child?

3 A. The child was laying in the crib face side up.

4 There was blood coming from the nose and the mouth of the
5 child, along with blood being in the crib; and the child
6 was livid, and not breathing, and cold to the touch.

7 Q. When you say blood coming from, there was not
8 blood still coming out. I mean, it was just -- can you
9 describe --

10 A. Yes, ma'am.

11 No, there was no blood coming out at the time.
12 It was blood that had been there for a while.

13 Q. Did you observe any bruising on the child?

14 A. No, ma'am, I didn't notice any bruising.

15 Q. And did you have an opportunity to see the
16 mother of the child, Jennifer S at the scene?

17 A. Yes, ma'am.

18 Q. Can you describe her demeanor for the jury?

19 A. She was very excited and upset, and hollering
20 and screaming at the time.

21 Q. And did you have an opportunity to observe her
22 boyfriend, Mr. Hillerby?

23 A. Yes, ma'am.

24 Q. How would you describe his demeanor?

25 A. He was without emotion. Did not appear to be

1 upset about anything going on.

2 Q. Did he say anything to you?

3 A. Yes, ma'am.

4 Q. What did he say to you?

5 A. He came up to myself, while I was talking to an
6 officer, and asked when will we know what happened.

7 Q. So he wanted to know when you were going to find
8 out what happened?

9 A. I -- that's what he asked, ma'am.

10 MS. WILLIAMS: Nothing further. Please answer
11 any questions the defense might have.

12 THE COURT: Mr. Bosnak?

13 CROSS-EXAMINATION

14 BY MR. BOSNAK:

15 Q. What is a medical-scene manager? What is that?

16 A. Basically, it's a command system setup that we
17 go by. Someone has to initiate command. And whoever
18 takes command management, they manage the scene, the
19 personnel and equipment, and any other equipment needed to
20 come in.

21 Q. Okay. So your job there is the management,
22 people in and out, equipment, that type of thing?

23 A. Yes, sir.

24 Q. So you've got a really important job?

25 A. Yes, sir.

1 Q. And paying a lot of attention to possibly the
2 victim or the deceased and what needs to be done?

3 A. Yes, sir.

4 Q. You also have to worry about not contaminating
5 the crime scene, too, don't you?

6 A. Yes, sir, that's correct.

7 Q. You've been trained in all that, haven't you?

8 A. Trained as in not to move anything, yes.

9 Q. Yeah. That's what I mean. And you're very
10 careful about all that?

11 A. Yes, sir.

12 Q. How many people are like you in the fire
13 department that have your same title?

14 A. There are several officers, captains, at our
15 station. Every station has a captain at it.

16 Q. But you are the one in Summerville? The only
17 one?

18 A. No, sir, I'm not the only one.

19 Q. Okay. How many other captains that are medical-
20 scene managers in Summerville?

21 A. There are three shifts with four stations, and
22 that would be twelve officers. Well, all officers have
23 training in that.

24 Q. And how often do you go out on these things and
25 manage the medical scene, would you say, a week?

1 A. We have medical calls everyday when on duty,
2 sir.

3 Q. So every day?

4 A. Yes, sir.

5 Q. So you see quite a few?

6 A. Yes, sir.

7 Q. The reason I'm asking you this is you seem --
8 this happened back almost a year and a half ago. You seem
9 to recall all this very, very well after having been to so
10 many of these. Did you write this down?

11 A. Yes, sir. You write it down on an incident
12 report. It's called Niffers [phonetic].

13 Q. You wrote it down on the incident report?

14 A. I'm not sure if I wrote all that info down, sir.

15 Q. Like Mr. Hillerby's demeanor: did you write
16 that down?

17 A. I can't recall, sir.

18 Q. Can't recall. Okay. Because this happened in
19 September of 2008; isn't --

20 A. Yes, sir.

21 Q. -- that correct?

22 A. Yes, sir.

23 Q. All right. Now, if a child died mysteriously,
24 or the family thought the child died mysteriously and they
25 just found the child, wouldn't they look to you to tell

1 them what might happen or what they thought happened?

2 A. They very well could, sir, but I'm not going to
3 answer that question. That's for the police.

4 Q. Well, no. How can it be for the police? You're
5 the medical people there on the scene; correct?

6 A. Yes, sir.

7 Q. And the family comes to you and says, could you
8 tell us what happened; nothing unusual about that, is it?

9 A. No, sir. People do ask us that quite often.

10 Q. Sure. A lot of medical situations, what
11 happened, could you tell us what happened, especially if
12 they're concerned about a family member or they're with
13 the family. Isn't it -- isn't that -- that's pretty
14 common, isn't it?

15 A. Yes, sir. It happens.

16 Q. Okay. So Mr. Hillerby just asking you what
17 happened, did you know what happened, it wouldn't be
18 anything unusual about that, would it?

19 A. No, sir. People ask us all the time.

20 Q. And as you stated before, the mother of the
21 child, Jennifer S , she was really shaken up over
22 this?

23 A. Yes, sir.

24 Q. And she was hysterical?

25 A. Yes, sir.

1 Q. And she was probably having a very hard time --

2 A. Yes, sir.

3 Q. -- wasn't she?

4 A. Yes, sir.

5 MR. BOSNAK: Okay. Thank you. No further
6 questions.

7 THE WITNESS: Yes, sir.

8 THE COURT: Ms. Williams?

9 MS. WILLIAMS: Quick follow up.

10 REDIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. You actually did give a statement, a very
13 detailed statement, did you not?

14 A. Yes, ma'am.

15 Q. And in the statement you detailed what you told
16 us about Mr. Hillerby, didn't you?

17 A. Yes, ma'am.

18 Q. Mr. Bosnak asked you if it would be unusual for
19 a family member to ask that. Did you find it unusual,
20 combined with his demeanor, the way he asked you that
21 question that day?

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

23 MS. WILLIAMS: Thank you.

24 MR. BOSNAK: One follow-up.

25 THE COURT: Mr. Bosnak.

RE CROSS-EXAMINATION

1
2 BY MR. BOSNAK:

3 Q. With all of your responsibilities that day, and
4 all that was going on, and everything you can think about,
5 you knew what type of demeanor he had?

6 A. I don't think I understand quite the question,
7 sir.

8 Q. Okay. I'll rephrase it. Do you know what a
9 person is thinking inside?

10 A. No, sir, I do not know what a person is thinking
11 inside.

12 MR. BOSNAK: Okay. Thank you.

13 THE COURT: You may step down. You are released
14 from your subpoena.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Call your next witness.

18 MS. BIAGIANTI: The State would call Agent Betty
19 Butler.

20 [Whereupon, Ms. Butler comes forward]

21 THE CLERK OF COURT: Please raise your right
22 hand. Place your left hand on the Bible.

23 [Whereupon, Ms. Butler is duly sworn by the
24 clerk of court as follows: do you solemnly swear or
25 affirm the testimony you will give the Court in the

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1 trial of this case will be the truth, the whole truth,
2 and nothing but the truth, so help you God]

3 THE WITNESS: I do.

4 THE CLERK OF COURT: Please be seated.

5 [Whereupon, Ms. Butler takes the witness stand]

6 THE CLERK OF COURT: State your full name, and
7 spell your last name for the record.

8 THE WITNESS: Betty Walker Butler. B-U-T-L-E-R.

9 MS. BIAGIANTI: Good morning, Ms. Butler.

10 - - - - -

11 BETTY W. BUTLER,

12 Having Been First Duly Sworn,

13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MS. BIAGIANTI:

16 Q. Can you please tell us where you are employed,
17 in what capacity, and for how long you've been employed
18 there.

19 A. I'm employed with the State Law Enforcement
20 Division, also known as SLED, and I was there for thirteen
21 and a half years as a forensic technician.

22 Q. And tell our jury a little bit about your
23 background, education, and experience that led you to come
24 to SLED.

25 A. Mainly on-the-job training. You are trained by

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1 a forensic technician, that is court expert witnesses, and
2 we are trained by DNA analysts. We are trained on
3 hundreds of items where before we can go online or before
4 we can work by ourselves we have to take competency test,
5 and every year after that we have to take a proficiency
6 test, to make sure that we know what we're doing.

7 Q. And I believe you said you're a forensic
8 technician. Tell us what a forensic technician is and
9 what your duties and responsibilities are at SLED.

10 A. A forensic technician in the evidence processing
11 department, we look for presumptive tests for blood,
12 semen. We look for body fluids. It could be vomit. We
13 look for hair, fibers, and we look for skin cells, sweat,
14 or anything else that could be of value to the case.

15 Q. And tell us generally, educate our jury, about
16 how items get to SLED and what happens, the log-in process
17 when items get to SLED, and how you get the items.

18 A. When the evidence comes in, it comes in to the
19 evidence control department. They log in the evidence.
20 When I say log in, we have a tracking system that we call
21 SLIMS where we -- the items gets a lab number and every
22 item gets an item number for tracking purpose. They drop
23 it off and we, in turn, go at the evidence control
24 department, pick up the evidence, and bring it back to our
25 department.

1 Q. And for the record, can you tell us what the
2 SLED lab number is in this case we're here about today?

3 A. In this case is SLED lab number L092010.

4 Q. And describe for us when items come into SLED --
5 and you said forensic technicians go and get the items.
6 Can -- tell us about that control room. Is it a secured
7 area? Can anyone come off the street and go into that
8 room?

9 A. No. When we go and pick up the evidence from
10 the evidence control department, it's a room that we go
11 and another forensic technician is in the back of this
12 room where she hands us the evidence out of a room. If
13 you -- you can't go back there. If anybody else other
14 than an evidence control department person -- personnel
15 goes back there, we have a log that they do have to
16 sign in. But no one is allowed to go back there but the
17 person -- the people that works in that department.

18 Q. So even other people at SLED who, say, work in
19 the arson department or the computer department, they
20 can't walk into this room?

21 A. You can't just walk in there. You have to sign
22 in if you're going back there for some reason.

23 Q. And did you receive a couple of items in this
24 case to test?

25 A. Yes, I did.

1 MS. BIAGIANTI: Beg your indulgence, Your Honor.

2 THE COURT: Yes, ma'am.

3 [Whereupon, Ms. Biagianti views exhibits]

4 Q. [Ms. Biagianti] Now, Ms. Butler, I'm showing
5 you what has already been introduced as State's Exhibit
6 Number 21. Do you recognize what that item is?

7 A. Yes, I do. It's item 1.0, which is a paint-
8 roller handle. It has where I have my initials; the item
9 number; my initials; the lab number, which is LZ092010;
10 and the date I processed the item.

11 Q. And whose handwriting is that?

12 A. And this is my handwriting.

13 MS. BIAGIANTI: For the record, Your Honor, I'm
14 opening up Number -- State's Exhibit Number 21.

15 Q. [Ms. Biagianti] Now, if you could please take
16 out item number 21 from the bag. And, again, tell us what
17 is -- how it's packaged and whose writing is on that.

18 A. This is white butcher paper that we use to wrap
19 the item in after we process the item. On each item we
20 put the item number, which is 1.0, my initials, BWB, the
21 lab number, and the date we process it.

22 Q. And why do you put it in butcher paper?

23 A. It's actually paper that we have to put down on
24 the table on every item so, it won't get contaminate, and
25 we wrap it back in that same paper and send it back to the

1 agency.

2 Q. And can you open it?

3 MS. BIAGIANTI: Do we have any scissors, Madam
4 Clerk?

5 [Whereupon, the witness complies]

6 Q. [Ms. Biagianti] Do you recognize what you just
7 opened?

8 A. Yes, I do, because on every item we have the
9 item number, 1.0, my initials, BWB, the lab number
10 L092010.

11 Q. And tell us what type of test, if any, did you
12 do on item number 21.

13 A. This particular item was --

14 MR. BOSNAK: Your Honor, I object.

15 THE COURT: Hold on one second.

16 MR. BOSNAK: I object.

17 THE COURT: Basis?

18 MR. BOSNAK: There's been no foundation laid for
19 this lady's qualifications such as schooling, different
20 things like that.

21 THE COURT: Counsel approach.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 MS. BIAGIANTI: You can continue, ma'am.

25 THE COURT: Hold on.

1 Just for the record, your objection is
2 overruled. It will be noted for the record, Mr.
3 Bosnak:

4 MR. BOSNAK: Thank you.

5 THE COURT: Thank you.

6 Q. [Ms. Biagianti] So I think you were telling us
7 what type of testing you did on this item.

8 A. This was a request for blood, presumptive test
9 of blood. What you see here: when we test our swab --
10 first we do a visual test to see if we see anything that's
11 blood. If we don't, then we take a clean swab and we swab
12 the whole item. Then we go back and we take another swab,
13 swab it and test that swab to see if it comes up as a
14 presumptive test for blood. If it comes up as blood, it
15 will turn pink but if it doesn't react to anything, then
16 it won't react.

17 In this case it wasn't -- it was negative for
18 blood. So what we do, we put two negative signs, draw a
19 circle. And these marks mean I test the whole item.

20 Q. Did you also test it for any other item?

21 A. The request was for blood.

22 Q. Did you also note on -- whether there was any
23 hair or foreign objects on that item?

24 A. We -- on every item, when we look at it we do
25 look for hair.

1 Q. And you do -- and tell us why you do that.

2 A. The reason why: sometimes if it's blood, or if
3 it's not blood, we just automatically look for hair. In
4 this case I did look for hair. And it says no hair was
5 found on here. And then after I look for the hair, then I
6 do the test for blood.

7 Q. And if you would have found blood in this case,
8 where would the item have gone from you?

9 A. If we would find blood, it would -- I would give
10 it another item number for the tracking, I would give it
11 the item -- the lab number, my initials, put it in a small
12 envelope, seal it with my initials and the date, put it in
13 another heat-sealed pouch, seal that, initial and date and
14 sign that, and then I would send it -- give it to the DNA
15 analyst on the case.

16 Q. And so then the DNA expert could test the blood?

17 A. Yes.

18 MS. BIAGIANTI: You can put item number 21 back
19 in the bag.

20 [Whereupon, the witness complies]

21 Q. [Ms. Biagianti] Now I'm showing you what's been
22 marked as State's Exhibit Number 22, already in evidence.
23 Again, same process. Can you recognize what that item is?

24 A. Yes, I do. This item is item number 2.0, has my
25 initials, BWB, has a lab number L092019 and the date,

1 4/24/09, that I processed it.

2 Q. If you could, ma'am, open State's Exhibit Number
3 22 and open the inner contents, as well.

4 [Whereupon, the witness complies]

5 A. Same thing here. I put the same information on
6 the white paper.

7 Q. Tell us what that is.

8 A. This is a piece of carpet, item 2.0, my
9 initials, and the lab number.

10 Q. And tell us: what type of testing did you do on
11 this item, ma'am?

12 A. I did presumptive test for blood. First I did a
13 visual of the item. I saw a spot. I test it for
14 presumptive test for blood. It turn up negative. That's
15 what you see, the two negatives circled, and for the
16 presumptive test for blood.

17 Q. And did you do the same type of testing, that
18 you describe in item number 21 about the swabs and it
19 turning pink, on this item?

20 A. Yes, I did.

21 Q. Thank you. If you could put it back in the
22 outer package, please.

23 [Whereupon, the witness complies]

24 Q. [Ms. Biagianti] I'm going to ask you State's
25 exhibit -- about State's Exhibit Number 24, again, already

1 into evidence. If you could tell us if you recognize what
2 that item is.

3 A. Yes, I do. It's item 6.0. It's pajamas. Item
4 6.0, BWB, the lab number, and the same thing, the white
5 paper, the item number, my initials, the lab number and
6 the date.

7 Q. And, again, tell us what type of testing you
8 were requested to do on this item.

9 A. The request on this item was for blood. As I
10 stated, it has item 6.0, BWB, lab number L092010.

11 Q. Okay. And tell us, ma'am, what you did when you
12 first received that item.

13 A. When I first received this item, I did a visual
14 test on it where I looked for blood.

15 Q. And what did -- what did you find on your visual
16 test?

17 A. After I did a visual test for blood, the spots
18 or the areas that looks like blood I did a presumptive
19 test. As I said, I took the clean swab and I put a
20 solution on it, swabbed the area, and when I put the
21 chemical on it and it turned positive for blood.

22 Q. And what do you do from there?

23 A. After certain areas turn positive for blood, I
24 cut the area -- cut some of the areas out. I start here
25 [indicates], 6.1 -- as I said, every item has to have a

1 different item number. I started with 6.1. I cut this
2 area out. I put it into a coin envelope, it's a small
3 yellow envelope, where I give it the item number --

4 Q. Let me interrupt you. This might make it
5 easier, ma'am.

6 I'm showing you State's Exhibit Number 25. I've
7 already shown it to counsel. Do you recognize what those
8 little envelopes are?

9 A. Yes, I do.

10 Q. Okay. And tell us what those little envelopes
11 are. And you can tie it into what you were saying a
12 minute ago.

13 A. This is a heat-sealed pouch where we put
14 evidence; as I said, where I put my initials and the date
15 across the seal, because we have to seal it. Then I put
16 my signature and the date. This is the envelopes that we
17 use to put the evidence in. If you -- the back of it has
18 my initials and the date.

19 Q. And how many envelopes, how many brown
20 envelopes, are in item 6, Exhibit Number 25?

21 A. There are four item numbers in item 6.0.

22 Q. And how many cuttings did you do from the
23 pajamas, which is State's Exhibit Number 24?

24 A. Four cuttings.

25 Q. Now, if you could, please, again go back to the

1 pajamas and tell us where you made each cutting from.

2 A. The first cutting was right here, 6.1.

3 Q. Would that be the left-breast area or chest area
4 of the child?

5 A. It would be like -- it would be.

6 Q. Actually, it's more toward the stomach area?

7 A. The stomach-middle area of the -- this is 6.1.

8 Q. Okay. And where is 6.2?

9 A. Then I did 6.2, one of the areas down at the
10 foot area.

11 Q. That would be the left foot?

12 A. I did an area at the back at the top, 6.0. And
13 another --

14 Q. Let me interrupt. You said 6.0. Is that --

15 A. I'm sorry. 6.3.

16 Q. Okay.

17 A. And I did another cutting toward the back, 6.4.
18 And it was a representative sample.

19 Q. Okay. Now, let's put State's Exhibit Number 24
20 back in the packaging.

21 [Whereupon, the witness complies]

22 Q. [Ms. Biagianti] Now, tell us, once you made
23 these cuttings and you put them in envelopes, where does
24 item number 25 go next?

25 A. Once I did the cuttings and I put them in this

1 bag, the analyst comes to my area and I hand it -- give it
2 to her directly in her hand.

3 Q. And, again, so the only items -- tell us the
4 only item you found blood on.

5 A. The only item that I found the presumptive test
6 for blood was State Exhibit -- was it 25? Item 6.0, the
7 pajamas.

8 MS. BIAGIANTI: Your Honor, at this time we move
9 State's Exhibit Number 25 into evidence.

10 MR. BOSNAK: Without objection.

11 THE COURT: State's 25 into evidence without
12 objection.

13 [Whereupon, State's Exhibit Number 25 is
14 admitted into evidence by the Court]

15 MS. BIAGIANTI: Please answer any questions the
16 defense might have for you.

17 MR. BOSNAK: Hello, Ms. Butler. How are you
18 today?

19 THE WITNESS: I'm fine. Thank you.

20 CROSS-EXAMINATION

21 BY MR. BOSNAK:

22 Q. Let me go over this to see did I understand it.

23 The evidence room at SLED is a very secure area;
24 correct?

25 A. Yes, it is.

1 Q. You not only take in things like pajamas and
2 sticks and those type of things, but drugs?

3 A. Yes, we do.

4 Q. Guns?

5 A. Yes, we do.

6 Q. All type of things?

7 A. Yes.

8 Q. And it would be true to say that for the most
9 part, all things used in crimes that need to be analyzed,
10 state law enforcement does it?

11 A. Yes.

12 Q. Would that be fair to say?

13 A. Yes.

14 Q. Now, a police department such as Summerville
15 would take this evidence and they would put it in one of
16 your bags, one of these SLED bags, and seal it?

17 A. No. They don't -- once they bring the evidence
18 to us, we put it into -- sometimes they bring it into
19 those bags there. What we do is put it into a box or one
20 of our boxes or heat-sealed pouch. We put it in there.
21 We seal it and have -- and put our tape on it and have
22 them initial and date the tape.

23 Q. So Summerville Police Department, whatever they
24 put the evidence in, would bring it to State Law
25 Enforcement Division and turn it over to an evidence

1 custodian? Would that be correct?

2 A. The evidence technician, yes.

3 Q. Technician.

4 That's what you are? Evidence technician; is
5 that correct?

6 A. Forensic technician.

7 Q. Oh. You're forensic. I'm sorry.

8 A. Uh-huh.

9 Q. So they turn it over to an evidence technician
10 and that person would be the one that would seal it in the
11 SLED bags; correct?

12 A. Correct.

13 Q. And then there are certain codes put on that
14 bag; correct?

15 A. The lab number and the item numbers.

16 Q. And that's where you can track it?

17 A. Yes.

18 Q. And that's also to keep it from being mixed up
19 with something else?

20 A. That's correct.

21 Q. Because we want to make sure that the evidence
22 is reliable?

23 A. That's correct.

24 Q. Now, when you're handling this evidence, there's
25 a protocol about handling evidence, isn't it?

1 A. Yes, it is.

2 Q. First of all, all of your DNA is on file;
3 correct?

4 A. Everything that we do is on file.

5 Q. No. I'm saying your particular DNA would be on
6 file with SLED.

7 A. Yes, it is.

8 MS. BIAGIANTI: Your Honor, I would object at
9 this point.

10 THE COURT: Basis?

11 MS. BIAGIANTI: I don't think she's qualified to
12 talk about something that would be a case for the next
13 witness.

14 MR. BOSNAK: Well, she --

15 THE COURT: Counsel approach.

16 [Whereupon, an off-the-record bench conference
17 is held]

18 THE COURT: Overruled.

19 Q. [Mr. Bosnak] So your DNA is on file?

20 A. Yes, it is.

21 Q. And what type of clothing do you have to wear in
22 your job?

23 A. In -- when we are in the room processing, we
24 have on gloves and we have on our lab coat.

25 Q. Okay. Do you wear any kind of netting on your

1 hair or anything?

2 A. No, we do not. Sometimes we use goggles and
3 face mask.

4 Q. And the reason you're using those gloves today
5 is to keep any of your DNA from transferring onto the
6 items that you're checking; correct?

7 A. That's correct.

8 Q. Okay. Now, you said that you checked this paint
9 handle or this piece of stick?

10 A. Yes, I did.

11 Q. And you only checked it for blood; correct?

12 A. Blood and hair.

13 Q. Blood and hair. And no hair found?

14 A. That's correct.

15 Q. And no blood?

16 A. That's correct.

17 Q. Did you check it for any type of DNA?

18 A. No, I did not. The request was for blood.

19 Q. Okay. And you checked the carpet, and that was
20 for blood only; correct?

21 A. Yes. Correct.

22 Q. And then you checked the pajamas, and you
23 checked that for blood only; correct?

24 A. Correct.

25 MR. BOSNAK: Thank you. No further questions.

1 MS. BIAGIANTI: Just one.

2 REDIRECT EXAMINATION

3 BY MS. BIAGIANTI:

4 Q. In order to check for DNA, you have to have some
5 type of blood; correct? Or other type of bodily fluids?

6 A. In order to check -- rephrase your question.

7 Q. In order to get to the DNA department, you or
8 someone in your condition -- position has to either find
9 blood or some other bodily fluid on an item?

10 A. That's correct.

11 MS. BIAGIANTI: Okay. Thank you.

12 MR. BOSNAK: Just a follow-up question.

13 RECROSS-EXAMINATION

14 BY MR. BOSNAK:

15 Q. When I asked you before if the reason you're
16 wearing the gloves is to keep your DNA from the handle --
17 you can transfer DNA just from your hand. Wouldn't that
18 be correct?

19 A. That's correct.

20 MR. BOSNAK: Thank you.

21 THE COURT: Ms. Butler, you may step down.

22 MS. BIAGIANTI: Can she be released from her
23 subpoena, Your Honor?

24 THE COURT: Any objection, Mr. Bosnak?

25 MR. BOSNAK: None, Your Honor.

1 THE COURT: And you are released from your
2 subpoena. Thank you.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: Call your next witness.

6 MS. BIAGIANTI: Your Honor, the State would call
7 Agent Robin Taylor.

8 [Whereupon, Ms. Taylor comes forward]

9 THE CLERK OF COURT: Please raise your right
10 hand, and place your left hand on the Bible.

11 [Whereupon, Ms. Taylor is duly sworn by the
12 clerk of court as follows: do you solemnly swear or
13 affirm the testimony you will give the Court in the
14 trial of this case will be the truth, the whole truth,
15 and nothing but the truth, so help you God]

16 THE WITNESS: I do.

17 THE CLERK OF COURT: Please be seated.

18 [Whereupon, Ms. Taylor takes the witness stand]

19 THE CLERK OF COURT: State your full name, and
20 spell your last name for the record.

21 THE WITNESS: My name is Robin A. Taylor.
22 T-A-Y-L-O-R.

23 MS. BIAGIANTI: Good morning, Ms. Taylor.

24 THE WITNESS: Good morning.
25

1 ROBIN A. TAYLOR,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. BIAGIANTI:

6 Q. Can you please tell us where you are employed,
7 in what capacity, and for how long you've been employed
8 there.

9 A. I work at State Law Enforcement Division. I am
10 the lieutenant over the forensic DNA laboratory, and I
11 have been at SLED March 17th will be twenty years.

12 Q. Congratulations.

13 Tell us a little bit about your background,
14 education, and experience that led you to SLED.

15 A. I have a bachelor of science degree in medical
16 technology from the University of South Carolina. I
17 graduated from Baptist Medical Center School of Medical
18 Technology in Columbia. I worked in a clinical
19 laboratory, Greenville Memorial Hospital, for
20 approximately a year and a half prior to joining SLED.
21 And, as I said, I've been at SLED for nearly twenty years
22 and during that time I've completed training programs in
23 the fields of forensic serology, forensic RFLP-DNA
24 analysis, and then also PCR-DNA analysis.

25 Q. And some of us who aren't familiar with those

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1 acronyms, just briefly tell us what that is.

2 A. Well, basically RFLP is Restriction Fragment
3 Length Polymorphism. It was just a methodology of doing
4 DNA when DNA first started, and it required quite a bit of
5 DNA and was not nearly as quick to do. It took us quite a
6 bit of time to do it.

7 And in 2000 SLED switched over from RFLP to PCR,
8 which stands for Polymerase Chain Reaction. And it's a
9 method of doing DNA that requires much less sample, it is
10 much quicker to do, and is the current methodology that we
11 use.

12 Q. And it's the current methodology most places?

13 A. Yes. It's worldwide.

14 Q. And it's the most current up-to-date technology?

15 A. Absolutely.

16 Q. And is SLED accredited?

17 A. Yes, we are.

18 Q. And tell us about some of your duties and
19 responsibilities as lieutenant over the forensic services
20 department.

21 A. Well, I've been lieutenant for nearly a year and
22 a half now, and mostly my duties are -- right now are to
23 make sure that the department runs smoothly and that the
24 analysts on the bench have what they need to do their jobs
25 and to do it well.

1 And prior to becoming lieutenant, I was a team
2 leader in the DNA laboratory. And that's simply the
3 hands-on, day-to-day immediate supervisor of several
4 people in the laboratory. We divide it up among several
5 team leaders.

6 And prior to that, I actually was a bench
7 analyst. I worked cases full time. But, again, for the
8 last year and a half I haven't really worked very many
9 cases.

10 Q. And have you been qualified as an expert in the
11 field of forensic serology and DNA before?

12 A. Yes, I have. Between the two disciplines, I've
13 been qualified over seventy times.

14 MS. BIAGIANTI: Your Honor, at this time I would
15 offer Ms. Taylor as an expert in the area of forensic
16 serology and DNA analysis.

17 THE COURT: Mr. Bosnak?

18 MR. BOSNAK: Without objection, Your Honor.

19 THE COURT: Ladies and gentlemen, normally when
20 a person testifies, they must testify as to what they
21 either heard, saw, or sensed by smell or something of
22 that nature. There is an exception when someone is
23 qualified because of their education or their
24 experience. They are then permitted to give their
25 opinion in certain areas if the Court qualifies them in

1 that way.

2 This witness will be qualified in the area of
3 forensic serology and DNA analysis to give opinion
4 testimony in those areas. That does not mean that you
5 must accept the opinion. It is simply evidence for you
6 to use in any way that you see fit, and to give it the
7 weight and credibility that you believe is appropriate.

8 Ms. Biagianti?

9 MS. BIAGIANTI: Thank you, Your Honor.

10 Q. [Ms. Biagianti] Now, tell us what DNA is in
11 layman's terms.

12 A. DNA stands for deoxyribonucleic acid, but
13 basically it's the chemical that's in the cells of your
14 body that carries genetic information from generation to
15 generation. You get half of your DNA from your father and
16 half of your DNA from your mother.

17 Now, in forensics we don't -- we target a very
18 small portion of the DNA that's known to be highly
19 variable from person to person because actually most of
20 your DNA from person to person is the same. But, again,
21 what we are looking at is a portion that doesn't code for
22 anything that we know of at this point, but it's highly
23 variable between persons. And, again, that's what we're
24 looking at in forensics.

25 Q. And tell us what substances is our DNA found in.

1 A. Body fluids are what we target. Usually blood,
2 semen, saliva. Now we're sweat and even skin cells. The
3 DNA is actually found in the nucleus of a cell. So if
4 you're thinking about your blood, DNA is not found in your
5 red blood cells because they don't have a nucleus. It's
6 found in the white blood cells.

7 Q. And tell us how -- this might be a dumb
8 question, but how we leave our DNA on objects.

9 A. A variety of ways. Anything from coughing, to
10 sneezing, bleeding. In the case of a sexual assault,
11 sexual contact. Even handling, these days we can -- we
12 can pick up DNA. And that's sometimes variable. I don't
13 want to -- I don't want to enhance the idea that, you
14 know, just brushing up against something is definitely
15 going to leave DNA. It doesn't always.

16 But we routinely these days test for contact in
17 ownership in clothing where we will check for skin cells
18 that have been deposited around necklines, waistlines,
19 pants, things like that. And we also routinely swab items
20 where a person may have handled it enough to leave behind
21 their DNA and leave behind some skin cells.

22 Q. Now, were you the actual forensic analysis
23 [phonetic] in this case?

24 A. No. I didn't perform the analysis in this case.
25 It was performed by an analyst in our department, Mary Ann

MIA PERRON, CCR, CVR-CM

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1 Boam [phonetic]. She is attending a professional meeting,
2 the American Academy of Forensic Scientists, in Seattle,
3 Washington, today.

4 Q. And are you familiar with Ms. Boam's work?

5 A. I am. I've known Mary Ann for the -- she's
6 worked there for several years, and I've known her the
7 full time, and I have daily contact and interaction with
8 her.

9 Q. And are you aware of whether she's been
10 qualified in the same area that you've been qualified in
11 just now? Forensic DNA and serology?

12 A. She has.

13 Q. And you're aware that she's testified multiple
14 times?

15 A. She has. I'm not sure of the exact number of
16 times, but she has testified.

17 Q. And so tell us a little bit how -- and you're --
18 let me back up. You're familiar with Mary Ann's testing
19 procedures and results as her supervisor?

20 A. Yes, I'm familiar with them because they are
21 standard throughout the department. We have a procedure
22 and a protocol that we follow and it's pretty much, you
23 know, like I said, standard throughout the department.
24 And that's how I'm familiar with her testing procedures.

25 Q. And before we even asked you to get involved in

1 this case, did you do any type of review of her work?

2 A. I did. Actually, before any case goes out of
3 the DNA laboratory it gets two reviews. One of them is a
4 peer or technical review done by another analyst, and they
5 look over every single aspect of the case and make sure
6 that it does comply with our operating procedures and that
7 everything looks as it should. They sign off on it, and
8 then it goes through what we call an administrative
9 review.

10 An administrative review is done by my self or
11 three -- one of three team leaders. There are four of us,
12 only, that do those. Your management level, generally.
13 You don't have to be. It's not required. But in our
14 laboratory, that's our way of doing things.

15 And, in fact, I did the final review on this
16 case. But I also sat down with Mary Ann yesterday, before
17 she left for Seattle, to just look it over once again.

18 Q. Now, Mary Ann received several items in this
19 case to test; correct?

20 A. Yes.

21 Q. Tell us a little bit about how the items get --
22 just, in general, how the items get to SLED and the
23 tamper-proof quality of the items that come to SLED.

24 A. The general flow of the evidence is that a
25 officer from a local agency will come into what we call

1 our log-in department, and they submit paperwork and the
2 evidence to technicians in there who enter it into the
3 computer and make sure it's properly sealed. Now, that
4 will entail boxes with evidence tape on them. And this
5 tape is really fragile. You can't open a container
6 without disturbing it. And, also, smaller items will go
7 into what are heat-sealed pouches.

8 And, frankly, in DNA, most of what we get is
9 heat-sealed pouches because larger items are going to go
10 through the evidence processing section of DNA. Ms.
11 Butler, who was in here earlier, works in that section.
12 And they will examine larger items and cut -- make
13 cuttings or swabs and then place them into, again, what we
14 call a heat-sealed pouch. And this is a plastic bag that
15 is heat-sealed on the open end and can't be opened without
16 obvious tearing or cutting of the bag. And every time one
17 of these bags is sealed, somebody has to initial and date
18 it.

19 Q. And, just briefly, I'll show you State's Exhibit
20 Number 25 that's already into evidence.

21 MS. BIAGIANTI: Your Honor, can I approach the
22 witness?

23 THE COURT: You may.

24 Q. [Ms. Biagianti] Is that a bag and item similar
25 to what you just discussed?

1 A. Yes. This is a heat-sealed pouch. And Betty
2 actually generated this one. And you can see where she
3 made the initial seal, and her initials there and the
4 date.

5 And then it went to Mary Ann, and she was the
6 next person to open it. And you can see where she cut it
7 open and then re-sealed it. And you can see her initials,
8 MEB, and then the date, as well.

9 And, again, there's identifying information
10 about the case on here. But this is a situation where as
11 an analyst on the bench, if you receive one of these and
12 you're missing a signature or it's not properly sealed,
13 you stop everything until you straighten out what's going
14 on: why is this like this; you know, is it explainable;
15 or what went on with this evidence. It's a way for us to
16 know that when we receive the evidence, it's as it should
17 be.

18 Q. And if an item gets to the log-in process --
19 from a law enforcement agency -- that has been sealed with
20 evidence tape and it looks as if it had been tampered
21 with, is there any process or procedure that the log-in
22 department makes or notes to let us know that the item has
23 been tampered with?

24 A. Generally, it's my understanding that the log-in
25 person would make the submitter resolve that problem prior

1 to accepting it. If something comes up maybe after
2 they're gone, it's probably not going to go anywhere until
3 it is resolved by the submitting agency.

4 And even myself, you know, if I see an
5 irregularity on the bench and -- I mean, I've been known
6 more than once to just make a phone call. You stop what
7 you're doing and make a phone call, and you let the person
8 know that testing won't go forward until any questions are
9 resolved.

10 It's not a real common occurrence because we're
11 very in-tune to this. It's something we've been doing for
12 years.

13 Q. And why do you do this? Why do you ensure that
14 these items aren't tampered with before they're ever
15 tested? What's the importance of that?

16 A. Well, the importance of it is huge. I mean,
17 it's so that you can know because I know that the evidence
18 wasn't tampered with, to the best of my knowledge, before
19 I generate a report. I mean, it's a very basic tenet of
20 all forensic testing.

21 Now, I can't be responsible for anything prior
22 to, you know, it coming into my custody. But I can look
23 and see. I can use my experience and I can use my
24 training to look at the evidence, to look at the envelopes
25 and to look at the pouches, and see that things are as

1 they should be.

2 And, again, we often -- well, I won't say often.
3 When necessary, we just stop what we're doing and make a
4 phone call until the issue is resolved, whatever the issue
5 is.

6 Q. And was there ever any type of issue in this
7 case?

8 A. Not to my knowledge, no.

9 Q. Now, Mary Ann, as I said, was -- she received a
10 number of items.

11 A. Yes.

12 Q. Tell us what she received, and then we'll go
13 through them individually. Would it refresh your memory
14 to look at the report?

15 A. Yes, I need to look at the report.

16 THE WITNESS: If that's okay, Your Honor.

17 Q. [Ms. Biagianti] No problem.

18 [Whereupon, the witness reviews documents]

19 A. She received a swab from a mattress; a swab from
20 a bedroom door; another swab from a bedroom door; and four
21 cuttings from pajamas.

22 Q. [Ms. Biagianti] And did she receive any types
23 of standards?

24 A. Yes, she did.

25 Q. And tell us what a standard is.

1 A. Well, DNA is a comparison science so basically
2 the entire point is to compare unknown samples of
3 evidence, a profile gotten from evidence, to known
4 standards of the people potentially involved in the case.

5 Now, I say that. It could be victims' known
6 standards or it could be suspects' known standards. But
7 we also have another classification called elimination
8 standards, and those come into play often when someone's
9 DNA may be found on the evidence but it may not -- it may
10 or may not be important to the case. That's really not
11 for us to decide. What we're going to do is just make the
12 comparisons to the evidence.

13 And on this case we received a blood standard
14 from VICTIM And then we also received some buccal
15 swabs. And that's a different form of us just having the
16 known DNA from a person.

17 It can be blood but actually, more often than
18 not, lately we just have someone take a sterile swab and
19 rub the inside of a cheek and they're collecting cells
20 from the inside of the cheek. It's much less invasive and
21 actually easier for us to handle at SLED. So we received
22 some buccal swabs on Justin Hillerby, Jennifer S . . . , and
23 Eric Riggins.

24 MS. BIAGIANTI: Okay. Showing the defendant's
25 counsel State's Exhibit Number 26, 27, 28, and 29.

1 [Whereupon, Mr. Bosnak reviews exhibits]

2 MS. BIAGIANTI: Your Honor, can I approach the
3 witness?

4 THE COURT: You may.

5 Q. [Ms. Biagianti] Lieutenant Taylor, I'm showing
6 you what's been marked as State's Exhibit Number 26. Can
7 you tell us what Number 26 is, if you recognize it.

8 A. This is labeled by the submitting agency as a
9 blood vial from victim : VICTIM . . . It has -- it's
10 appropriately labeled with a biohazard label and sealed
11 with evidence tape. You also will see on here L09-2010-7.
12 Mary Ann wrote that. That -- our case number is L09-2010
13 and this is item number 7.

14 And, again, this is a pouch that would have been
15 sealed in evidence log-in. When the agency came in, the
16 submitting officer, the name is here and initials are on
17 the seal. And it looks like Mary Ann opened it two
18 different times. And it's sealed back with her initials.

19 Now, I will say -- what I will tell you is that
20 when we receive blood in a liquid form in a blood vial --
21 I'm sure all of you have had your blood drawn. It's the
22 same thing. We don't want to store it that way. It's not
23 stable that way for very long so we need to pour it onto a
24 piece of kind of thick filter paper.

25 And we'll label that filter paper with the case

1 number and the name associated with it, and allow it to
2 dry. And that way it's good for years and years and
3 years. But that's a more stable way to store the blood.
4 That's why you don't see any evidence of a blood vial in
5 here. That was discarded. And, again, you can see where
6 Mary Ann initialed when she sealed the littler envelope
7 that the blood is in now.

8 MS. BIAGIANTI: Your Honor, at this time we move
9 State's Exhibit Number 26 into evidence.

10 MR. BOSNAK: Without objection.

11 THE COURT: State's 26 into evidence without
12 objection.

13 [Whereupon, State's Exhibit Number 26 is
14 admitted into evidence by the Court]

15 Q. [Ms. Biagianti] I'm now showing you State's
16 Exhibit Number 27. Do you recognize what that is?

17 A. Now, this is an envelope labeled with probably
18 the submitting agent's case number and it says oral swabs,
19 suspect Justin Hillerby.

20 Oral swabs is just an alternative way of naming
21 buccal swabs. And, again, you can see where Mary Ann --
22 this time she printed a label and actually placed it on
23 the envelope that's inside the pouch. And it came to us,
24 it appears to me, appropriately sealed. And she initialed
25 and dated when she broke that seal, which is not

1 necessarily required but it's good practice. She opened
2 it, it looks like just one time, and sealed it back. And
3 here are her initials and the date. And it feels a little
4 bit bulky. Most of the time these swabs come in a
5 cardboard container for them, and that's probably what
6 that is. I'm not sure.

7 MS. BIAGIANTI: Your Honor, at this time we
8 would move State's Exhibit Number 27 into evidence.

9 MR. BOSNAK: Without objection.

10 THE COURT: State's 27 into evidence without
11 objection.

12 [Whereupon, State's Exhibit Number 27 is
13 admitted into evidence by the Court]

14 Q. [Ms. Biagianti] And we'll skip State's Exhibit
15 Number 29, because you were just talking about something
16 similar to that. Tell us what that is.

17 A. This is our item number 10 and it's -- appears
18 to be swabs. It says -- the submitting agency wrote on
19 here probably, again, their case number. It's the same
20 number as before. And it says Eric Riggins. And on the
21 other one you can see where Mary Ann wrote our case number
22 and item number. And this was item number 10, and her
23 initials are there. And this is the kind of cardboard
24 thing that's probably inside this other envelope. But we
25 see these often. They're very common. And, once again,

1 you can see where Mary Ann broke the seal on the bottom
2 and resealed it.

3 MS. BIAGIANTI: Your Honor, at this time we
4 would move State's Exhibit Number 29 into evidence.

5 MR. BOSNAK: Without objection.

6 THE COURT: State's 29 into evidence without
7 objection.

8 [Whereupon, State's Exhibit Number 29 is
9 admitted into evidence by the Court]

10 Q. [Ms. Biagianti] And, finally, State's Exhibit
11 Number 28. Again, do you recognize what that item is?

12 A. Well, it -- again, it appears to be an envelope
13 that was submitted. It's labeled as our item number 9,
14 which would be buccal swabs from Jennifer S ; and,
15 once again, sealed by the submitting officer; opened and
16 resealed by Mary Ann.

17 MS. BIAGIANTI: And, Your Honor, at this time we
18 move State's Exhibit Number 28 into evidence.

19 MR. BOSNAK: Without objection.

20 THE COURT: State's 28 into evidence without
21 objection.

22 [Whereupon, State's Exhibit Number 28 is
23 admitted into evidence by the Court]

24 MS. BIAGIANTI: And I am showing you State's
25 Exhibit Number 23, Mr. Bosnak.

1 [Whereupon, Mr. Bosnak reviews exhibit]

2 MS. BIAGIANTI: Again, could I approach the
3 witness, Your Honor?

4 THE COURT: You may.

5 Q. [Ms. Biagianti] This is State's -- I'm showing
6 you State's Number 23. Again, can you tell us what that
7 is, please, if you recognize it.

8 A. Okay. This is an envelope labeled with the same
9 number. Actually, it's a different number. There it is.
10 That's the same. It says items three, five and six on
11 here. I --

12 Q. Are those the agency's item numbers, not your
13 item numbers?

14 A. They appear to be the agency's item numbers.
15 And I can't tell -- all that's labeled on here is
16 container B and I don't -- I don't know, actually, for
17 sure what these would be. But considering what I've seen
18 here, were the items that Betty cut out and the known
19 standards, it appears that it's probably some swabs
20 submitted --

21 Q. Could those --

22 A. -- in this case.

23 Q. Could those be the swabs from the -- I know you
24 testified earlier about a swab from a mattress and the two
25 swabs from the bedroom door.

1 A. It absolutely -- I mean, it feels that way but I
2 have no way of knowing. And it does indicate there are
3 three items. So without having our item numbers on it, I
4 can't be positive.

5 MS. BIAGIANTI: Your Honor, at this time we move
6 State's Exhibit Number 23 into evidence.

7 MR. BOSNAK: She doesn't -- she doesn't know
8 what's --

9 MS. BIAGIANTI: Well, we can --

10 MR. BOSNAK: -- doesn't know what's in the bag.

11 MS. BIAGIANTI: We can open it, Your Honor.
12 Let's try that.

13 THE COURT: All right. Have her open the bag.
14 Sustained as to your objection, Mr. Bosnak.

15 MS. BIAGIANTI: Do you want some gloves?

16 THE WITNESS: That would be helpful, yes. I'm
17 going to need scissors.

18 A. Okay. I'm going to cut into this bag.

19 Q. [Ms. Biagianti] And, again, that's State's
20 Exhibit Number?

21 A. 23.

22 Q. Okay.

23 A. Okay. I have here inside the inner envelope
24 three swab boxes. Bear with me. They are labeled number
25 three, blood on mattress, by the submitting agency. And

1 that actually did translate to item number three for our
2 case, as well. Mary Ann put a case sticker on it, and
3 those are her initials.

4 The next item is labeled as number five, blood
5 on door, by the submitting agency. Mary Ann affixed a
6 case label. And, again, our item ended up coinciding as
7 also item number four, swab from bedroom door.

8 Q. Is number four -- I'm sorry. Your item --

9 A. Oh, I'm sorry. Their item was five. I
10 apologize.

11 Q. And your item was number what?

12 A. Four.

13 Q. Okay. Thank you.

14 A. All right. Submitting agency item number six
15 was our item number five. And, again, it was labeled by
16 Mary Ann. These are appropriately sealed, and it looks
17 like Mary Ann taped them back shut. Again, case label,
18 everything. It appears that these are the items that are
19 reflected on this report as items three, four, and five.

20 Q. And five, I think you did not say what that was.
21 Is that a swab from a bedroom door?

22 A. It says blood on door. Their number five.

23 Q. And that's what -- and that's not SLED's
24 writing. That's what the agency wrote; correct? Blood on
25 door?

1 A. Right. Yeah. We did not designate that.
2 That's just how the submitting agency labeled it.

3 MS. BIAGIANTI: If you could please put it back
4 in the inner envelope and then put it back in State's
5 Number 23.

6 Your Honor, I'm going to staple it back just so
7 items won't fall out.

8 THE COURT: Thank you.

9 Q. [Ms. Biagianti] Now, what type of -- tell us
10 about the type of testing that's done on items that are
11 submitted from the agency. So that would be item number
12 three which is a swab from the mattress, four and five
13 which are swabs from the bedroom doors, and 6.1, 6.2, 6.3
14 and 6.4 which are cuttings from pajamas. What type of
15 testing are done -- is done on those items?

16 A. Well, initially, the testing done usually is to
17 determine which body fluid we're dealing with. And most
18 of the time that's indicated by the type of case, and the
19 submitting agency will indicate to us what we should
20 expect to find. Now, that doesn't mean we won't test for
21 anything else. But in a case such as this, there was a
22 test done to indicate whether or not blood was present and
23 that --

24 Q. And let's go item -- I'm sorry to interrupt you
25 -- item by item. Swab number three.

1 A. Swab -- item number three, the swab from the
2 mattress, Mary Ann performed a test that resulted in a
3 positive result for blood -- it just said blood indicated.
4 And then she took it on for DNA analysis.

5 Items -- shall I go on?

6 Q. Tell us whose DNA was on item number three.
7 Let's do the test and then the results.

8 A. Okay. Item number three, blood was indicated.
9 And the DNA profile developed from that item matched the
10 DNA profile of VICTIM [REDACTED]. The probability of
11 randomly selecting another individual who has a DNA
12 profile that would match the same -- the profile on that
13 item is approximately one in 1.8 quadrillion.

14 Q. And what does that mean?

15 A. It simply means that if you choose any other
16 person at random, the probability that they would have the
17 same DNA profile as VICTIM [REDACTED] is one in 1.8
18 quadrillion. It's a rare chance that it would happen.
19 It's --

20 Q. What's the population of the world,
21 approximately?

22 A. I think about six billion. 1.8 quadrillion is
23 1.8 with about fourteen zeroes behind it, so -- but,
24 again, we're not talking about the population necessarily.
25 We're talking about a chance, a random chance, that

1 someone would have that profile.

2 Q. So that's VICTIM's blood?

3 A. Right.

4 Q. Okay. Now, let's go to item number -- SLED item
5 number four, the swab from the bedroom door. What type of
6 testing was done on that item?

7 A. Sometimes when we examine a swab, we're -- we
8 recognize that we have a very limited sample and so we're
9 not going to use any of the sample on any testing for body
10 fluids. We're going to take it straight to DNA. And in
11 this case DNA was the only thing done on that swab from
12 the bedroom door, item number four.

13 Q. So you can't tell us that it's blood?

14 A. No, I can't.

15 Q. We have no idea what that substance is?

16 A. We don't.

17 Q. Okay. And tell us the results from that non-
18 blood substance.

19 A. The DNA profile developed from item four is a
20 mixture of at least two individuals. The DNA profile of
21 the major contributor to this mixture matches the DNA
22 profile of Eric Riggins. The probability of randomly
23 selecting any unrelated individual having a DNA profile
24 matching the one found on this item of evidence is
25 approximately one in forty-nine trillion.

1 Now, there was another minor contributor in this
2 profile but it did not give us enough information for any
3 kind of reliable interpretation.

4 Q. So, again, tell us: the substance -- you can't
5 tell us if it's blood?

6 A. We don't -- we have no way of knowing at this
7 point if it was blood or if it was sweat or if it was
8 touch DNA or what. We did -- we were unable to do any
9 kind of testing that would give us that information. It
10 was limited to only DNA.

11 Q. And tell us what a mixture is. I mean, you
12 alluded to it earlier, but --

13 A. A mixture is simply a DNA profile where more
14 than one individual contributed to that profile. And in
15 this case, and in the best-case scenarios, we can easily
16 tell where one person donated the majority of this DNA.
17 And this is one of those instances where the majority of
18 the DNA looks single-source, and it looks just as we would
19 expect it to, and it matches a particular known standard
20 in the case.

21 Now, also in with this -- and if you'll pardon
22 me while I just double check, while I'm talking -- there
23 were a few locations where it appeared that at a very low
24 level somebody else's DNA was there, as well.

25 DNA is not something that is limitless in -- if

1 we don't have enough information, we can't match it. We
2 can't say anything about it, in fact. And the sensitivity
3 of our test -- sensitivity of our testing will often lead
4 us to find -- you know, see very low levels of DNA. And
5 we have to be very careful with that DNA. We don't want
6 to overstate, you know, the evidence. And the bottom line
7 on this particular portion of this profile, this low-level
8 second person in here, we can't do anything with it. It's
9 insufficient for any sort of reliable interpretation.

10 Q. Now, are you aware of who Mr. Riggins is in
11 relation to this case?

12 A. Only as I was told in discussions in preparation
13 for this trial. It's my understanding he's a roommate and
14 lived in the house.

15 Q. Now, the fact that it's his DNA on this bedroom
16 door, does that surprise you?

17 A. Not really. Living in the house, you know,
18 you're going to come in contact with different surfaces in
19 the house regularly, and it's not unexpected to find --
20 especially people who live in a residence, it's not
21 unexpected to find their DNA on surfaces that might be
22 commonly touched.

23 Q. What if this was his bedroom door? Would that
24 surprise you?

25 A. Not at all.

1 Q. Now, if you could please tell us about item
2 number five, which I believe you said is the second swab
3 from the bedroom door. Tell us what type of testing was
4 done on that.

5 A. We had the same situation with item number five.
6 There was insufficient amount to do anything preliminary.
7 It had to go straight to DNA or we risk not getting any
8 DNA profile.

9 And the results of the DNA testing for item
10 number five was that it -- the DNA profile is from an
11 unidentified female individual.

12 Q. Would it surprise you to know that Mr. Riggins'
13 girlfriend lived in that same bedroom? Would it surprise
14 you if it were her DNA?

15 A. Not if she commonly touches the surfaces, no, it
16 wouldn't surprise me.

17 Q. Now, item number 6.1: can you please tell us
18 what was -- and let me back up. Items four and five, they
19 didn't test positive for blood?

20 A. There was no testing done to determine that.
21 There was -- it went -- only DNA was done on that. No
22 screening test for identifying any type of body fluid was
23 done.

24 Q. And every other item you tested, did that -- did
25 those items test presumptively for blood?

1 A. Mary Ann tested items three, which is the swab.
2 from the mattress that I spoke about earlier, and then
3 cuttings from the pajamas. She received four cuttings,
4 and those did indicate the presence of blood. She was
5 able to test those four items, and they did indicate the
6 presence of blood.

7 Q. So now tell us about 6, item 6.1, if you will.

8 A. Item 6.1 is a cutting from pajamas. And as I
9 said before, preliminary testing indicated the presence of
10 blood. Then DNA analysis was performed on this item and
11 it was reported as -- this item, along with item 6.4,
12 which is another cutting from the pajamas where blood was
13 indicated, matched the DNA profile of *victim* [REDACTED]

14 [REDACTED].
15 Q. The victim in the case?

16 A. The victim.

17 Q. And tell us about items 6.2. Excuse me. 6.2.

18 A. 6.2 also yielded a positive test for the
19 indication of blood, and also the DNA results were such
20 that it matched the DNA profile of the victim and had the
21 same statistic, that I quoted earlier from the mattress,
22 of one in a quadrillion -- 1 -- I'm sorry -- one in 1.8
23 quadrillion.

24 Q. And, finally, Lieutenant Taylor, tell us about
25 item 6.3.

1 A. Item 6.3 was another cutting from the pajamas.
2 It was one of the four. The DNA profile developed from
3 this item was a mixture, again, of at least two
4 individuals. The DNA profile of the major contributor
5 also matches the DNA profile of the victim, VICTIM [REDACTED].
6 Remember what I said about the mixture. He was the major
7 contributor to this profile. The DNA profile of the minor
8 contributor is insufficient yet again for reliable
9 interpretation. There's just not enough information to be
10 able to include or exclude someone as a contributor.

11 Q. And can you tell us: do you know where 6.3 came
12 from on the pajama suit?

13 A. I think I know.

14 THE WITNESS: But, Your Honor, if I may refer to
15 the case file --

16 THE COURT: You may.

17 THE WITNESS: -- to be sure?

18 [Whereupon, the witness reviews documents]

19 A. As part of a DNA case file we include the work
20 sheets from evidence processing because it gives us
21 sometimes needed information. And what I am referring to
22 is a worksheet created by Ms. Butler, who testified prior
23 to me, and it appears that item 6.3, the cutting -- 6.3
24 was from the back of the neck of the pajamas.

25 Q. [Ms. Biagianti] So tell us the significance of

1 where that cutting was from and is it possible that DNA
2 could have been transferred, from the person who put the
3 pajamas on him, from someone touching the back of his
4 neck?

5 A. It's difficult to speculate those kinds of
6 things, but it's possible. Somebody could have just run
7 their finger in in loosening it, or something like that.
8 I don't know, to be honest. But it's not unusual to find
9 mixtures on clothing for that very reason. But, again,
10 it's difficult to know.

11 But someone -- you know, contact could have
12 given this low a level of DNA. Again, I hesitate to
13 go into any sort of definitive answer because it's
14 speculation.

15 Q. And the last question, Lieutenant Taylor: you
16 alluded to it earlier, but items four and five, what could
17 that substance be? I think you started to talk about, you
18 know, it could be any substance. Could it be sweat, could
19 it be blood, could it be tears, could it be saliva, could
20 it be semen, could it be touching, could it be anything?

21 A. I have to say it could be any of those things.
22 Again, there was insufficient amount of the stain to do
23 any testing that might give us an idea of what type of
24 body fluid it was. And so, again, I -- it could be --
25 it's DNA. It's their DNA, and that's about the extent of

1 what I can say.

2 MS. BIAGIANTI: Indulgence, Your Honor.

3 THE COURT: Yes, ma'am.

4 [Whereupon, Ms. Biagianti and Ms. Williams
5 confer]

6 MS. BIAGIANTI: Your Honor, at this time I would
7 admit item -- offer number -- item number 23 into
8 evidence. Those were the swabs that we opened up.

9 THE COURT: Mr. Bosnak?

10 MR. BOSNAK: Without objection, Your Honor.

11 THE COURT: State's 23 into evidence without
12 objection.

13 [Whereupon, State's Exhibit Number 23 is
14 admitted into evidence by the Court]

15 MS. BIAGIANTI: Thank you. Please answer any
16 questions the defense might have.

17 THE COURT: Mr. Foreman, this would be an
18 appropriate time for us to take our mid-morning break.
19 Do we need a break, or may we continue on?

20 THE FOREPERSON: We need a break.

21 THE COURT: You need a break?

22 THE FOREPERSON: Yes.

23 THE COURT: All right. Do not begin your
24 deliberations. Do not discuss this case.

25 We'll receive you back in about ten, fifteen

1 minutes. Thank you.

2 Please rise for the jury.

3 Lieutenant, please remain seated.

4 [Whereupon, the jury exits the courtroom at
5 10:30 a.m.]

6 THE COURT: Thank you. Be seated.

7 Lieutenant Taylor, you may step down and take a
8 break, as well. Do not discuss your case or your
9 testimony with any of the parties involved in this
10 case.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Thank you. You may step down.

13 [Whereupon, the witness exits the witness stand]

14 THE COURT: Anything before we take our morning
15 break?

16 MS. WILLIAMS: Nothing from the State, Your
17 Honor.

18 MR. BOSNAK: Nothing from the defense, Your
19 Honor.

20 THE COURT: All right. We will be at ease until
21 10:45. Thank you.

22 [Whereupon, a recess is taken from 10:30 a.m. to
23 10:42 a.m.]

24 [Whereupon, the witness re-takes the witness
25 stand]

1 THE COURT: Be seated.

2 Anything before we bring in the jury?

3 MS. WILLIAMS: Yes, Your Honor, the State is
4 ready.

5 MR. BOSNAK: Nothing from the defense, Your
6 Honor.

7 THE COURT: Please bring in the jury.

8 [Whereupon, the jury enters the courtroom at
9 10:43 a.m.]

10 THE COURT: Thank you. Be seated.

11 Mr. Bosnak, your witness.

12 MR. BOSNAK: Yes, ma'am. Just a few questions.

13 CROSS-EXAMINATION

14 BY MR. BOSNAK:

15 Q. You had made a statement before about DNA on
16 clothing. And I believe you said that the more somebody
17 touched it, put their hands on it, the easier it would be
18 to find the DNA; correct?

19 A. Certainly, because the assumption would be that
20 the more you handle something, the more likely it is you
21 will have left behind DNA with multiple contacts.

22 Q. Just to give an example: say this jacket that I
23 have on -- and sometimes I pull on it and, you know, that
24 type of stuff, just out of nervousness, and say before you
25 left, you patted me on the back. The likelihood of my DNA

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1 showing up on this jacket, since I'm wearing it and
2 handling it and touching it and pulling on it, would be
3 much greater than you just patting me on the back. Would
4 that be true?

5 A. I would -- I would think that to be true, yes.

6 MR. BOSNAK: Okay. Thank you. No further
7 questions.

8 THE COURT: Ms. Biagianti?

9 MS. BIAGIANTI: Nothing further, Your Honor.

10 THE COURT: Lieutenant Taylor, you may step
11 down. You are released from your subpoena.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: Ms. Williams, before you call your
17 next witness, could you take care of the evidence?

18 MS. WILLIAMS: Yes, Your Honor.

19 THE COURT: Thank you.

20 [Off the record momentarily]

21 THE COURT: Call your next witness.

22 MS. WILLIAMS: Detective Shannon Sharp.

23 [Whereupon, Ms. Sharp comes forward]

24 MS. WILLIAMS: Detective Sharp, if you can just
25 take the orange chair up there.

1 THE CLERK OF COURT: Raise your right hand.
2 Place your left hand on the Bible.

3 [Whereupon, Ms. Sharp is duly sworn by the clerk
4 of court as follows: do you solemnly swear or affirm
5 the testimony you will give the Court in the trial of
6 this case will be the truth, the whole truth, and
7 nothing but the truth, so help you God]

8 THE WITNESS: Yes, I do.

9 THE CLERK OF COURT: Please be seated.

10 [Whereupon, Ms. Sharp takes the witness stand]

11 THE CLERK OF COURT: State your full name, and
12 spell your last name for the record.

13 THE WITNESS: All right. My name is Shannon
14 Sharp. S-H-A-R-P.

15 - - - - -

16 SHANNON SHARP,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MS. WILLIAMS:

21 Q. And where do you work?

22 A. I'm currently employed by the Summerville Police
23 Department.

24 Q. How long have you been there?

25 A. Right at ten years, ma'am.

1 Q. You're not related to Sterling Sharp, are you?

2 A. I wish I was his younger brother.

3 Q. What do you do for the Summerville Police
4 Department?

5 A. I'm currently assigned to the detectives
6 division, ma'am.

7 Q. And how long have you been a detective?

8 A. Right about four years.

9 Q. How long have you been in law enforcement,
10 total?

11 A. Eleven to twelve years, ma'am.

12 Q. And did you get involved in the case of the
13 State versus Justin Hillerby?

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

15 Q. Did you take any statements from Justin
16 Hillerby?

17 A. I took three total. Yes, ma'am.

18 Q. And were all of those statements written?

19 A. Yes, ma'am, they were.

20 Q. When you took the statements, was someone else
21 present in the room?

22 A. Yes, ma'am.

23 Q. Was it always the same person, or was it
24 different?

25 A. It was almost always Sargent Williams. She was

1 there at the time.

2 Q. And you're talking about Sargent Cassandra
3 Williams, the case agent that's sitting --

4 A. Yes, ma'am. My immediate superior.

5 Q. Okay. And during -- let's start with the first
6 time that you questioned the defendant. What date was
7 that?

8 A. That was September 15th, 2008.

9 Q. And was that the date that the victim in this
10 case was found?

11 A. Yes, ma'am, it was.

12 Q. And if you know, where was Mr. Hillerby coming
13 from when he came to speak to you?

14 A. He was at the residence, ma'am.

15 Q. And were other people questioned, as well, that
16 day?

17 A. Yes, ma'am, there was.

18 Q. At that time, is it fair to say that there
19 wasn't a suspect?

20 A. No. No, ma'am, there was not.

21 Q. And how long did you talk with Mr. Hillerby?

22 A. On the 15th I roughly talked to Mr. Hillerby for
23 I would say two hours, ma'am.

24 Q. Okay. And did he appear to be under the
25 influence of any drugs or alcohol?

1 A. I could smell alcohol coming off of him, yes,
2 ma'am, but he said no, he was not intoxicated.

3 Q. Did he seem drunk still?

4 A. Drunk, no. Hung over, I would say probably yes.

5 Q. Okay. Did he appear to understand your
6 questions?

7 A. Yes, ma'am.

8 Q. Did you detect any kind of mental incapacity?
9 Any kind of problem with him comprehending what you were
10 saying?

11 A. No, ma'am, I did not.

12 Q. And to your knowledge, what was his level of
13 education?

14 A. He stated to me on our advisement of rights form
15 that the highest level of education that he completed was
16 ninth grade.

17 Q. Okay. Were you aware of him getting his GED at
18 that time?

19 A. No, ma'am. I just went with what he told me.

20 Q. Now, did you issue what we have all come to know
21 as Miranda rights to Mr. Hillerby?

22 A. Yes, ma'am.

23 Q. And we've seen that on television. But how do
24 you personally issue the Miranda rights to an individual?

25 A. Well, the Summerville Police Department for an

1 interview setting has an advisement of rights form. I
2 would fill out the top part, name, address, employment,
3 social security number, race, sex, date of birth, the
4 date, the time. And there's two questions I ask them:
5 can you read and write; the highest level of education
6 that you've completed.

7 Q. Okay. And do you have the original copy of that
8 rights form with you?

9 A. I do believe that that's been entered into
10 evidence already, I think.

11 MS. WILLIAMS: The Court's indulgence for just a
12 moment.

13 THE COURT: Yes, ma'am.

14 [Whereupon, Ms. Williams and Ms. Biagianti
15 confer]

16 MS. WILLIAMS: Your Honor, I'm going to show
17 counsel what's been previously marked as State's
18 Exhibit 38.

19 [Whereupon, Ms. Williams proffers documents to
20 Mr. Bosnak]

21 [Whereupon, Mr. Bosnak reviews documents]

22 MS. WILLIAMS: May I approach, Your Honor?

23 THE COURT: You may.

24 Q. [Ms. Williams] Can you identify this item for
25 me?

1 A. Yes, ma'am. That's the advisement of rights
2 form that Mr. Hillerby initialed and signed.

3 Q. Okay. And who fills out this top part?

4 A. This top part, that's my writing. I did, ma'am.

5 Q. Okay. And that's basically -- what is that?

6 A. That's the current case number, his name, his
7 address, his employment, social security number, his race,
8 sex, date of birth, phone numbers, date, time, and like I
9 said, those two questions that I asked him.

10 Q. Okay. And then read the questions or the -- the
11 rights that you read to him. How many of them are there?

12 A. There's five total, ma'am.

13 Q. Okay. Can you read the first one?

14 A. Number one: I have the absolute right to remain
15 silent, do not have to answer any questions or give a
16 statement, and this fact cannot be used against me.

17 Q. And then after you read him that right, what do
18 you do?

19 A. Ask him do you understand.

20 Q. And did he?

21 A. Yes, ma'am.

22 Q. And then whose initials are these?

23 A. Those are Mr. Hillerby's.

24 Q. Okay. And after each number, does Mr. Hillerby
25 initial it? Or do you read all five and he initials all

1 of them?

2 A. I read the first one. If he understands it, he
3 puts his initials on it -- sorry -- puts his initials on
4 it, and then I go to the second one.

5 Q. Okay. What is the second one?

6 A. Number two: if I do answer questions or give a
7 statement, anything I say can and will be used against me
8 in a court of law.

9 Q. Okay. And did you ask him if he understood that
10 one?

11 A. Yes, ma'am.

12 Q. And did he?

13 A. Yes, ma'am, he did.

14 Q. Did he initial it?

15 A. Yes, he did, ma'am.

16 Q. What about the third one?

17 A. Number three: I have the right to consult with
18 a lawyer of my choice before I answer questions or give a
19 statement, and to also have him present while I'm being
20 questioned.

21 Q. Okay. And did he understand that one?

22 A. Yes, ma'am.

23 Q. Did he initial it?

24 A. Yes, he did.

25 Q. And the next one?

1 A. Number four: if I wish to talk to a lawyer or
2 have him present but am unable to afford to hire a lawyer,
3 one will be appointed to represent me free of charge.

4 Q. And did he understand that right?

5 A. Yes, ma'am.

6 Q. Did he initial it?

7 A. Yes, he did, ma'am.

8 Q. And what about the last one?

9 A. Number five: if I decide to answer questions or
10 give a statement without having a lawyer present
11 representing me, I have the absolute right during this
12 interview to stop answering questions and to remain
13 silent.

14 Q. Did he understand that one?

15 A. Yes, ma'am.

16 Q. Did he initial it?

17 A. Yes, he did, ma'am.

18 Q. And what does the next sentence say?

19 A. The next sentence says: I fully understand each
20 of these rights of which I have been advised of.

21 Q. And who signs that?

22 A. Mr. Hillerby signs it on the far right-hand
23 side; myself and a witness sign it on the left-hand side.

24 Q. Okay. And what about underneath? What is that
25 called?

1 A. Lastly is the waiver of rights, and it states:
2 I fully understand each of these rights of which I have
3 been advised of, and having those rights in mind I wish to
4 waive these rights and answer questions. No threats,
5 force, or promises of any kind have been made to me by
6 anyone to induce or to cause me to waive these rights and
7 answer questions.

8 Q. And who signs that?

9 A. Again, myself and the witness on the left-hand
10 side, and Mr. Hillerby signed it on the right-hand side.

11 Q. Okay. And did you make any threats, promises,
12 any kind of conditions, in order to get Mr. Hillerby to
13 sign this form?

14 A. No, ma'am, I did not.

15 Q. Was he handcuffed?

16 A. No, ma'am, he was not.

17 Q. Was he in custody?

18 A. No, ma'am, he was not.

19 Q. Could he have left?

20 A. Yes, ma'am.

21 Q. Did he leave at the end of the interview?

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

23 Q. He was not arrested that day?

24 A. No, ma'am.

25 Q. And was he given any breaks?

1 A. Yes, ma'am.

2 Q. Tell me about that.

3 A. After he gave the interview, the verbal
4 interview, when we were done speaking he said he wasn't
5 feeling good, he was feeling dizzy and faint and he needed
6 some air. I said, all right, do you want to go out back.
7 And he said, yeah, can I smoke. Yes, sir. So we went out
8 the back door and smoked. He said he was fine. Came back
9 in and continued.

10 Q. And on that day did he also give a written
11 statement?

12 A. Yes, ma'am.

13 Q. And did he -- did you threaten him? Did you
14 promise him anything in order for him to give a written
15 statement?

16 A. No, ma'am.

17 Q. Who wrote the statement out?

18 A. Mr. Hillerby wrote the upper portion of the
19 statement, ma'am.

20 Q. And then on the bottom of the statement, are
21 there questions and answers?

22 A. Yes, ma'am. When his statement was finished, I
23 write the line, questions asked by Detective Sharp of the
24 Summerville Police Department. Followed by that, I write
25 down a Q on the far-left side, and whatever the question

1 may be I'll write it down. And then an A for the answer.

2 MS. WILLIAMS: Okay. May I approach, Your
3 Honor?

4 THE COURT: You may.

5 Q. [Ms. Williams] And on the questions, are they
6 in a different color ink?

7 A. Yes, ma'am.

8 I have the person that I'm interviewing, I
9 always try to make them use a blue pen so it's easier to
10 differentiate when I use a black pen.

11 Q. So you wrote the questions in black?

12 A. Yes, ma'am.

13 Q. He wrote the answers in blue?

14 A. Yes, ma'am.

15 Q. Okay. And were you in the room from beginning
16 to end and watch him write this statement?

17 A. Yes, ma'am.

18 MS. WILLIAMS: Your Honor, at this time the
19 State would offer State's Exhibit Number 38 into
20 evidence.

21 MR. BOSNAK: Without objection.

22 THE COURT: State's 38 into evidence without
23 objection.

24 [Whereupon, State's Exhibit Number 38 is
25 admitted into evidence by the Court]

1 MS. WILLIAMS: Permission to publish?

2 THE COURT: You may.

3 Q. [Ms. Williams] And this is going to be up on
4 the board. If you would just -- I don't know if you can
5 see it but as it's up there, if you could read it for the
6 jury.

7 A. Read what he --

8 Q. It's going to be hard to read, I think.

9 A. All righty.

10 Q. On this day did Mr. Hillerby make any admissions
11 about hitting this child?

12 A. No.

13 Q. Is this the rights form?

14 A. Yes, ma'am.

15 Q. Okay. I don't think you need to read that,
16 because we just went through it. But is this the form
17 that you discussed?

18 A. Yes, ma'am.

19 MS. WILLIAMS: And where is the pointer.

20 May I approach, Your Honor?

21 THE COURT: You may.

22 MS. WILLIAMS: There's a laser pointer here. If
23 you could just maybe not read it, but point out the
24 parts that you were talking about where he initialed
25 the rights and --

1 A. This up here is the part that I fill out and the
2 two questions that I had asked.

3 Here's the one through five, the rights that I
4 just read.

5 Those are Mr. Hillerby's initials that he put on
6 the line right there.

7 That's my signature.

8 Sargent John Murray's signature right there as a
9 witness.

10 That's Mr. Hillerby's signature.

11 And then again the waiver of rights, my
12 signature, Sargent Murray's, and Mr. Hillerby's.

13 Q. [Ms. Williams] And on the original copy you
14 could see the different color inks?

15 A. Yes, ma'am.

16 MS. WILLIAMS: All right. And if we could put
17 up the statement.

18 Q. [Ms. Williams] This is the first of three
19 statements. Is that true?

20 A. Yes, ma'am.

21 Q. If you could just read along. I think it's
22 going to be -- the jury may be able to see it. I know my
23 eyes aren't good enough to see it.

24 A. All right, ma'am.

25 Mr. Hillerby wrote: went to pick up Rory.

1 Stopped by Melissa's first to see my son. Me and her
2 argued a little bit. Went to Rory's. Picked him up.
3 Came home. First grabbed ~~VICTIM~~ to go to the pool. I
4 drove, Jen walked. Stayed at the pool all day. About
5 2:00 or 3:00. Noticed a bruise on his face. Figured he
6 hit his head on the pool somehow. Came home. I started
7 to feed the kids. Fed ~~VICTIM~~ first, then Serena. I told
8 Serena to go to bed. I let ~~VICTIM~~ stay up with me. He
9 spilt my drink on the table. I grabbed him and pointed to
10 the corner for -- pointed to the corner for ten minutes.
11 I let him out. He played for a while still. I didn't
12 have any milk, so I gave him some corn-dog bites. He
13 started to bob his head. I tried to get him to stand up
14 but he wouldn't, so I put him to bed. He was fine then.
15 We woke up this morning to check on him and it looked like
16 he was sleeping. Jen tried to shake him but he didn't
17 move. She rolled him over and he was already gone. I
18 called 911, and tried to keep her away.

19 Q. And what about the questions and answers?

20 A. The first question was what time did you and the
21 family arrive at the pool. The answer: 11:00, maybe
22 12:00. Second question: who was with all of you. He
23 answered: me, Jen. And then the interview ended.

24 Q. Okay. Was that because he wasn't feeling well?

25 A. Yes, ma'am. He had mentioned -- this would be

1 the third time that he had mentioned he was dizzy, and I
2 told him, look, we need to stop this if you're not feeling
3 well. So I went and got the fire department first
4 responders. I also had dispatch notify Dorchester County
5 EMS. They both got there at the same time, checked him
6 out, said he was okay. At that time, Jennifer S
7 walked in the room. The interview was over. He wanted to
8 go.

9 Q. Okay. So on that day Mr. Hillerby left the
10 police department, wasn't under arrest?

11 A. Correct.

12 Q. And that was on the 15th?

13 A. September 15th. Yes, ma'am.

14 Q. When is the next time that you encountered Mr.
15 Hillerby?

16 A. September 17th.

17 Q. So two days later?

18 A. Yes, ma'am.

19 Q. And where was that?

20 A. It was at the Dorchester County Sheriff's
21 Department on Demmingway.

22 Q. And how did he get there? Did you drive him or
23 did he --

24 A. No. He arrived, I do believe, with Jennifer
25 S

1 Q. Okay. So he got there himself?

2 A. Yes, ma'am.

3 Q. You met him there.

4 A. [No response]

5 Q. And at some point on the 17th, did he again give
6 you a statement?

7 A. Yes, ma'am, he did.

8 Q. And where was that statement given?

9 A. This statement was at the Dorchester County
10 Sheriff's Department on the second floor.

11 Q. Was the written statement actually given there,
12 or did you drive him to --

13 A. Actually, the written statement was there.

14 Q. Okay. Is that in Summerville?

15 A. It's not in the town limits.

16 Q. Is it --

17 A. It's exactly 3.0 miles from the police
18 department.

19 Q. Okay. 3.0.

20 A. I've driven that many times.

21 Q. Okay. Did you go through the same procedure
22 with the Miranda form with Mr. Hillerby?

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

24 Q. Okay. This would be the second time that you
25 had gone through this?

1 A. Yes, ma'am.

2 Q. Did he appear to be under the influence of
3 alcohol or drugs?

4 A. No, ma'am, he did not.

5 Q. Did he appear to have any trouble understanding
6 you?

7 A. No, ma'am, he did not.

8 Q. How long did the interview take?

9 A. This interview took approximately -- I would say
10 this interview took approximately an hour and a half to an
11 hour and forty-five minutes. We finished roughly 1:00,
12 1:30-ish.

13 Q. Did you threaten him, make him any promises,
14 give him anything in exchange for him giving you a
15 statement?

16 A. No, ma'am.

17 Q. Did you deny him access to food, water, the
18 bathroom?

19 A. No, ma'am.

20 Q. Were cigarettes breaks available if he needed
21 them?

22 A. If he needed them. He just never asked.

23 Q. Was he handcuffed during the interview?

24 A. No, ma'am.

25 Q. And when this interview began, was he in

1 custody? Was he -- had he been arrested?

2 A. No, ma'am.

3 Q. Did you go through the same kind of rights form?

4 A. The exact same one, yes, ma'am.

5 MS. WILLIAMS: Okay. Your Honor, I'm going to
6 show counsel what's been previously marked as State's
7 Exhibit 39.

8 [Whereupon, Ms. Williams proffers documents to
9 Mr. Bosnak]

10 [Whereupon, Mr. Bosnak reviews documents]

11 MS. WILLIAMS: May I approach?

12 THE COURT: You may.

13 Q. [Ms. Williams] And what is this?

14 A. That's the Summerville Police Department
15 advisement of rights form, ma'am.

16 Q. And is it exactly like the one that we just went
17 through for the 15th?

18 A. Yes, ma'am.

19 Q. Who filled out the top?

20 A. I did.

21 Q. And did you go through each of the five numbers
22 of Miranda just like you did the previous time?

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

24 Q. And each time did you ask him if he understood?

25 A. Yes, ma'am.

1 Q. And did he say yes each time?

2 A. Yes, ma'am.

3 Q. Did he initial?

4 A. Yes, ma'am, he did.

5 Q. Did you have any concerns about Mr. Hillerby
6 understanding what you were telling him?

7 A. No, I did not.

8 Q. No coercion?

9 A. No, ma'am.

10 Q. Did he give you a written statement on that day?

11 A. Yes, ma'am, he did.

12 Q. Was it a different version of events that he had
13 previously told you?

14 A. Yes, it was, ma'am.

15 Q. Were you in the room the whole time, when Mr.
16 Hillerby wrote the statement, from beginning to end?

17 A. Yes, ma'am.

18 Q. At this time was he taking more responsibility
19 for the injuries inflicted on UTCTFM [REDACTED]?

20 A. Yes, ma'am, he was.

21 MS. WILLIAMS: Your Honor, at this time we would
22 offer State's Exhibit Number 39 into evidence.

23 MR. BOSNAK: Without objection.

24 THE COURT: State's 39 into evidence without
25 objection.

1 [Whereupon, State's Exhibit Number 39 is
2 admitted into evidence by the Court]

3 MS. WILLIAMS: Permission to publish.

4 THE COURT: You may.

5 Q. [Ms. Williams] Okay. Is this the same --

6 A. Yes, ma'am, it is.

7 Q. -- that we just talked about?

8 So this will be the second time he's gotten his
9 Miranda rights.

10 A. Correct. Yes, ma'am.

11 Q. And those are Justin Hillerby's signatures, and
12 you watched him sign?

13 A. Yes, ma'am.

14 Q. And on the originals could we see the two
15 different colors of ink?

16 A. Yes, ma'am.

17 Q. Okay. Again, Detective Sharp, if you could
18 indulge those of us that don't have good eyes and just
19 very slowly and loudly read the statement so that the jury
20 can hear it.

21 A. All right, ma'am.

22 Mr. Hillerby wrote: I ran out of my room and he
23 was running towards me. I caught his head with my knee.
24 He was a little groggy, and I was getting tired. I tried
25 to feed him but he kept nodding off. I may have clipped

1 his head on the way to his crib and maybe again on his
2 crib. I believe he hit his head at the pool early that
3 day, and probably the corner where I caught him all there
4 together I believe is what caused it. I was in my
5 bedroom. I grabbed the doorjamb to swing out into the
6 hallway quicker, and he was running into the hallway. I
7 caught the top of his head hard enough to throw his head
8 down and his feet up. He moved slowly, so I helped him up
9 and went back into the room. When I came out, he was on
10 the futon, so I tried to feed him. But he got more tired
11 on the way to the bedroom. I believe I clipped his head
12 in the hallway and maybe the crib, too. I was intoxicated
13 and tired, tired to memory [phonetic] that everything that
14 happened when I put him to sleep and the last time I saw
15 him alive.

16 Q. And that is the portion that Mr. Hillerby wrote?

17 A. Yes, ma'am.

18 Q. Now, could we just go through the questions and
19 answers. And if you could just talk as loudly as you can
20 into the microphone.

21 A. The questions were asked by Detective Sargent
22 Cassandra Williams. Who did you strike with your knee and
23 what time did this occur. Answer: VICTIM between 9:30
24 and 10:00 on Sunday, 14. Question: was VICTIM responsive
25 from knee strike -- or what was VICTIM's response from the

1 knee strike. His head hit first, because his feet came
2 up. He was moving slowly and moaning, so I picked him up
3 and told him to walk it off. Question: what did VICTIM's
4 head hit first after the knee strike. The floor in the
5 hallway. Question: after the knee strike, where did
6 VICTIM go and what was he doing while you were in the
7 bedroom. He was wobbling to the futon, just sitting there
8 like a zombie. Just looked real tired. Question: what
9 were you doing in the bedroom, and how long were you in
10 there before you saw VICTIM again. Went to get a
11 cigarette, caught a few minutes of Comedy Central. About
12 five to ten minutes. Question: how was VICTIM when you
13 saw him next. Describe what he was doing. That -- when I
14 saw him on the futon, I put him in his highchair.
15 Question: why did you put him in the highchair. We were
16 out of milk, so I thought food would help him sleep
17 better. Question: why do you think VICTIM was wobbling.
18 Thought he was dizzy from the knee shot. Figured it would
19 wear off. Question: what did you do to ensure that
20 was okay. Nothing. Question: in your statement you
21 mentioned that you tried to feed VICTIM but he got more
22 tired. What were you feeding him, and what made you think
23 that he became more tired. Mini corn-dog bites, and his
24 head started bobbing against the highchair. Question:
25 how did VICTIM get to his bedroom and what time did this

1 occur. I had to carry him to his bedroom. He would not
2 walk. About 9:30 or 10:00. Question: was VICTIM still
3 conscious at this time. He was still moving but his eyes
4 would not open. Question: what part of VICTIM's head got
5 clipped in the hallway and what did it strike. The side
6 of his head against the doorframe to his room. Was it the
7 left or right side of his head. I don't remember.
8 Question: what part of VICTIM's head struck the crib.
9 Left front. How did you place VICTIM in the crib. To what
10 direction of his bedroom was his head pointing. Face
11 down, pointing towards the closet, feet towards the
12 window. Question: what was VICTIM wearing when you placed
13 him in his crib. His onesie. Describe the linen that was
14 on his crib mattress when you placed VICTIM inside. There
15 were no sheets on the bed. He pulled his diaper off the
16 day before. Light gray with little designs. What was
17 VICTIM's response after you picked him -- put him in the
18 crib. He moved a little bit, but not much more of a
19 squirm. Question: did you strike or cause an
20 unenforceable [phonetic] injury to VICTIM that day, other
21 than the knee strike and the strikes to the doorway and
22 the crib. I grabbed his shoulder and his neck, but no
23 head strikes. Question: why did you grab VICTIM's
24 shoulder and neck. When did this occur and what was his
25 response. He spilt my glass of tea about 9:00 or so. He

1 was shocked, but walked to his regular corner. Question:
2 who was at the residence when you struck ~~WITNESS~~ with your
3 knee. Eric, Brandi, and Serena. What were the
4 aforementioned people -- where -- excuse me. Where were
5 the aforementioned people during that time. Serena was
6 sleeping in her room with the door open. Eric and Brandi
7 were in their room watching TV and talking. Question:
8 who did you -- who did you explain ~~WITNESS~~'s head injury
9 regarding to the knee strike to. No one. Did you check
10 on ~~WITNESS~~ after you placed him in the crib. No. We had
11 been swimming all day, and I had the monitor on medium.
12 Did any -- question: did anyone witness ~~WITNESS~~ hitting his
13 head at the pool. No. Did anyone hear the commotion
14 between you and ~~WITNESS~~ during the strikes, and, if so,
15 explain. And the answer is no.

16 Q. And sitting in the room, that last question did
17 anyone hear the commotion between you and ~~WITNESS~~ during the
18 strike, did you take that as the people that were in the
19 house?

20 A. Yes, ma'am.

21 Q. So he was saying that no one heard this that was
22 in the house?

23 A. Yes, ma'am.

24 Q. And those were Mr. Hillerby's words?

25 A. The answers after each question were Mr.

1 Hillerby's words.

2 Q. And he wrote them?

3 A. Yes, ma'am.

4 Q. Okay. So what happened after this statement was
5 given?

6 A. After this statement was given --

7 MS. WILLIAMS: Excuse me. Detective, would you
8 like some water?

9 THE WITNESS: If you have some.

10 MS. WILLIAMS: Yeah. Your Honor, may I
11 approach?

12 THE COURT: You may.

13 [Off the record momentarily]

14 Q. [Ms. Williams] Okay. So what happens after
15 this statement is given?

16 A. After this statement was completed, ma'am,
17 Mr. Hillerby was placed under arrest and transported
18 back to the Summerville Police Department.

19 Q. Okay. And what was he arrested for?

20 A. Homicide by child abuse.

21 Q. And where did he spend the night on the 17th?

22 A. Here -- Berkeley County jail, ma'am.

23 Q. Okay. And at some point did he go through -- go
24 back to Summerville?

25 A. Yes, ma'am. The morning of the 18th he was

1 transported back to the Summerville Police Department for
2 his bond hearing.

3 Q. Okay. And then was he then transported back
4 here?

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

6 Q. And did you learn at some point during the
7 transportation that he wanted to speak with you again?

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

9 Q. And who initiated that interview?

10 A. Mr. Hillerby did.

11 Q. And where was he interviewed on that day?

12 A. On the 18th, after his bond hearing, he was
13 interviewed in a detective's office in the interview room.

14 Q. And this time he was under arrest. He was
15 incarcerated; is that correct?

16 A. Yes, ma'am.

17 Q. And did you again go through the same procedure
18 that you had gone through the previous two times with
19 regard to Miranda?

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

21 Q. And during this time did you explain to Mr.
22 Hillerby that he didn't -- that there's no promises? Did
23 you threaten him? Did you try to coerce him in any way?

24 A. Not at all. This time if anything I actually
25 even told him, look, you've just been bonded for this

1 charge; you don't need to talk to me; do you have a
2 lawyer. Because I saw the bond hearing. I know he got
3 advised -- public defender. And he said, yeah, he wanted
4 to talk to me.

5 Q. And, again, waived each of the five rights?

6 A. Yes, ma'am.

7 Q. And, again, did you read each one individually?

8 A. Yes, ma'am.

9 Q. Did he indicate that he understood each one?

10 A. Yes, he did, ma'am.

11 Q. And did he initial by each number?

12 A. Yes, ma'am.

13 Q. Did he sign at the bottom?

14 A. Yes, ma'am.

15 Q. And did he sign after the waiver of rights?

16 A. Yes, ma'am.

17 Q. And now since he had been in jail that night,
18 I'm assuming that he did not appear to be under the
19 influence of anything? any kind of alcohol or drugs?

20 A. Correct, ma'am.

21 Q. Did he seem so emotionally distraught that he
22 didn't understand what you were saying or couldn't
23 comprehend what you were saying?

24 A. No, ma'am.

25 MS. WILLIAMS: Your Honor, I'm going to show

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1 counsel what's previously been marked as State's
2 Exhibit 40.

3 [Whereupon, Ms. Williams proffers documents to
4 Mr. Bosnak]

5 [Whereupon, Mr. Bosnak reviews documents]

6 MS. WILLIAMS: May I approach?

7 THE COURT: You may.

8 Q. [Ms. Williams] And on this day that he wanted
9 to come give a statement, did he request just any
10 detective or did he request somebody specifically?

11 A. No, ma'am. He requested to speak to me.

12 Q. So he wanted to talk to you to give you a
13 statement?

14 A. Yes, ma'am.

15 Q. Did he say why?

16 A. No.

17 Q. Okay. What is that that I just brought you?

18 A. Again, this is a Summerville Police Department
19 advisement of rights form.

20 Q. And is that the original copy that you had with
21 Mr. Hillerby that day?

22 A. Yes, ma'am, it is.

23 Q. And did he -- do you recognize that as his
24 signatures?

25 A. Yes, ma'am.

1 Q. And then did he give a written statement on that
2 day?

3 A. Yes, ma'am, he did.

4 Q. And did you watch him write it from beginning to
5 end?

6 A. Yes, ma'am.

7 Q. Did you write out the question?

8 A. Yes, ma'am, after he finished writing it out. I
9 wrote the questions this time.

10 Q. And did he write out the answers?

11 A. Yes, ma'am, he did.

12 Q. And one thing I didn't ask you on the others:
13 each time, do you give the defendant a copy of his
14 statement?

15 A. Yes, ma'am.

16 Q. And did you do so on this day?

17 A. Yes, ma'am.

18 MS. WILLIAMS: Your Honor, at this time we would
19 offer State's Exhibit 40 into evidence.

20 MR. BOSNAK: Your Honor, without objection.
21 We've already made these objections earlier.

22 THE COURT: State's 40 into evidence without
23 objection.

24 [Whereupon, State's Exhibit Number 40 is
25 admitted into evidence by the Court]

1 MS. WILLIAMS: And you can put the rights form
2 up.

3 Q. [Ms. Williams] On this day did Mr. Hillerby
4 indicate that the previous two statements were not
5 entirely true?

6 A. Yes, ma'am, he did.

7 Q. And did he indicate that now he wanted to tell
8 the truth?

9 A. Yes, ma'am, he did.

10 Q. Did he tell you why?

11 A. He said he wanted to get his side of the story
12 out because he was being unfavorably portrayed in the
13 media.

14 Q. Did he tell you anything else about why he
15 wanted to give a statement?

16 A. He just wanted his side out.

17 Q. And is this the rights form?

18 A. Yes, ma'am. Yes, ma'am.

19 MS. WILLIAMS: Your Honor, I'm going to approach
20 again, with your permission.

21 THE COURT: You may.

22 MS. WILLIAMS: I'm going to leave this up here
23 so that you have the original copy to refer to. It
24 might be easier to read.

25 THE WITNESS: Okay.

1 MS. WILLIAMS: And just make sure the microphone
2 is --

3 Q. [Ms. Williams] And, again, on the original we
4 would see Mr. Hillerby's signatures. Are they in a
5 different color in this one, as well?

6 A. Yes, ma'am. They're in blue.

7 Q. Can you read that for the jury so that they know
8 what it says?

9 A. Yes, ma'am.

10 Mr. Hillerby wrote: he spilled my drink. I
11 called him in the kitchen. I knelt down and said, what is
12 wrong with you.

13 MS. WILLIAMS: Can you talk just a little bit
14 louder?

15 THE WITNESS: I'm sorry. I know -- I'll start
16 again.

17 A. Mr. Hillerby wrote: he spilled my drink. I
18 called him in the kitchen. I knelt down and said, what is
19 wrong with you. I smacked him openhanded a couple of
20 times. The last time, his head hit the floor. I went and
21 cleaned up the mess. When I came back, he was still
22 laying there with his eyes open. I put him on the futon
23 and made another glass of tea. When I looked at him, he
24 looked like he was falling asleep. I then put him to bed.

25 Q. [Ms. Williams] Okay. And then did you ask him

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1 questions in which he answered?

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

3 Q. Okay. Can you read those questions?

4 A. Question: how much beer had you drank at this
5 point. About ten beers. Which room were you in when you
6 called him in. The kitchen. When he came into the
7 kitchen, what did you do and say to ~~UTDM~~ What's wrong
8 with you. I then smacked him a couple of times, the last
9 one throwing him to the floor. Question: in other words,
10 you hit him so hard you knocked him to the floor. Yes.
11 Where did you hit him at. In what part of the body. The
12 head. Question: all over the head, or in just one place.
13 All over. Openhanded or closed handed. Openhanded.
14 Question: after you left the kitchen with him on the
15 floor, where did you go and how long were you gone. To
16 the living room to clean up the tea. Gone long enough to
17 clean it up. Question: when you returned to the kitchen,
18 was ~~UTDM~~ still laying on the floor. Answer: yes, but
19 his eyes were open. When ~~UTDM~~ was knocked off his feet,
20 did he hit his head on the floor. Answer: yes. When you
21 picked up ~~UTDM~~ to move him, did you see any red marks or
22 bruises on his face. I didn't look. Why did you move him
23 to the couch. I don't know. How long was he on the
24 couch. Long enough for me to fix another glass of tea.
25 During that time frame did he move or make any sounds. He

1 moaned like he was tired. Did he move or make any sounds
2 when you put him to bed. No. He just laid there. Did
3 you seek any type of medical treatment at all or tell
4 anyone at this time about what you had did to ~~VICTIM~~ or his
5 condition -- or ~~VICTIM~~'s conditions. Answer: no. Why are
6 you changing your story today, 9/18/08, from what you told
7 me yesterday, 9/17/08. I'm scared, and I just want to be
8 honest. Question: is today's chain of events the true
9 facts of what happened the night ~~VICTIM~~ died. Yes.
10 Exactly. Why did you ask to speak to me, Detective Sharp,
11 alone. Because you were the first one I talked to. I
12 thought it was the way to tell the truth. I'm more
13 comfortable. Did ~~VICTIM~~ have any blood or any fluids
14 coming out of his nose or mouth during any of this. Not
15 that I noticed. I wasn't looking. Did the roommates,
16 Eric and Brandi, have anything to do with this incident.
17 No. Did you tell Jennifer the truth about ~~VICTIM~~'s death.
18 No. During this incident, were you drunk. Yes. When you
19 said you hit him all over the head, can you remember where
20 you hit him. No. Is what you told me and Detective
21 Sargent Williams yesterday all a lie. Answer: yes. Is
22 what you told me today the full and the whole truth. Yes.
23 Are you leaving anything out. No. Question: what was
24 ~~VICTIM~~'s demeanor when he was on the couch. He was in and
25 out, like he was falling asleep. Were his eyes open or

1 closed. They were opening and shutting slowly. Did you
2 strike ~~with~~ with anything other than your hands. No. Is
3 there anything more that you would like to add. Answer:
4 I'm sorry I waited so long to tell the truth. The last
5 question: is there any questions I should have asked you
6 that I did not. The answer is no.

7 Q. And did you give him a copy of this statement?

8 A. Yes, ma'am.

9 Q. And when you gave him a copy of this statement,
10 did he say anything about -- anything to you at all?

11 A. He just said that now that he might be able to
12 sleep.

13 MS. WILLIAMS: Court's indulgence.

14 THE COURT: Yes, ma'am.

15 [Whereupon, Ms. Williams and Ms. Biagianti
16 confer]

17 MS. WILLIAMS: No further questions. Please
18 answer any questions that the defense may have.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Mr. Bosnak?

21 MR. BOSNAK: Thank you.

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23 - - -