

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

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S.C. SUPREME COURT

Ralph K. Anderson, III, Special Circuit Court Judge

Appellate Case No. 2017-002102

Jermaine Mayweathers,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE FAMILY COURT
) 2008-JU-21-108
COUNTY OF FLORENCE)

THE STATE OF)
SOUTH CAROLINA,)
)
Plaintiff,)
)
-vs-) TRANSCRIPT OF RECORD
)
JERMAINE MAYWEATHERS,)
)
Defendant.)

March 18-19, 2009
Florence County, South Carolina

B E F O R E.:

THE HONORABLE JERRY D. VINSON, JR., Judge.

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EXHIBITS

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OPENING STATEMENTS

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1 WEDNESDAY, MARCH 18, 2009

2 (WHEREUPON, at 9:51 a.m., on Wednesday, March 18,
3 2009, this matter was called for a waiver hearing.
4 Present in the courtroom were attorneys for the State,
5 the defendant, and attorney for the defendant.)

6 THE COURT: Yes, sir, Mr. Richardson.

7 MR. RICHARDSON: Thank you, Your Honor. May it
8 please the Court? This is 2008-JU-21-108, in the
9 interest of Jermaine Mayweathers. We're here today in
10 regards to a waiver hearing to determine a transfer of
11 jurisdiction from Family Court to General Sessions
12 Court.

13 The petition was filed in the Family Court on July
14 30 of 2008. And the requirements mandated by Kent v.
15 United States of the full investigation have been met,
16 and the pre-waiver evaluation has been completed by
17 Dr. Joel Heffler. And he will be available to testify
18 later today.

19 Your Honor, the statute under which the State has
20 made this motion to transfer is 63-19-1210, subsection
21 5 of the Code of Law of south Carolina, specifically
22 that being a juvenile older than fourteen (14) younger
23 than sixteen (16) who commits an offense, the penalty
24 for which would be greater than -- fifteen (15) years
25 or greater, may be waived by the Family Court to the

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OPENINGSTATEMENTS

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1 Court of General Sessions for disposition in that
2 court.

3 Your Honor, I'll give a brief opening statement.

4 THE COURT: One second please. I do want --
5 before you proceed with your opening, I do want to
6 note that we are starting about twenty-two (22) or
7 twenty-three (23) minutes later than this case was
8 slated to start because Mr. Mayweathers' parents were
9 not present in the courtroom. And I did not want to
10 and could not start the trial without them.

11 Ma'am, would you stand for me please? Would you
12 identify yourself for the record?

13 DEFNDANT'S MOTHER: Patricia Mayweathers.

14 THE COURT: Ms. Mayweathers, y'all knew that this
15 was supposed to start at 9:30 this morning; right?

16 DEFNDANT'S MOTHER: Yes.

17 THE COURT: And why -- why were you not here at
18 9:30?

19 DEFNDANT'S MOTHER: I'm not from down here, and I
20 don't know how to get to here.

21 THE COURT: Well, where were you staying?

22 DEFNDANT'S MOTHER: At his father's house.

23 THE COURT: And where is that?

24 DEFNDANT'S MOTHER: On Jeffers.

25 THE COURT: And you didn't know where the

OPENING STATEMENTS

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1 courthouse was? Y'all didn't figure out where that
2 was yesterday before today?

3 DEFNDANT'S MOTHER: I arrived here around 12:30
4 this morning.

5 THE COURT: Okay. I mean this is a -- this is a
6 pretty important day to be starting twenty (20),
7 twenty-five (25) minutes late. All right. Thank you,
8 ma'am. You can be seated.

9 MS. WINGARD: Judge, I will say for the record
10 that his father, Mr. Jerito, is not yet here. His
11 neighbor has informed me that he was parking the car
12 and will be up shortly. I believe we can start
13 though, Judge.

14 THE COURT: I'm going to because I really don't
15 want to wait any longer. We have two (2) days slated
16 for this hearing; and -- and I'm afraid we're going to
17 need all of that time if not more. And I don't want
18 to run the risk of losing any time for this hearing.

19 We'll check in an appropriate time to see if he is
20 outside. I'll -- After we do openings, I'm going to
21 let my deputy check outside and see if he is here yet
22 and invite him in to join us in the courtroom.

23 THE COURT: All right. I'll be glad to hear from
24 you, Mr. Richardson.

25 MR. RICHARDSON: Thank you, Your Honor. If it

OPENINGSTATEMENTS

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1 please the Court? Mr. Mayweathers on his petition was
2 charged with the offense of homicide by child abuse.
3 This offense is alleged to have occurred on the --
4 July 25th of 2008. The facts that the State will
5 present are the following.

6 Late that afternoon on the 25th, approximately 5:20
7 in the afternoon, a call was made to emergency 9-1-1
8 dispatch by the defendant, Mr. Jermaine Mayweathers.
9 In that call, he stated that a young man, a five-year-
10 old, **Minor Child**, whom he was babysitting for the
11 day, was not breathing correctly.

12 The ambulance arrived and found Mr. **Minor Child**
13 , on the floor in a bedroom of the home on
14 Gilbert Street in the county of Florence. He had
15 thrown up on himself and was not moving. They took
16 him to the hospital. Upon arrival to the hospital, he
17 was examined by Dr. Gerald Atwood. Dr. Atwood will
18 also be here to testify tomorrow.

19 He was rushed into emergency brain surgery.
20 Unfortunately, that did not alleviate the problems
21 that he had. He had suffered a -- a major brain
22 injury caused by blunt force trauma. He was
23 pronounced brain dead and eventually taken off of life
24 support shortly thereafter.

25 He was sent to a Dr. Erin Presnell of the Medical

OPENING STATEMENTS

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1 University of South Carolina. She conducted the
2 autopsy in the case. She will be present to testify
3 this afternoon as to her findings.

4 Law enforcement began investigating, of course,
5 the -- the night that this incident occurred. After
6 taking several statements, they came to the conclusion
7 that Mr. Mayweathers was the -- the only person who
8 possibly could have done this. And we'll get into the
9 -- the evidence with Investigator Lowder of the
10 sheriff's office.

11 And per the family members, the victim, -- as to
12 how everyone else including Ms. Deborah Williams, the
13 mother of the victim; Mr. Willie Jerito, her then
14 boyfriend; were not present in the home at the time
15 this injury could have occurred.

16 The only people present in the home would be Mr.
17 Jermaine Mayweathers, defendant; K.P. , who
18 is seated over here behind me, who is the brother of
19 the victim; and the victim himself, Mr. Child

20 . Those are the only three (3) individuals who
21 were in the home at the time. And I think the
22 evidence will show reason -- will have probable cause
23 to show Mr. Mayweathers committed the offense of
24 homicide by child abuse.

25 We have multiple medical witnesses that we will

OPENING STATEMENTS

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1 present, also law enforcement, and family members,
2 specifically Mr. K.P. and Ms. Deborah
3 Williams, the mother. And we're confident that at the
4 end of the testimony, that you will find probable
5 cause and find that this case is suitable to be
6 transferred to the Court of General Sessions for
7 disposition.

8 Thank you very much.

9 THE COURT: Ms. Wingard?

10 MS. WINGARD: Jermaine respectfully requests that
11 this matter not be transferred to General Sessions,
12 but rather remain in Family Court. I am cognizant of
13 the various cases in South Carolina that support
14 waiver when there is a death.

15 But when you look at those cases, the one thing
16 that strikes me that's dramatically different when you
17 look at Miller and when you look at Pittman. When you
18 look at those cases, there is some sort of deadly
19 weapon used, some sort of gun or knife. Even if you
20 accept the State's theory of the case as to what
21 happened to little Child, there's no evidence of any
22 sort of -- of weapon.

23 There -- It's my understanding there may be
24 testimony about the belt. But there is also going to
25 testimony, assuming that Ms. Williams will testify.

OPENING STATEMENTS

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1 similar to the statement she gave, that she herself,
2 the night before this, took out a belt to punish these
3 children.

4 Now, Jermaine has given a statement. And it is
5 clear that he is saying he did not injure this child.
6 And so what the Court will need to decide is it truly
7 the only way that this little boy could have died was
8 at Jermaine's hand from circumstances. And I believe
9 that there are circumstances in here that will suggest
10 otherwise. And that will be developed.

11 But as we talked about whether Jermaine could be
12 rehabilitated, -- And, once again, we will assume for
13 argument's sake in a broad sense because we deny, of
14 course, the charge. But even if you assumed for
15 argument's sake that he caused the death of this
16 child, I think he can be rehabilitated in the Juvenile
17 Justice System.

18 And I would ask that you not just consider the
19 seriousness of this alleged event, but all eight (8)
20 of the Kent factors. This is a young man who had some
21 minor involvement with the Juvenile Justice System
22 when he was living in Virginia. This young man has
23 essentially been out since this happened.

24 He had some minor times of being detained at DJJ;
25 but for the most part, he was out during -- while we

OPENING STATEMENTS

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1 were waiting for this. And Ms. Ingram was living --
2 he has been living with her since December -- will
3 testify that he is doing well in school, that she's
4 not had any trouble with him.

5 If -- If, in fact, something snapped and he is the
6 one who did this to this child, -- And again, that is
7 only for argument's sake that I say that. -- it is
8 clear that this is not a bad young man. This is not a
9 -- a young man with any kind of violent history. This
10 is the young man who found himself thrust with the
11 responsibility of two (2) little boys, without any
12 discussion of what his responsibilities were.

13 And I will not belabor what I believe the
14 testimony will show at this time. But it is a young
15 man who found himself thrust into this situation.
16 This is a young man who immediately called 9-1-1 when
17 he realized this little boy was in distress. This is
18 not a young man who tried to cover up anything, who
19 went out looking for trouble.

20 And -- And that is the pattern when you look at
21 decisions of -- from waiver hearings. So I would -- I
22 would urge the Court to look at not just the fact that
23 -- that, unfortunately, we have a little five-year-old
24 who's died, but all of the Kent factors.

25 THE COURT: Thank you, ma'am.

OPENING STATEMENTS

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1 (Defendant's father entered the courtroom.)

2 THE COURT: Who are you sir?

3 DEFENDANT'S FATHER: His father.

4 THE COURT: And what's your name?

5 DEFENDANT'S FATHER: Willie Jerito.

6 THE COURT: Mr. Jerito, this matter was to start
7 at 9:30 this morning. I finally was able to start
8 about twenty-two (22) minutes late because you and --
9 and the mother were not here. Why is that, sir?

10 DEFENDANT'S FATHER: Well, I got up a little late.
11 I got a late start today, that's all.

12 THE COURT: I mean, on a day that's this important
13 to your son?

14 DEFENDANT'S FATHER: I just got a late start. I
15 had a late night. I got a late start because I'm a
16 little too tired. I don't what else to say.

17 THE COURT: An apology would be appropriate. Have
18 a seat, sir.

19 The State may call its first witness.

20 MR. RICHARDSON: Thank you. The State will call

21 Mr. K.P. .

22 THE COURT: K.P. , would you come up please and
23 have a seat there on the witness stand.

24 Mr. Richardson, would you put that Bible there in
25 front of him?

1 MR. RICHARDSON: Sure.

2 THE COURT: And would you put your left hand on
3 the Bible and raise your right hand for me. Put your
4 left hand on top of the Bible.

5 MR. RICHARDSON: Put your hand on it.

6 THE COURT: Put your left hand on the Bible and
7 raise your right hand for me.

8 MR. RICHARDSON: Great.

9 THE COURT: There we go.

10 K.P. , being first
11 duly sworn, testified as follows:

12 THE COURT: All right. Thank you. And you can
13 put that Bible back up there for me, Mr. Richardson.
14 And if you'll move that microphone over a little bit
15 closer to him and push it down a little bit so that he
16 can talk into the microphone. There you go.

17 MR. RICHARDSON: All right.

18 THE COURT: All right.

19 DIRECT EXAMINATION BY MR. RICHARDSON:

20 Q. Okay, K.P. . Can you tell me how old you are?

21 A. Seven (7).

22 Q. Seven (7) years old.

23 MS. WINGARD: Judge, I need to object at this
24 point. I believe, because of his age, we need to
25 qualify him. I don't feel merely swearing him in is

1 sufficient. I believe we need to show that he
2 understands what an oath is.

3 THE COURT: All right.

4 MS. WINGARD: It's my understanding he's only
5 seven (7).

6 THE COURT: I certainly have no objection to that
7 qualification being made.

8 Mr. Richardson, under the circumstances, I do
9 believe it would be appropriate. And so if you will
10 examine him concerning those factors which are
11 indicative of his understanding of his oath.

12 BY MR. RICHARDSON:

13 Q. K.P. , you say you're seven (7) years old. What
14 grade are you in in school?

15 A. Second.

16 Q. Second grade?

17 A. (Nodded head.)

18 Q. Okay. Who lives with you at your house?

19 A. My mama and my two (2) sisters.

20 Q. Okay. And where do you live?

21 A. In Olanta.

22 Q. Okay. If I were to ask you, K.P. , the
23 difference between the truth and a lie, do you think
24 you could tell me? If I -- If I said, for instance,
25 this Bible is black. Would that be the truth or a

1 lie?

2 A. A lie.

3 Q. Okay. What color is it?

4 A. Dark red.

5 Q. Dark red. Okay. Is it a good thing when you tell
6 a lie?

7 A. No.

8 Q. What happens to you when you tell a lie?

9 A. You get in trouble for it.

10 Q. Okay. It's better to tell the truth, isn't it?

11 A. (Nodded head.)

12 Q. Okay. And do you understand what the judge asked
13 you about telling him the truth, the whole truth, and
14 nothing but the truth?

15 A. Yes, sir.

16 Q. Okay. What does that mean to you?

17 A. Nothing.

18 Q. It means -- It means nothing to you?

19 A. (Shook head.)

20 Q. Well you know what the truth is; right? Can you
21 tell what the -- the truth is?

22 A. (Nodded head.)

23 Q. Okay. Does that mean to you that what really
24 happened is what you're going to tell us about?

25 A. (No verbal response.)

1 Q. Say yes or no.

2 A. Yes.

3 Q. Okay.

4 MR. RICHARDSON: Your Honor, are there any further
5 questions? I think he's demonstrated he knows the
6 difference between the truth and a lie.

7 THE COURT: Would you like the opportunity to voir
8 dire?

9 MS. WINGARD: Judge, I would just object, have my
10 objection continued. I think he said that the oath
11 meant nothing to him. So that suggests to me he
12 doesn't understand how -- the significance of the
13 testimony.

14 THE COURT: Let me ask you a couple of quick
15 questions, K.P. . When I made you put your hand on
16 the Bible a second ago and raise your right hand, we
17 call that an oath. Do you know what an oath is?

18 WITNESS K.P. : No.

19 THE COURT: An oath is like a promise. You
20 understand what a promise is?

21 WITNESS K.P. : Yeah.

22 THE COURT: What is a promise?

23 WITNESS K.P. : When you promise somebody
24 something.

25 THE COURT: And that means you're going to do what

TESTIMONY OF K.P.

18

1 you say you're going to do? Is that what a promise
2 is?

3 WITNESS K.P. : Yes.

4 THE COURT: So when I asked you if you were going
5 to tell the truth, the whole truth, and nothing but
6 the truth, you promised me that you would do that;
7 right?

8 WITNESS K.P. : Yeah.

9 THE COURT: And what does that mean?

10 WITNESS K.P. : To tell the truth.

11 THE COURT: That's right. You have to tell me the
12 truth; right?

13 WITNESS K.P. : (Nodded head.)

14 THE COURT: Is that right?

15 WITNESS K.P. : Yes, sir.

16 THE COURT: Any additional voir dire?

17 MS. WINGARD: Not to this subject.

18 THE COURT: All right. I do find that this
19 witness understands the difference between the truth
20 and a lie. After questioning him concerning his oath,
21 I find that he does understand that an oath is a
22 promise. And he understands that he has promised to
23 tell the truth. And so I will allow him to testify
24 here today.

25 MR. RICHARDSON: Thank you.

1 BY MR. RICHARDSON:

2 Q. All right, K.P. . Do you remember when you
3 lived with your mom and your little brother Child
4 and Jermaine here and -- and Willie? Do you remember
5 living with them?

6 A. Yes, sir.

7 Q. Okay. And what -- what did you call Willie?

8 A. I don't know.

9 Q. Do you have a name for him? Was it Peanut?

10 A. (Nodded head.)

11 Q. Say -- Say yes or no.

12 A. Yes.

13 Q. Okay. So you remember when all of y'all lived
14 together in the same house?

15 A. (Nodded head.)

16 Q. Say yes or no for me.

17 A. Yes.

18 Q. Okay. Do you remember the day that you and

19 Child and Jermaine were staying together in the
20 house, and Child got hurt?

21 A. Yes.

22 Q. Okay. Can you tell me---

23 A. Yes, sir.

24 Q. Can you tell that morning -- that day that Child

25 got hurt, what -- what was the first thing you did

- 1 after you got up that -- that morning?
- 2 A. Watched TV.
- 3 Q. Okay. And was Child already awake?
- 4 A. No.
- 5 Q. So he was still asleep?
- 6 A. (Nodded head.)
- 7 Q. Was Jermaine already awake?
- 8 A. Yes.
- 9 Q. Okay. So Child was the last one to wake up?
- 10 A. Yes.
- 11 Q. Okay. After Child woke up, what did you and
- 12 Child do that day?
- 13 A. Eat breakfast.
- 14 Q. Okay. Do you remember what y'all had to eat?
- 15 A. No.
- 16 Q. No? Okay. What did y'all do after you ate
- 17 breakfast?
- 18 A. Go back and watch TV.
- 19 Q. Okay. Where did you watch TV?
- 20 A. In my sister room.
- 21 Q. Okay. Is that one of the bedrooms in your house?
- 22 A. Yeah.
- 23 Q. Okay. Where was Jermaine when y'all were watching
- 24 TV?
- 25 A. He was cooking breakfast for us.

1 Q. Okay. And after y'all ate breakfast and watched
2 TV, what happened after that?

3 A. We keep watching TV and stuff.

4 Q. Okay. At any time did Jermaine come to the -- to
5 you and your brother and separate you?

6 A. Yeah.

7 Q. Okay. What -- What did he do that for?

8 A. I don't know.

9 Q. Okay. Where did he put you?

10 A. Nowhere. I just came in the living room.

11 Q. You came in the living room?

12 A. (Nodded head.)

13 Q. Where did he put Child ?

14 A. In -- In the room.

15 Q. In what room?

16 A. In our room.

17 Q. In your room?

18 A. Our room.

19 Q. The bedroom where you slept?

20 A. (Nodded head.)

21 Q. Okay. What did Jermaine do with Child after
22 that?

23 A. (Mumbled response.)

24 Q. K.P. ? Did you hear me?

25 A. Yes.

- 1 Q. Okay. What did Jermaine do with Child after he
2 put him in the bedroom?
- 3 A. Beat him.
- 4 Q. Can you speak up for me a little bit?
- 5 A. Beat him.
- 6 Q. What did he beat him with?
- 7 A. One of Mama's belts.
- 8 Q. Okay. What did that belt look like?
- 9 A. It had polka dots and it was a white one.
- 10 Q. It's a white belt with polka dots in it?
- 11 A. (Nodded head.)
- 12 Q. Okay. Is that all he hit him with that you saw?
- 13 A. Yeah.
- 14 Q. Okay. Did he -- Did Jermaine see you watching?
- 15 A. No.
- 16 Q. Okay. At any time did Jermaine go in the bedroom
17 with Child and leave you out of it?
- 18 A. No.
- 19 Q. Okay. Did you see Jermaine close the bedroom door
20 at all?
- 21 A. Yes.
- 22 Q. Okay. Why did he do that?
- 23 A. I don't know.
- 24 Q. Okay. So were you in the bedroom when he closed
25 the door?

- 1 A. No.
- 2 Q. So you were still in the living room?
- 3 A. (Nodded head.)
- 4 Q. Say yes or no for me.
- 5 A. No.
- 6 Q. So -- Were you in the living room when he was in
- 7 the bedroom with the door shut?
- 8 A. Yeah.
- 9 Q. Okay. When he was in the bedroom with Child and
- 10 you were in the living room, did you hear any noises
- 11 coming from the bedroom?
- 12 A. Yes.
- 13 Q. What kind of noises did you hear?
- 14 A. Noises to the wall.
- 15 Q. A bump into the wall?
- 16 A. Yes, sir.
- 17 Q. Did you hear it just one (1) time or more than one
- 18 (1) time?
- 19 A. One (1) time.
- 20 Q. Okay. Did you hear your -- Did you hear your
- 21 brother Child say anything?
- 22 A. No.
- 23 Q. All right. What happened after Jermaine came out
- 24 of the bedroom?
- 25 A. He called the ambulance.

1 MS. WINGARD: I'm sorry. I couldn't understand
2 that response.

3 BY MR. RICHARDSON:

4 Q. Could you say that a little bit louder?

5 A. Yes.

6 Q. Okay. What happened after he came out the
7 bedroom?

8 A. He called the ambulance.

9 Q. All right. And what did you do after Jermaine
10 came out the bedroOm?

11 A. I came in the room and watch him.

12 Q. SO you went in the room with your little brother?

13 A. (Nodded head.)

14 Q. What was your little brother doing in the bedroom?

15 A. He was throwing up.

16 Q. He was throwing up?

17 A. (Nodded head.)

18 A. Was he -- Was he laying down?

19 A. Yes.

20 Q. Where was he laying down?

21 A. On the floor.

22 Q. Okay. And how many times did he throw up?

23 A. One (1) time.

24 Q. Yeah. Did you try to talk to him?

25 A. Yeah.

1 Q. Could he say anything to you?

2 A. No.

3 Q. What did you ask him?

4 A. Wake up.

5 Q. And he couldn't do anything?

6 A. No.

7 Q. Okay. When Jermaine went to call the ambulance,
8 where were you?

9 A. In the room.

10 Q. You were still in the room with your brother?

11 A. (Nodded head.)

12 Q. Before the ambulance got there, did Jermaine say
13 anything to you?

14 A. No.

15 Q. Okay. At any time before the ambulance got there,
16 any time later that night, did Jermaine say anything
17 to you at all?

18 A. Yes.

19 Q. What did he say?

20 A. I couldn't remember it.

21 Q. You can't remember?

22 A. No.

23 Q. Okay. That's good. If I ask you a question and
24 you can't remember the answer, you just say you can't
25 remember. That's good. Did you go to the hospital

1 later that day?

2 A. Yes.

3 Q. Okay. And you were with your mom and -- and your
4 dad?

5 A. Yeah.

6 Q. Okay. Is there anything else that you can
7 remember that happened that day?

8 A. No.

9 Q. Okay. Hang on one second for me. I'll be right
10 back.

11 (Pause while attorneys for the State confer.)

12 MR. RICHARDSON: K.P. , I appreciate your
13 answering my questions. This lady here wearing the
14 red -- red jacket, she's going to get to ask you a few
15 questions. Okay? So you answer them for her just
16 like you did for me. All right?

17 WITNESS K.P. : Yes.

18 MR. RICHARDSON: Okay. Very good. Thank you,
19 sir.

20 THE COURT: Yes, ma'am.

21 MS. WINGARD: Thank you.

22 CROSS EXAMINATION BY MS. WINGARD:

23 Q. Hi, K.P. . My name is Carrington. That's a
24 funny name, isn't it? That sounds like a last name.

25 A. Yes.

1 Q. And I'm here today -- I represent Jermaine. I'm a
2 defense attorney. Do you know what a defense attorney
3 is?

4 A. No, ma'am.

5 Q. Okay. Well I'm here to do what is in Jermaine's
6 best interest and to help him through this process.
7 Okay?

8 A. Yes, ma'am.

9 Q. All right. Now how long have you known Jermaine?

10 A. Since we was living in Lake City whenever he came
11 back. I saw him -- I saw him laying in the bed and
12 every morning.

13 Q. Okay. We -- Now let me tell you, K.P. , you
14 need to speak into there (pointing at microphone).
15 Okay?

16 A. (No verbal response.)

17 Q. Because I need to hear you; and Jermaine needs to
18 hear you. But the most important people who need to
19 hear you: the judge needs to hear you; and this lady.
20 She's called a court reporter. Okay? And it's her
21 job -- This lady has the hardest job in the courtroom
22 because it's her job to record everything that's said.
23 Okay?

24 So it's real important that you speak up so
25 particularly this lady can understand what you're

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1 saying. Okay?

2 A. (Nodded head.)

3 Q. All right. So you were saying that you've known
4 Jermaine for some time. How long have you known him?

5 A. In Lake City.

6 Q. In Lake City? And you lived in Lake City before
7 you moved to Florence? Is that right?

8 A. Yes.

9 Q. Okay. So you've known him for say six (6) months,
10 or can you give us some time that you were in Lake
11 City before you were here?

12 A. Yes, ma'am.

13 Q. Okay. When did -- When were you in Lake City?

14 A. (No response.)

15 Q. Okay. Let me ask you this: Child died during
16 the summer when school was out. Do you remember that?

17 A. Yes.

18 Q. Okay. The first time that you met Jermaine, was
19 that when school was going on?

20 A. Yes.

21 Q. Was it around a particular holiday? Can you
22 remember that?

23 A. No.

24 Q. So you don't remember if it was around Christmas
25 or sometime like that?

1 A. No.

2 Q. All right. But you -- you had met him before the
3 summer? Is that right?

4 A. Yes.

5 Q. Had he ever stayed with you before?

6 A. Yeah.

7 Q. Now on this day that you've been telling us about,
8 you had only been staying at home for a few days. Is
9 that right?

10 A. Yeah.

11 Q. Before coming back to stay at your mom's house,
12 where had you been living? Where had you been
13 staying?

14 A. At my grandma's house.

15 Q. And who is that? Who's your grandma? Which
16 grandma because you have several grand mamas, don't
17 you?

18 A. Grandma Pat.

19 Q. Grandma --?

20 A. Pat.

21 Q. Pat? So you'd been staying at Grandma Pat's
22 house. And is that your daddy's mother?

23 A. No.

24 Q. That's your mother's mother?

25 A. Yes.

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1 Q. Okay. And how long had you stayed there?

2 A. I can't remember.

3 Q. All right. Had you been staying with your dad
4 some?

5 A. Yes.

6 Q. Okay. And what do you call your dad?

7 A. I call him Dad all the time.

8 Q. You call him Dad?

9 A. Um-hm.

10 Q. Okay. And you call Willie Jerito, Peanut; is that
11 right?

12 A. Yes.

13 Q. Okay. And he was staying with your mom?

14 A. Yes, ma'am.

15 Q. Now you and Child sometimes play rough, don't
16 you?

17 A. Yes.

18 Q. Okay. And you get in trouble for playing rough,
19 don't you?

20 A. Yes, ma'am.

21 Q. Okay. And when you play rough, your mom gets very
22 upset; doesn't she?

23 A. Yes.

24 Q. All right. And I believe just a day or two before
25 this, you and Child got in trouble for playing

1 rough; didn't you?

2 A. Yeah.

3 Q. And your mama got a belt out, didn't she?

4 A. Yes, ma'am.

5 Q. Did she spank you?

6 A. I can't remember.

7 Q. Okay. Did she spank Child ?

8 A. No.

9 Q. She didn't spank Child ? Why did she get the
10 belt out?

11 A. I don't -- Because we was playing rough.

12 Q. You were playing rough. Okay. Tell me what you
13 were doing to play rough.

14 A. Running around the house.

15 Q. Okay. All right. You have bunk beds, don't you?

16 A. Yes.

17 Q. And you and Child used to play on those bunk
18 beds sometimes, didn't you?

19 A. Yes.

20 Q. Okay. You'd play rough on the bunk beds?

21 A. Yes.

22 Q. Can you remember if that's what you were doing?

23 You -- You said that you were in the room with the
24 bunk beds right before y'all -- before Child got

25 sick. Is that right?

- 1 A. Yes.
- 2 Q. Were you making a lot of noise in there?
- 3 A. No.
- 4 Q. You weren't? Well, why did Jermaine come in there
- 5 if y'all weren't making a lot of noise?
- 6 A. I didn't know.
- 7 Q. You don't know?
- 8 A. No.
- 9 Q. You -- But you were in that room with the bunk
- 10 beds, and you were playing rough? Right?
- 11 A. Yes.
- 12 Q. And for some reason that you don't know why,
- 13 Jermaine just came in there?
- 14 A. No.
- 15 Q. You -- You don't know why Jermaine came in there,
- 16 or what I said was wrong?
- 17 A. No. I didn't know why he came in there.
- 18 Q. You don't know why he came in?
- 19 A. No.
- 20 Q. All right. You said that you went in the living
- 21 room. Is that right?
- 22 A. Yes, ma'am.
- 23 Q. Okay. And why did you go in the living room?
- 24 A. To watch a movie.
- 25 Q. Okay. So you didn't go in the living room because

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1 Jermaine told you to go in the living room; you went
2 in there to watch a movie?

3 A. Yeah.

4 Q. Okay. And did Child stay in the bedroom with
5 the bunk beds, or did he go in the bedroom with the
6 pallets on the floor?

7 A. Pallets on the floor.

8 Q. Okay. And what did he do in that room?

9 A. He was sleeping.

10 Q. Okay. So he went -- As soon as he left from the
11 two of you being in the room with the bunk beds to go
12 into the other bedroom, that's when he fell asleep,
13 right then?

14 A. Yeah.

15 Q. Okay. So he was by himself in that room?

16 A. Yeah.

17 Q. Nobody else was with him?

18 A. No.

19 Q. Okay. Do you remember talking right after this
20 happened -- just a day after this happened, do you
21 remember talking to Ms. Debbie? That's that lady
22 right there with the tiger-looking sweater on.

23 A. Yes.

24 Q. Okay. And you talked to her the next day. And
25 you didn't tell her anything about Jermaine doing

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1 anything, did you?

2 A. No.

3 Q. Okay. And then two (2) days later, she talked to
4 you again. And you didn't tell her anything about
5 Jermaine putting y'all in separate rooms, did you?

6 A. No.

7 Q. Okay.

8 MS. WINGARD: Judge, I have the interviews. And
9 they are lengthy, but I believe it is important for
10 you to look at both of them to -- to show the
11 inconsistencies.

12 THE COURT: At -- Before you finish your -- your
13 cross examination you want me to look at those, or
14 when you finish your cross examination?

15 MS. WINGARD: I just wanted to get them marked and
16 introduced at this point---

17 THE COURT: All right.

18 MS. WINGARD: ---for you, and---

19 THE COURT: Any -- Any objection to those?

20 MR. RICHARDSON: No, sir, Your Honor. They're
21 open to hearsay, but that's allowed.

22 THE COURT: All right. They'll be marked as
23 Plaintiff's -- I mean, as Defense 1 and 2.

24 ***DEFENDANT EXHIBITS 1-2 ENTERED***

25 THE COURT: Defense 1 is July 26, 2008. Defense 2

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1 is July 28, 2008. And I'll -- I'll review those in
2 just a few moments.

3 BY MS. WINGARD:

4 Q. Jermaine fixed your lunch that day, didn't he?

5 A. Yes.

6 Q. And he fixed your breakfast too?

7 A. Yes.

8 Q. Did you see your mama at all that day?

9 A. No.

10 Q. Until she came home later, is that right?

11 A. Yeah.

12 Q. Is Jermaine -- What did you call Jermaine? Was he
13 your -- Did you think of him as a step-brother, or
14 what did you call him?

15 A. Jermaine.

16 Q. You called him Jermaine. But did you think of him
17 as your step-brother or your friend or -- How did you
18 think of Jermaine?

19 A. My step-brother.

20 Q. Your step-brother? And let me -- let me
21 understand now what you're telling me. You didn't
22 hear -- You didn't see Jermaine do anything to

23 Child ; is that right?

24 A. No. Yes.

25 Q. Okay. You didn't see him do anything to him?

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1 A. Yes. I see.

2 Q. All right. What did -- What did you see?

3 A. He beat him.

4 Q. He beat him? Okay. And -- But you didn't say
5 anything right after the interview, I mean, right
6 after this happened when you were interviewed; did
7 you?

8 A. No.

9 Q. Okay. And it was only after you'd been talked to.
10 Who -- Who talked to you about this incident?

11 A. Ms. Robin.

12 Q. Who?

13 A. Ms. Robin at the counselor.

14 Q. All right. Okay. And that's when you -- and
15 after that's when you decided that you had seen
16 Jermaine beat Child ?

17 A. Yes.

18 Q. You didn't remember that before, did you?

19 A. No, ma'am.

20 Q. Okay. All right. Even though you had been
21 interviewed just right after this happened? Is that
22 right?

23 A. Yes.

24 Q. Okay. Did you go play outside any during that
25 day?

1 A. No.

2 Q. Okay. And when -- So everybody stayed inside the
3 whole time?

4 A. Yeah.

5 Q. And why don't you like to go outside?

6 A. Nobody to play with.

7 Q. There wasn't anybody to play with?

8 A. No.

9 Q. And do you remember saying you didn't like to go
10 in the woods?

11 A. No.

12 Q. You don't remember saying you didn't like to go in
13 the woods?

14 A. No, ma'am.

15 Q. You don't remember saying that that were bears in
16 the woods?

17 A. Yes.

18 Q. You remembered saying that? Had you ever seen a
19 bear in the woods?

20 A. No.

21 Q. okay. How did you know there were bears in the
22 woods? Did somebody tell you there are bears in the
23 woods?

24 A. No.

25 Q. okay. Well why did you think there were bears in

1 the woods?

2 A. They live in the woods.

3 Q. But I -- I'm asking you why do you think they live
4 in the woods?

5 A. I don't know.

6 Q. You don't know? But you thought there were bears
7 in the woods near the house that you were living in.

8 Is that right?

9 A. Yeah.

10 Q. But you didn't discuss that with anybody, and
11 nobody told you that?

12 A. No.

13 Q. Okay.

14 MS. WINGARD: I don't have any further questions.

15 THE COURT: Any re-direct?

16 MR. RICHARDSON: Briefly.

17 RE-DIRECT EXAMINATION BY MR. RICHARDSON:

18 Q. K.P. , do you remember talking to Ms. Debbie at
19 the -- at the Care House that day after the -- after
20 what happened to *child* ?

21 A. Yeah.

22 Q. Okay. Do you remember telling the lady at the
23 Care House that you were scared of Jermaine?

24 MS. WINGARD: Objection, Your Honor. That's
25 hearsay.

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1 WITNESS PICKETT: Yeah.

2 MR. RICHARDSON: Your Honor, hearsay is admissible
3 in---

4 THE COURT: I -- I'm going to allow the statement.

5 MS. WINGARD: Judge, it -- there wasn't, I mean,
6 they've got to??? that it was.

7 MR. RICHARDSON: I didn't ask that. I didn't say
8 it was.

9 THE COURT: Well, be more specific then in your
10 question. I'm sorry. I misunderstood. Be more
11 specific in your question.

12 MR. RICHARDSON: Okay.

13 BY MR. RICHARDSON:

14 Q. **KP** do you remember when you were at the Care
15 House talking to a lady named Ms. Andrews, a Katrina
16 Andrews?

17 A. Yes.

18 Q. Okay. And you talked to her after you talked to
19 Ms. Debbie, didn't you?

20 A. Yes.

21 Q. Okay. And do you remember her asking you a
22 question about if -- if you were scared?

23 A. No.

24 Q. You don't remember her asking?

25 A. No.

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1 Q. Okay. Do you remember telling her that you were
2 scared of Jermaine?

3 A. Yes.

4 Q. Okay. And why -- why did you say you were scared
5 of him?

6 A. Because he's big.

7 Q. Okay. Did he say anything to you to make you
8 scared of him?

9 A. No.

10 Q. All right. When you had those talks with Ms.
11 Debbie, were you nervous?

12 A. No.

13 Q. Were you scared at all?

14 A. No.

15 Q. Okay. And do you remember talking to her at two
16 (2) different times?

17 A. Yes.

18 Q. Okay. And do you remember telling her the -- the
19 truth both times?

20 A. Yes, sir.

21 Q. As best you remember it?

22 A. Yes.

23 Q. Okay. I don't have anymore questions for you.

24 THE COURT: Recross?

25 MS. WINGARD: No.

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1 THE COURT: All right. I have a few questions for
2 you. So let me ask you a couple of questions.

3 EXAMINATION BY THE COURT:

4 Q. Now you talked about the room that you and Child
5 had with bunk beds in it that was at the house; right?

6 A. Yes.

7 Q. And did you sleep in the bunk beds?

8 A. Yes.

9 Q. Which bunk did you sleep on, the top bunk or the -
10 - or the lower bunk?

11 A. The top one.

12 Q. And who slept on the lower one?

13 A. My bro- -- My brother.

14 Q. Child ? Child slept -- Which brother?

15 A. I was sleeping in it. He was sleeping on the
16 floor in the other room.

17 Q. Okay. So Child didn't sleep on the bunk bed?

18 A. (Shook head.)

19 Q. But y'all played in the room with the bunk beds;
20 right?

21 A. (Nodded head.)

22 Q. And when you -- When y'all played in the room with
23 the bunk beds, did y'all ever try to jump from the top
24 bunk down to the floor?

25 A. No.

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1 Q. Did y'all fight up on the top bunk?

2 A. No.

3 Q. Or wrestle up on the top bunk?

4 A. No.

5 Q. Did anyone ever fall off of that top bunk?

6 A. No.

7 Q. Did you ever fall off of the top bunk?

8 A. No.

9 Q. And did Shaquan ever fall off of the top bunk?

10 A. No.

11 Q. This -- The day that this happened, you talked
12 about you were there and Jermaine was there and

13 Child was there. Was anybody else there at the
14 house that whole day?

15 A. No.

16 Q. Just the three (3) of you?

17 A. Yes.

18 Q. And you got up that morning, and you watched TV
19 for a little while. Which room did you watch TV in?

20 A. In the living room.

21 Q. Okay. And then Child got up a little bit later.
22 And then y'all had breakfast; right?

23 A. Yes.

24 Q. And then you watched TV for a while?

25 A. Yes.

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1 Q. And what room did you watch TV in then?

2 A. In the living room.

3 Q. And then did y'all play some before lunch?

4 A. No.

5 Q. Okay. So you watched TV, and then you had lunch.

6 Right?

7 A. Yeah.

8 Q. And after lunch did y'all play some?

9 A. Yeah.

10 Q. What did y'all play?

11 A. His game.

12 Q. What game did you play?

13 A. Jermaine's.

14 Q. Was it a video game?

15 A. Yes.

16 Q. And did you play it on the TV?

17 A. Yes.

18 Q. And was it the TV in the living room that you

19 played the game on?

20 A. No.

21 Q. In the bedroom?

22 A. Um-hm.

23 Q. Which -- Who's bedroom was that?

24 A. Three (3) of ours.

25 Q. Y'all's? The one with the bunk beds?

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1 A. Um-um.

2 Q. The one with the pallets?

3 A. Yes.

4 Q. Okay. And then you said that you and -- and

5 Child played rough some too. What were y'all doing

6 playing rough that day? Tell me what you were doing

7 that was rough play?

8 A. Chasing each other.

9 Q. Okay. Around the house or just in the bedroom?

10 A. Around the house.

11 Q. Okay. And did you knock anything over?

12 A. No.

13 Q. Did you tackle Child ?

14 A. No.

15 Q. Did he tackle you?

16 A. No.

17 Q. Okay. And did you do any other kind of rough play

18 that day?

19 A. No.

20 Q. Just chasing each other?

21 A. Yeah.

22 Q. And when y'all were chasing each other, did

23 Jermaine say anything to you, like, "Y'all stop," or,

24 "Behave," or anything like that?

25 A. No.

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1 Q. Did he seem upset that y'all were chasing each
2 other?

3 A. No.

4 Q. You said that at some point in time, Jermaine did
5 get upset; right?

6 A. No.

7 Q. He never got upset?

8 A. (Shook head.)

9 Q. Why -- You -- You told me that Jermaine got out a
10 polka dot belt; right?

11 A. Yes.

12 Q. Why did he get the polka dot belt out?

13 A. I don't know.

14 Q. You don't know?

15 A. No.

16 Q. Were y'all doing anything just before -- you and

17 Child doing anything just before he got out the
18 polka dot belt?

19 A. No.

20 Q. What were you doing just before he got out the

21 polka dot belt? Were y'all playing or watching TV or
22 playing a video game?

23 A. Watching TV.

24 Q. So y'all were in there watching TV?

25 A. Yes.

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1 Q. What were you watching then; do you remember?

2 A. Fantastic Four.

3 Q. Okay. And were y'all acting out any of the parts
4 of the Fantastic Four?

5 A. No.

6 Q. Okay. So you're just sitting on the floor or
7 sitting on the couch or sitting on a chair, watching
8 the Fantastic Four; right?

9 A. Yes.

10 Q. And then you said Sha- -- that Jermaine came and
11 got Child ?

12 A. Yes.

13 Q. And took him to another room?

14 A. Yes.

15 Q. And he had a belt then?

16 A. Yes.

17 Q. And you said you saw him hit Child ?

18 A. Yes.

19 Q. With the belt?

20 A. Yeah.

21 Q. Where was he when he hit Child with the belt?

22 A. In the room.

23 Q. Which room?

24 A. In our -- the three of our room.

25 Q. Y'all's room. The room with the pallets?

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1 A. (No verbal response.)

2 Q. And you were in there then too?

3 A. Yes.

4 Q. Well when did you go from the room where you --
5 Did you watch -- And let me ask this question: Did
6 you watch the Fantastic Four in your room or the
7 living room?

8 A. The living room.

9 Q. Okay. So when did you go from the living room
10 back to y'all's room?

11 A. In my sister room.

12 Q. In your sister's room?

13 A. Nodded head.

14 Q. So y'all went back -- You went from the living
15 room to your sister's room?

16 A. Yeah.

17 Q. And -- And what were you doing in your sister's
18 room?

19 A. Taking me a nap.

20 Q. Taking a nap. Okay. And what was Child doing
21 while you were taking a nap?

22 A. He was closing his eyes.

23 Q. He was closing his eyes. Was he trying to take a
24 nap too?

25 A. Yeah.

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1 Q. Where was he when you were taking a nap?

2 A. In the pallet.

3 Q. On the pallet? Well how do you know he was on the
4 pallet in -- in the other room when you were sleeping
5 on your -- sleeping in your sister's room?

6 A. I walked past the door.

7 Q. You walked past the door?

8 A. (Nodded head.)

9 A. And was he asleep then?

10 A. Yeah.

11 Q. And then did you see -- And this is before
12 Jermaine had the belt?

13 A. Yeah.

14 Q. Okay. When y'all woke up, what did you do?

15 A. Play.

16 Q. What did y'all play?

17 A. Hide and seek.

18 Q. I'm sorry. Say that again?

19 A. Hide and seek.

20 Q. Okay. And did y'all knock anything over or make a
21 lot of noise or rough house when you were playing hide
22 and seek?

23 A. No.

24 Q. And after you started playing hide -- After you
25 played hide and seek, what did you do?

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1 A. We just sit on the couch and watch SpongeBob.

2 Q. You watched SpongeBob. Okay. And -- And then
3 after SpongeBob went off, what did you do?

4 A. What another show.

5 Q. And -- And was SpongeBob just on the regular TV or
6 was it on a -- a video tape or a DVD?

7 A. On regular TV.

8 Q. Okay. And so, then after SpongeBob went off, what
9 did you watch?

10 A. (unintelligible)

11 Q. Okay. And -- And did y'all watch that whole show?

12 A. Yes.

13 Q. And then after that show went off, what did you
14 watch?

15 A. Nothing else.

16 Q. I'm sorry?

17 A. Nothing else.

18 Q. Nothing else. And -- And so what did you do after
19 that show went off?

20 A. Go to my room and my mama room.

21 Q. You went into your mama's room?

22 A. Yes.

23 Q. And what did you do in your mama's room?

24 A. Finded my socks to put them on.

25 Q. Okay. Then after you got your socks and put on

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1 your socks, what did you do?

2 A. Get dressed.

3 Q. I'm sorry?

4 A. Get dressed.

5 Q. Get dressed to do what?

6 A. Play outside.

7 Q. Okay. And did you go outside?

8 A. No. Because there wasn't nobody to play with.

9 Q. Okay. So you got your socks on. You were
10 thinking about going outside. What was Child doing
11 then?

12 A. He was in the room.

13 Q. With you?

14 A. Yeah.

15 Q. And -- And did Child want to go outside?

16 A. No.

17 Q. So y'all decided to stay inside. What did you do
18 then?

19 A. Nothing else. Keep watching TV.

20 Q. Okay. So what did you watch then?

21 A. Disney channel.

22 Q. I'm sorry?

23 A. Disney channel.

24 Q. Okay. And how long did y'all watch -- Did y'all
25 watch more than one (1) show on the Disney channel?

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1 A. Yeah.

2 Q. How many shows did you watch?

3 A. Eleven (11).

4 Q. Eleven (11)? That's a long time. You watched
5 eleven (11) shows?

6 A. Yes.

7 Q. Okay. And after you watched eleven (11) shows on
8 the Disney channel, what did you do?

9 A. Went in my -- played in my mama's room.

10 Q. And what did you do there?

11 A. Get a movie.

12 Q. You got a movie. Okay. What movie did you get?

13 A. I had to just pick a movie.

14 Q. You just picked a movie?

15 A. Yeah.

16 Q. You don't know which one it was?

17 A. No.

18 Q. Okay. Did y'all watch that movie?

19 A. Yeah.

20 Q. And what was it?

21 A. I didn't -- I didn't know the title.

22 Q. Okay. What was it about?

23 A. I forgot.

24 Q. Okay. And what did you do after that?

25 A. Laid down.

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1 Q. You laid down again?

2 A. (Nodded head.)

3 Q. And what did Child do then?

4 A. He was still watching TV.

5 Q. Okay. Where did you lay down?

6 A. In my mama's room.

7 Q. Okay. And -- And after you finished laying down,
8 what did you do?

9 A. Get my Pacman game and play it on the TV.

10 Q. Okay. Did Child play that game with you?

11 A. Yeah.

12 Q. And -- And y'all played that game for a while, and
13 then what did you do?

14 A. We had went outside to see when my mama coming.

15 Q. Okay. And -- And how long did you wait outside?

16 Did you wait very long?

17 A. No.

18 Q. Was it kind of hot that day?

19 A. Yeah.

20 Q. Okay. And you came back inside, and what did you
21 do?

22 A. I had fixed my brother some cereal.

23 Q. You fixed some cereal?

24 A. (Nodded head.)

25 Q. Now this is in the afternoon; right?

TESTIMONY OF

K.P.

53

1 A. No.

2 Q. It was still in the morning?

3 A. (Nodded head.)

4 Q. I'm confused. So -- So all of these things you've
5 been telling me about happened before lunch time?

6 A. Yes.

7 Q. Okay. Well let's talk about what happened after
8 lunch time. Did you take a nap after lunch time?

9 A. No.

10 Q. You didn't? Do you know what time it was whenever
11 Jermaine got the belt?

12 A. No.

13 Q. Were you watching TV when that happened?

14 A. No.

15 Q. What were you doing when that happened?

16 A. In my room.

17 Q. What were you doing in the room?

18 A. Listening to music.

19 Q. Listening to music? Okay. Did y'all dance some
20 while you were listening to the music?

21 A. No.

22 Q. Did y'all have the music turned up very loud?

23 A. No.

24 Q. What kind of music were you listening to?

25 A. I was singing music.

TESTIMONY OF

K.P.

54

1 Q. Singing music. Okay. And -- And that's when
2 Jermaine came in with the belt?

3 A. No.

4 Q. Well when did he come in with the -- What were
5 y'all doing when he came in with the belt?

6 A. We was still listening to music.

7 Q. Okay. And did he say anything when he came in
8 with the belt?

9 A. No.

10 Q. Did he -- Did he make you leave the room then?

11 A. No.

12 Q. And you stayed there when he came in the room with
13 the belt?

14 A. Yeah.

15 Q. Well what did he do when he came in the room with
16 the belt?

17 A. Nothing.

18 Q. He didn't do anything?

19 A. He -- He was going to put it on.

20 Q. He went to put the belt on?

21 A. He go to put it on the bed.

22 Q. On the bed?

23 A. (Nodded head.)

24 Q. Why?

25 A. Because we was in our room.

TESTIMONY OF

K.P.

55

1 Q. Okay. So he was putting the belt up?

2 A. Yes.

3 Q. Well did he use the belt before he put it up?

4 A. No.

5 Q. All right. So -- So when did he come into the
6 room with the belt and use the belt?

7 A. I don't know.

8 Q. You don't know?

9 A. (Shook head.)

10 Q. You said you saw him use the belt; right?

11 A. Yeah.

12 Q. And he hit -- Did he hit you with the belt?

13 A. No.

14 Q. Did he hit Child with the belt?

15 A. Yeah.

16 Q. And you watched him hit Child with the belt?

17 A. Yeah.

18 Q. You were right there in the same room?

19 A. Yeah.

20 Q. And he could see you watching? Jermaine could see
21 you watching Child and---

22 A. Yeah.

23 Q. And he didn't say anything to you?

24 A. No.

25 Q. And what did Child do when Jermaine hit him with

TESTIMONY OF K.P.

56

- 1 the belt?
- 2 A. He didn't do nothing else.
- 3 Q. Did he -- Did he cry?
- 4 A. No.
- 5 Q. Did he say ouch?
- 6 A. No.
- 7 Q. Did he yell?
- 8 A. No.
- 9 Q. He didn't make any noise at all when -- when he
- 10 was hitting him with the belt?
- 11 A. No.
- 12 Q. Where did he hit him with the belt?
- 13 A. It was in his stomach.
- 14 Q. In his stomach?
- 15 A. Yes.
- 16 Q. Was Child laying on the floor?
- 17 A. Yeah.
- 18 Q. How many times did he hit him with the belt?
- 19 A. Ten (10) times.
- 20 Q. How many?
- 21 A. About ten (10) times.
- 22 Q. Ten (10) times. And after he hit him with the
- 23 belt, what did he do? What did -- What did Jermaine
- 24 do after he hit Child with the belt?
- 25 A. He went to get a ambulance.

TESTIMONY OF K.P.

57

1 Q. Okay. Was Child asleep when Jermaine hit him
2 with the belt?

3 A. Yeah.

4 Q. And -- And did he not make any noise?

5 A. No.

6 Q. And Child didn't wake up when Jermaine hit him
7 with the belt?

8 A. No.

9 Q. Was Jermaine in the room with Child without you
10 being there before he hit him with the belt?

11 A. Yeah.

12 Q. And that's when he had the door closed?

13 A. Yeah.

14 Q. And that's---

15 A. I---

16 Q. ---I'm sorry.

17 A. I was in the room when he closed the door.

18 Q. You were in there when he closed the door?

19 A. Yes.

20 Q. So -- So were you inside the room with the door
21 closed or outside the room with the door closed?

22 A. In -- Inside the room.

23 Q. So you saw everything that happened?

24 A. Yeah.

25 Q. Well what made the big bump noise?

TESTIMONY OF K.P.

58

- 1 A. The wall.
- 2 Q. The wall? Well what -- What hit the wall to make
- 3 a bump noise?
- 4 A. His head.
- 5 Q. Whose head?
- 6 A. My brother's.
- 7 Q. Child 's?
- 8 A. Yeah. Then he hit -- hit him on the bunk bed too.
- 9 Q. He did?
- 10 A. Yeah.
- 11 Q. How did that happen?
- 12 A. Jermaine was spinning him around.
- 13 Q. He was spinning him around?
- 14 A. (Nodded head.)
- 15 Q. Was he -- Did he pick him up?
- 16 A. Yeah.
- 17 Q. Was he playing?
- 18 A. Yeah.
- 19 Q. Was he angry?
- 20 A. No.
- 21 Q. He was just playing?
- 22 A. Yeah.
- 23 Q. And you were in the room too?
- 24 A. Um-hm.
- 25 Q. And---

TESTIMONY OF K.P.

59

1 A. No. I was in the living room.

2 Q. Okay. Now I'm confused, so help me understand.

3 Because you said that you were in the room when you
4 saw him hit his head on the wall. Is that true?

5 A. Yeah.

6 Q. And you saw -- You saw Jermaine pick him up and
7 was spinning him around?

8 A. Yeah.

9 Q. You saw that too?

10 A. (Nodded head.)

11 Q. And he hit his head on the bunk bed when he was
12 spinning him around?

13 A. Yeah.

14 Q. How was he spinning him around?

15 A. He picked him up and grabbed his hands.

16 Q. He grabbed his -- grabbed what?

17 A. Hand and pick him up by his stomach.

18 Q. By his stomach?

19 A. (Nodded head.)

20 Q. And he was just spinning him around?

21 A. Yeah.

22 Q. But you said he wasn't angry when he did that?

23 A. No.

24 Q. Was -- Was he mad at you?

25 A. No.

TESTIMONY OF

K.P.

60

1 Q. Was he mad at Child ?

2 A. No.

3 Q. So y'all were just playing?

4 A. Yeah.

5 Q. Did he pick you up and spin you around any?

6 A. No.

7 Q. Did he ever pick you up and spin you around
8 anytime?

9 A. No.

10 Q. Okay. Had you ever seen him pick up Child and
11 spin him around before?

12 A. Yeah.

13 Q. And he -- Did you ever see him hurt Child when
14 he picked him up and spun him around?

15 A. No.

16 Q. Well when Jermaine picked up Child and was
17 spinning him around, what was Child saying?

18 A. Nothing.

19 Q. Was he -- Was he awake?

20 A. No.

21 Q. He was asleep when he picked him up and spun him
22 around?

23 A. Yeah. The whole time he was sleeping. When he
24 waked up then went outside and went to see when my
25 mama's coming. Then he went back to sleep. He was

TESTIMONY OF K.P.

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1 sleeping the whole time.

2 Q. He was asleep the whole time?

3 A. Yeah.

4 THE COURT: Okay. That's all the questions I have
5 for him at this time. I'm going to view the
6 interviews. And then I may have some more questions
7 after I review the interviews. So do y'all have any
8 questions at this time based upon my questioning?

9 MS. WINGARD: Not at this time.

10 MR. RICHARDSON: No, sir.

11 THE COURT: Okay. I'm going to let you go back
12 out and sit with your family now. I might have a
13 couple more questions for you in a few minutes.

14 I'm going to review those interviews. How long
15 are the interviews?

16 MS. WINGARD: Judge, I think one is about an hour;
17 and the second one is maybe a half an hour. They're
18 lengthy. I'm -- I apologize.

19 THE COURT: Well, I mean, there's -- there's no
20 way to make them any shorter. I -- I hate to make
21 everybody wait, but I may have questions, after I
22 review the interviews, for this young man. And so I
23 guess we're going to stand at ease for a period of
24 time while I view these interviews.

25 I'm going to step back in my chambers to do that

TESTIMONY OF K.P.

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1 as opposed to sitting here on the bench. But I do
2 want to watch both of these interviews.

3 Counsel, if y'all want to be present with me while
4 I'm watching the interviews, you're welcome to do so.
5 If you don't want to be present, that's fine too. I'm
6 just simply going to watch them.

7 MR. JEPERTINGER: That'll bring us to about 12:30
8 then?

9 MS. WINGARD: I -- I would just as soon hear them
10 again. I've of course heard them on several
11 occasions, but I don't mind listening to them again
12 since -- in light of what his testimony was.

13 THE COURT: All right. We're going to stand at
14 ease until -- hopefully I can see it by about 12:15,
15 so we'll stand at ease until 12:15.

16 (Court is at ease; 10:54 a.m.)

17 (Court reconvened; 12:39 p.m.)

18 DEPUTY: Order in the court. All rise.

19 THE COURT: Thank you. Please be seated.

20 Unfortunately, it took us a little longer than what we
21 had anticipated to listen to the interviews that were
22 done, which have been marked as Exhibits 1 and 2 for
23 the defendant. I've now reviewed those exhibits. The
24 attorneys were present when I did so. And I do have a
25 couple of questions I'd like to ask K.P. .

TESTIMONY OF K.P.

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1 Hey, K.P. . How about have a seat there on the
2 witness stand again. All right. K.P. , I just have
3 a couple of questions after I watched the interviews I
4 wanted to ask you about.

5 BY THE COURT:

6 Q. Now, you remember when you went to that place, and
7 they had a camera, and -- and Ms. Debbie interviewed
8 you? Do you remember doing that?

9 A. Yeah.

10 Q. And she asked you a lot of questions both times,
11 didn't she?

12 A. Yeah.

13 Q. And -- And I want to ask you about a couple of
14 things that you told Ms. Debbie that I wasn't sure
15 about from today. You told Ms. Debbie that Child
16 hit his head on the bunk bed at some point in time.
17 Do you remember telling her that?

18 A. Yeah.

19 Q. And do you remember when he hit his head on the
20 bunk bed?

21 A. Yes.

22 Q. When was that?

23 A. At the house.

24 Q. Was it -- Was it that day, or was it the day
25 before or a long time before?

TESTIMONY OF

K.P.

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1 A. A long time before.

2 Q. A long time before. Okay. And did he have a lump
3 on his head?

4 A. Yes.

5 Q. Could you see it?

6 A. Yes.

7 Q. Could you feel it?

8 A. No.

9 Q. Did he still have a lump on his head on the day
10 that you and Jermaine were there with Child ?

11 A. Yeah.

12 Q. And you told Ms. Debbie that the day she was
13 asking you questions about, the day that was you and
14 Jermaine and Child there, that Child woke up that
15 morning; and he wasn't feeling good. Do you remember
16 telling her that?

17 A. Yes.

18 Q. And -- And do you remember that that day, did he
19 wake up and he didn't feel good?

20 A. Yes.

21 Q. What was wrong? Do you remember?

22 A. No.

23 Q. Do you remember why he didn't feel good?

24 A. No.

25 Q. How do you know he didn't feel good?

TESTIMONY OF

K.P.

65

1 A. I can't remember.

2 Q. Did he say, "I don't feel good"?

3 A. Yes.

4 Q. Or did he -- Was -- Did he do something that made
5 you know that he didn't feel good, like he coughed a
6 lot or sneezed a lot or did he get sick or anything
7 like that?

8 A. No.

9 Q. He didn't get sick?

10 A. No.

11 Q. Did he throw up any that day?

12 A. Yeah.

13 Q. Now did he throw up all day long or just that
14 afternoon?

15 A. That afternoon.

16 Q. He didn't throw up in the morning?

17 A. No.

18 Q. Did he eat breakfast with you?

19 A. No.

20 Q. Child didn't eat breakfast with you?

21 A. No.

22 Q. Do you know what he ate that morning for
23 breakfast?

24 A. No.

25 Q. Okay. Did he eat lunch with you?

TESTIMONY OF K.P.

66

1 A. Yeah.

2 Q. What -- What did he eat for lunch?

3 A. Cereal.

4 Q. And what did you have for lunch?

5 A. Cereal.

6 Q. Okay. Did you have cereal for breakfast?

7 A. Yes.

8 Q. Do you like cereal?

9 A. Yes.

10 Q. What kind of cereal did you have?

11 A. Fruity Pebbles.

12 Q. Okay. Ms. Debbie was asking you questions about
13 being afraid about talking about things. Do you
14 remember that?

15 A. Yes.

16 Q. Were you afraid? It wasn't the first time you
17 talked to her; it was the second time you talked to
18 her. Were you afraid to tell her anything that day?

19 A. No.

20 Q. Well why did you tell her that you were scared to
21 talk about things? Do you remember?

22 A. No.

23 Q. She -- You said something about you were afraid
24 you would get a beating.

25 A. Yeah.

TESTIMONY OF

K.P.

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1 Q. Why would you have gotten a beating?

2 A. I don't know.

3 Q. Why were you afraid that you might get a -- a
4 spanking?

5 A. Because I was -- I was afraid.

6 Q. You were afraid of what?

7 A. My mama's going to beat me.

8 Q. Why?

9 A. Because.

10 Q. Because why?

11 A. I didn't have want to get a beating.

12 Q. You didn't what?

13 A. I didn't have -- want to get a beating.

14 Q. You didn't want to get a beating? Oh, I know.

15 That -- That hurts, doesn't it?

16 A. Yes.

17 Q. So why were you afraid that you might get a -- a
18 beating? What were you -- What -- What were you not
19 supposed to do, or what were supposed to do to keep
20 from getting a beating?

21 A. Clean my room.

22 Q. Uh-huh.

23 A. Don't play around the house.

24 Q. Okay.

25 A. And quit running---

TESTIMONY OF

K.P.

68

- 1 Q. Right.
- 2 A. ---around the house.
- 3 Q. Right.
- 4 A. And broking stuff.
- 5 Q. Right.
- 6 A. And breaking my mom's stuff.
- 7 Q. You told Ms. Debbie something about breaking a
- 8 mirror, and you got in trouble for that. Is that
- 9 right?
- 10 A. Yeah.
- 11 Q. And Child got in trouble too, didn't he?
- 12 A. Yes.
- 13 Q. Was that a long time before the -- the day that
- 14 you and Jermaine and Child were together by
- 15 yourselves, or a little bit of time before?
- 16 A. A long time.
- 17 Q. A long time. Well I know that you were worried
- 18 about when you don't do what you're supposed to do, or
- 19 you do something you're not supposed to do, you might
- 20 get a spanking. Right?
- 21 A. Yes.
- 22 Q. Well on the day that you were talking to Ms.
- 23 Debbie, what were you afraid that you might do that
- 24 would get you in trouble with your mom?
- 25 A. Not doing what my mom telled me to do.

TESTIMONY OF K.P.

69

1 Q. And what did she tell you to do?

2 A. Clean up my room.

3 Q. Okay. Anything else?

4 A. No.

5 Q. Okay.

6 THE COURT: Counsel, that's all the questions I
7 have for the witness at this time. Do either of you
8 have any additional questions based on my questions or
9 the review of the interviews?

10 MR. RICHARDSON: No, sir.

11 THE COURT: All right.

12 MS. WINGARD: I do have a few I'd like to ask.

13 THE COURT: Okay. Yes, ma'am.

14 RE CROSS EXAMINATION BY MS. WINGARD:

15 Q. K.P. , your -- your mama fussed at you for
16 playing rough, didn't she?

17 A. Yes.

18 Q. And so you would be afraid to admit to her that
19 you and Child played rough, wouldn't you?

20 A. Yes.

21 Q. Okay. You wouldn't want her to know that, would
22 you?

23 A. Nope.

24 Q. Because you would be afraid that you would get a
25 beating if she knew that. Is that right?

TESTIMONY OF K.P.

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1 A. Yes.

2 Q. Okay. Has she beaten you before for playing
3 rough?

4 A. Yes.

5 Q. All right. When you talked about **Child** hitting
6 his head on the bunk bed, has he done that more than
7 once?

8 A. No.

9 Q. He just did it one (1) time?

10 A. He did it twice.

11 Q. He did it twice. Okay. So he did it one (1) time
12 a long time ago.

13 A. (Nodded head.)

14 Q. Now when you say a long time ago, do you mean
15 since you came back to stay with your mom right before
16 **Child** got sick? Because you'd been away. Isn't
17 that right?

18 A. Yes.

19 Q. And so you'd only been home a -- back to this home
20 a few days. Isn't that right?

21 A. Yes.

22 Q. Okay. So did he hit his head on the bunk bed the
23 first time after you came back?

24 A. Yes.

25 Q. Okay. So it would have been within a few days.

TESTIMONY OF

K.P.

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1 Is that right?

2 A. Yes.

3 Q. And then the second time he hit his head on the
4 bunk bed, would that have -- would that have been the
5 day he got sick and went to the hospital?

6 A. No.

7 Q. When was the second time?

8 A. When we was living in Lake City, and he bumped his
9 head on the sidewalk.

10 Q. Okay. Well now I'm talking about the bunk bed.

11 You said he hit his head on the bunk bed twice. Did -
12 - Can you remember the second time he hit his head on
13 the bunk bed?

14 A. No.

15 Q. You -- You know he hit it twice on the bunk bed,
16 but you can't remember the second time?

17 A. No.

18 Q. Okay. When Child woke up that morning, did he
19 eat anything when he got up?

20 A. Yeah.

21 Q. And what did he eat?

22 A. Cereal.

23 Q. Okay. And was that right when he got up?

24 A. Yeah.

25 Q. He said he felt bad when he got up, but he still

TESTIMONY OF

K.P.

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1 could eat something?

2 A. Yes.

3 Q. Okay. So he was saying all along that he felt
4 bad. Did he start feeling worse as the day went on?

5 A. Yes.

6 Q. So it got progressively worse as the day went on?

7 A. Yes.

8 Q. Thank you.

9 MS. WINGARD: I don't have any other questions.

10 THE COURT: Anything further?

11 MR. RICHARDSON: No, sir.

12 THE COURT: All right. Thank you. You can return
13 to your seat now.

14 WITNESS K.P. : Okay.

15 THE COURT: May this witness be excused when his
16 family is ready to leave?

17 MR. RICHARDSON: Yes.

18 MS. WINGARD: Yes.

19 THE COURT: All right. Let me ask counsel to
20 approach for just a second, and let me just kind of
21 figure out where we are.

22 (Bench conference held off the record.)

23 THE COURT: All right. Well then call your next
24 witness and we'll just keep plowing through.

25 MS. WINGARD: Well, do you need Debbie for

TESTIMONY OF DEBORAH WILLIAMS

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1 anything? I'm not going to call her so. Debbie's
2 under subpoena from the public defender's office. Can
3 we excuse her?

4 MR. RICHARDSON: No objection.

5 THE COURT: Okay. Thank you, Ms. Fraley. You're
6 excused.

7 All right. You can call your next witness.

8 MR. RICHARDSON: Thank you, Your Honor. The State
9 would call Ms. Deborah Williams.

10 THE COURT: Ma'am, if you would come forward
11 please and place your left hand on the Bible and raise
12 your right.

13 DEBORAH CHRISTINE WILLIAMS,
14 being first duly sworn, testified as follows:

15 THE COURT: Thank you, ma'am. Please have a seat.
16 State your full name.

17 WITNESS WILLIAMS: Deborah Christine Williams.

18 THE COURT: Thank you, ma'am. Yes, sir.

19 MR. RICHARDSON: Your Honor.

20 DIRECT EXAMINATION BY MR. RICHARDSON:

21 Q. Ms. Williams, where do you live now?

22 A. I live at the home of my mom. My father and step-
23 mother.

24 Q. okay. Is that in Olanta?

25 A. Yes. Olanta, South Carolina.

TESTIMONY OF DEBORAH WILLIAMS

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- 1 Q. Okay. Previously, where did you live?
- 2 A. In Florence.
- 3 Q. Okay. Was that on Gilbert Street.
- 4 A. Gilbert---
- 5 Q. Gilbert Drive?
- 6 A. Gilbert Drive.
- 7 Q. Okay. That's in Florence County?
- 8 A. Yes, sir.
- 9 Q. Okay. Is that where this incident took place?
- 10 A. Yes, sir.
- 11 Q. All right. When you lived on Gilbert Drive, where
- 12 were you working at that time?
- 13 A. At the place I'm currently working, which is
- 14 Holiday Inn Express.
- 15 Q. Okay. When you in Gilbert -- on Gilbert Drive
- 16 back in July of last year, who lived in that house
- 17 with you?
- 18 A. Well me and -- me and all four (4) of my kids and
- 19 William. But at the time, they weren't there.
- 20 Q. Who wasn't there?
- 21 A. They were just staying at their grandparents for
- 22 the summer. Summer was out. And they
- 23 (unintelligible). But they would -- That's where they
- 24 were going to be living.
- 25 Q. So you had---

TESTIMONY OF DEBORAH WILLIAMS

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1 A. I just had recently moved in, maybe two (2) months
2 before this incident happened.

3 Q. Okay. So you have four (4) children?

4 A. Um-hm.

5 Q. Okay. Now at the time of this incident, how many
6 of your children are staying in the house with you?

7 A. Just my son, my two (2) sons and Jermaine.

8 Q. Okay. What is Jermaine's relation to you?

9 A. Nothing now. I mean, at the time, he would've
10 been my step-son.

11 Q. Okay. So were you and -- and Willie married?

12 A. No.

13 Q. Okay. So y'all -- y'all are just living together--
14 --

15 A. Planning. We were planning.

16 Q. All right. And your two (2) boys were staying
17 with you?

18 A. Yes. At the time.

19 Q. Child and K.P. ?

20 A. Yeah.

21 Q. All right. And your two (2) daughters were
22 living---

23 A. They were living there too. They all just went --
24 They were at their father's house for the summer. And
25 my daughter was at they grandparents.

TESTIMONY OF DEBORAH WILLIAMS

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1 Q. Okay. So your daughters just so happened not to
2 be there---

3 A. Yeah.

4 Q. ---at the time?

5 A. I -- I actually picked them up that Saturday
6 because my father had family function at his house.
7 And Jermaine was there with us. And that's when I
8 picked them up. But I didn't take them back. I took
9 my daughters back, but I didn't take my -- I wasn't
10 going to take my sons back until that Friday. So I
11 didn't go back to work until that week.

12 Q. Okay. So your daughters -- The Friday this
13 incident happened, your daughters were back in---

14 A. Yeah. They was back in Lake City.

15 Q. ---in Lake City, but your sons were still with
16 you?

17 A. Um-hm.

18 Q. All right. Now inside your -- the home is a -- is
19 a mobile home. Is that right?

20 A. Yes, sir.

21 Q. Okay. Inside that house, who slept in what
22 bedroom?

23 A. Well, we didn't count -- We had -- One bedroom
24 didn't currently have a bed in it---

25 Q. Okay.

TESTIMONY OF DEBORAH WILLIAMS

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- 1 A. ---because I have an account at Farmer's Bureau.
2 I was going to get a bed from there. But at the time,
3 nobody was there but Jermaine so we said it was all
4 right. He could just sleep in the bunk bed. But then
5 when my sons came, they slept in the bed. I guess
6 whenever Jermaine went to bed, he either could sleep
7 on the couch; or he made up a pallet on the floor in
8 the room. Because that where the game was and the TV.
9 Q. All right. So are there three (3) total bedrooms?
10 A. It was three (3).
11 Q. Okay. So one was the master bedroom---
12 A. Uh-huh.
13 Q. ---that's your bedroom?
14 A. Yes.
15 Q. Okay another bedroom was bunk beds?
16 A. Yeah. I had the wrong -- the bed, with the bunk
17 beds.
18 Q. Now whose room was that?
19 A. That was my daughters' room.
20 Q. That was your daughters'?
21 A. Um-hm.
22 Q. With the bunk bed?
23 A. The bed -- They -- My sons had the bed. The bed
24 was too big for its going in. They had a full, no a
25 queen size. Queen was too big. So we just put that

TESTIMONY OF DEBORAH WILLIAMS

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1 away, you know, throw it away. And we would get us
2 another bunk bed set.

3 Q. So the third bedroom, at the time this happened,
4 had no bed in it?

5 A. No.

6 Q. It was kind of a make-shift?

7 A. Yeah. It just had the TV, dresser, that kind of
8 thing.

9 Q. Okay.

10 A. Just waiting for the bed we needed.

11 Q. And that's where the boys stayed?

12 A. That's where they were going to sleep.

13 Q. Right.

14 A. See, we didn't make no official, like -- we was
15 like -- in they bed, when they got ready to come home
16 for school and stuff. We was going to already have a
17 bed to move on.

18 Q. Okay. And with Jermaine staying there, he really
19 would stay on the couch or wherever he could?

20 A. Yeah. Well, see at the time, it was nobody there
21 but him before I went and got my sons. So he slept in
22 the room with the bunk bed. But when my sons came,
23 they slept in the room on the bunk bed. And I was
24 already going to bed by the time he even went to bed.
25 He stayed up playing the game.

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1 Q. Okay. Now July 25th, before that? How long up
2 until that point had Jermaine been living with you in
3 that house?

4 A. He was there with us for, I would say, about two
5 and a half weeks---

6 Q. Okay.

7 A. ---before that happened. I'm not sure, but
8 estimate about two and a half weeks.

9 Q. And how long had you known Jermaine total?

10 A. I haven't really, really, like, knew him, knew
11 him. But he has came and stayed with me one other
12 time in the past, him and his brother Shawn.

13 Q. Okay. So this time when he stayed with you this
14 last summer was the first time he'd actually, quote,
15 unquote, "lived" with you for a period of time?

16 A. Yes. We was making a -- arrangements---

17 Q. Okay.

18 A. ---for him to stay here in South Carolina.

19 Q. Okay. At that point in time, you were working at
20 the Holiday Inn.

21 A. Um-hm.

22 Q. And where was Willie working?

23 A. He wasn't currently working.

24 Q. Okay.

25 A. He was looking for a job.

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1 Q. Okay. So the day that this incident happened,
2 where were you?

3 A. I was at work.

4 Q. What time do you get to work in the mornings?

5 A. I'm not sure, that morning I got to work -- It was
6 well after eight (8). It was before nine (9) because
7 I got a phone call from my sister because I had a aunt
8 that passed in Jersey. So I was late from talking on
9 the phone with her.

10 Q. Okay. So you got to work sometime before nine (9)
11 o'clock?

12 A. Yeah. It was before nine (9).

13 Q. All right. On that day when you were at work,
14 where was Willie?

15 A. He went somewhere with a cousin of his.

16 Q. Okay. And when did he leave the house?

17 A. Early that morning. I don't. I'm not sure what
18 time. I just know that that he came for him early
19 that morning.

20 Q. Okay. So he was gone before you left?

21 A. Yeah. Um-hm.

22 Q. Okay. So that left Jermaine and your two (2) boys
23 in the house?

24 A. Um-hm. And me before I left for work.

25 Q. Okay. Had Jermaine ever kept your boys before?

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1 A. One (1) time that week. We went -- Me and him
2 went to the movie.

3 Q. Okay. Did you feel comfortable having Jermaine
4 watch them?

5 A. At the time, yeah. I ain't going to lie. Yes.
6 Because, I mean, I would never have thought of nothing
7 like this going on.

8 Q. Had he ever given you any indication of---

9 A. No.

10 Q. ---irresponsibility or anything?

11 A. No. He didn't.

12 Q. Okay. Was -- Was he willing to watch them or---

13 A. Yeah.

14 Q. Did he give you a hard time about it?

15 A. No.

16 Q. Okay. The night before the incident happened,---

17 A. Um-hm.

18 Q. ---was everybody home?

19 A. Yes. We -- All of us was at home.

20 Q. Okay. What did y'all do that night, starting from
21 when you got home from work?

22 A. When I got home from work, I started cooking.

23 After I cooked, we looked at movies up until like
24 after two (2) o'clock that morning.

25 Q. Okay. Did Child eat supper that night?

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1 A. Yes. Him and K.P. sat at the table and ate,
2 and Jermaine sat in the living room on the chair
3 looking at TV.

4 Q. Was Child , did he appear sick at all?

5 A. No.

6 Q. Okay. Did he appear sluggish or anything?

7 A. No. Not that I noticed.

8 Q. Okay. He just appeared as he normally was?

9 A. No.

10 Q. Okay. At any time as the night progressed into
11 the early hours of the morning, did his condition
12 change at all?

13 A. No. Because after we -- The last movie we watched
14 was Welcome Home Roscoe. After that went off, I to go
15 down to the grocery mart. So I told them to go ahead
16 and go to bed. And that's what they did.

17 Q. And he was fine when he went to bed?

18 A. He was fine. He was even fine that morning when I
19 peeked in the room at him. He was fine. He was
20 sleeping on the bottom bunk.

21 Q. So he was sleeping in the bunk bed?

22 A. Um-hm. He was on the bottom bunk. He was fine
23 then.

24 Q. Okay. There's been mention made of a bump on his
25 head from the bunk bed. What can you tell the Court.

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1 about that incident?

2 A. When I got home Thursday, I'd say it was almost
3 five (5) when I got home from work.

4 Q. The day before?

5 A. Yeah. And Child always runs up to -- every time
6 I open the door, he runs up. And he ran up to me; he
7 had a bump on his head, right here (pointing to
8 forehead). And I asked him, I said, "Well where did
9 you get that bump from, Child?"

10 Q. Could you say where specifically on his head that
11 bump was?

12 A. Okay. On your left, on the left-hand side---

13 Q. Left-hand side

14 A. ---of his forehead.

15 Q. ---of his forehead.

16 A. Um-hm.

17 Q. Okay.

18 A. And I asked him where did, I said, "Child, where
19 you get that bump from?" And before I could say
20 anything, Jermaine says, "Well we were in there
21 playing to rough, and he hit his head on the bunk
22 bed."

23 Q. This was on Thursday?

24 A. Yeah. So I did the normal things that I would do.

25 I say, "Well, Child, are you all right? Your head

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1 hurting?" He said no, his wasn't hurting. So I
2 watched him because I already know if a child bump his
3 head, don't let him go to sleep. So I watched him.
4 And he was up from five-something when I got home from
5 work, up until after two (2) o'clock in the morning.
6 He was up. And I sent him to bed after we finished
7 watching the movie.

8 Q. And he appeared fine that whole time?

9 A. He was fine. Him and K.P. was in there running
10 around playing.

11 Q. Did the bump get any worse, or did it stay the
12 same?

13 A. It stayed the same.

14 Q. Okay. And you say it was on the left side of his
15 forehead?

16 A. Yeah. He was facing me, it was on the opposite --
17 No, matter of fact, no. Sorry. Right because he was
18 facing me. It was on my left from him.

19 Q. Okay.

20 A. But if we standing, you see what I'm saying? If
21 he standing right on, face -- No, when he facing me,
22 it was on his left from my -- It was on his -- my --
23 my left. That's where the bump was.

24 Q. Okay.

25 A. From my left, looking at him.

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1 Q. Okay. Also we talked some already about the way
2 you disciplined your children. When you typically
3 discipline them, what do you do?

4 A. I tap them on the hand.

5 Q. Okay. What else?

6 A. And I beat them on their bottom.

7 Q. What do you hit them with on the hand?

8 A. A belt.

9 Q. A belt?

10 A. Um-hm. Or any.

11 Q. Okay. Have you ever hit them anywhere on their
12 body?

13 A. No.

14 Q. So at any time on that Thursday before, did you
15 spank your two (2) boys on the hand?

16 A. I spanked them Wednesday night.

17 Q. Okay. Wednesday night.

18 A. Yeah.

19 Q. Okay. For what reason? Do you remember?

20 A. It was running around, acting up, jumping over the
21 chairs and stuff. So I -- I spanked them on they
22 hand. And I told them to go sit down until I finished
23 cooking.

24 Q. Okay. As -- The Friday that the incident
25 happened, what do you remember happening that

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1 afternoon?

2 A. Well, I'm not sure what time it was when I got
3 off. I know it was -- I know it was after five (5)
4 when I got off because we were short of help, stuck at
5 work. When I got home, I didn't see, you know, that
6 nothing happened. When I walked in the door, I
7 normally pick with Jermaine a little bit, you know,
8 just try to have fun.

9 And I was like, "Oh, I see that girl," you know,
10 that kind of thing. And I got a lot out before he
11 say, -- well, what I thought he said when I walk --
12 when I started to walk to the back of the house --
13 because I noticed Child didn't run up to me. And
14 like I say, he always come run up to me every time I
15 walk through the door, no matter what door. He always
16 runs.

17 I noticed he didn't run up to me. So as I start
18 to go to the back to where their rooms were, he said,
19 -- what I thought he said was, "You got to take
20 Child to the hospital." So I started to run to the
21 back. He said, "No. Child not back there." I
22 said, "Well, where is he?" He said, "At the
23 hospital." "He's at the hospital?"

24 I just ran out the door. And we got in the car.
25 And when we got in the car, that's when the next door

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1 neighbor called me. Because my cell phone had died.
2 So I just put it on the charger in the car. I never
3 did check my voice messages. When we got in the car,
4 I just turned to him; and I asked him, I said,
5 "Jermaine, what happened?"

6 First words come out of his mouth was, " K.P.
7 and Child was fighting, and I separated them." I
8 said, "That's it?" "Yeah." And that's all I got out
9 of him since then.

10 Q. Okay. So who all went to the hospital with you?

11 A. Me, Jermaine, and K.P. .

12 Q. Okay. Did -- Did K.P. say anything to you when
13 you got him?

14 A. No. I asked -- I turned to K.P. , and he was in
15 the car, and I asked him, I said, "Did you fight your
16 brother because you know I don't allow y'all fighting?
17 And I told y'all about that. I don't want y'all
18 fighting. Y'all brothers." He said, "No. I wasn't
19 the one fighting Child ." Those were his words.

20 Q. Okay. So you go to the hospital?

21 A. Um-hm.

22 Q. Which hospital was it?

23 A. At first I went to Carolinas because I figured it
24 was closer. But it was McLeod when I got the phone
25 call from the next door neighbor. So I rushed to

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1 McLeod.

2 Q. Okay. So what happened when you got to McLeod?

3 A. Nothing I ever thought I would have seen my son
4 laying there.

5 Q. What -- What kind of condition was he when you saw
6 him?

7 A. I thought he was breathing because, you know, when
8 they're babies you look at they stomach just to make
9 sure it going up and down. And that's what I saw. I
10 saw him -- the stomach going up and down. I asked the
11 doctor, I said, "Oh, okay. So he's breathing. What's
12 wrong?" He said that's not breathing. He's on the
13 respirator. It's a respirator. "Well, what's going
14 on?" "He had mass brain damage."

15 Q. Well when you got to the hospital, had he already
16 had surgery?

17 A. No. I had to sign for it.

18 Q. You had to sign for the surgery?

19 A. Um-hm. They had to rush him.

20 Q. When you saw him, did he have any visible -- Did
21 they have his bandaged or anything?

22 A. No. They just had tubes. They just had him
23 naked. They had tubes going every which way.

24 Q. So you could see his head?

25 A. Yeah.

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1 Q. Could you -- Could you see any injuries, you know,
2 on his head or the rest of his body at that time when
3 you looked?

4 A. To be honest, I wasn't even looking like --
5 looking at it like that. All I could see was my son
6 just laying there, not moving. I've been thinking
7 about this.

8 Q. Okay. It was after that that the sheriff's office
9 came to talk with you?

10 A. Yes.

11 Q. Okay. And was that Investigator Lowder?

12 A. Yes.

13 Q. Okay. And still during this whole time, was it
14 just you, Jermaine, and K.P. ?

15 A. At the hospital.

16 Q. Okay. Let's backtrack a little bit. You talked
17 about Jermaine had -- had been living with you for
18 several weeks at this point. Why was he moving in
19 with -- with the two (2) of you?

20 A. BeCause his mother couldn't handle him.

21 Q. And what makes you say that?

22 A. She---

23 MS. WINGARD: Judge, I think that might be
24 hearsay.

25 WITNESS WILLIAMS: I---

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1 THE COURT: One second, Ma'am.

2 Sir?

3 MR. RICHARDSON: Your Honor, I'm going to try to
4 clarify with this next question what specifically she
5 meant by that.

6 THE COURT: Well the objection is to the hearsay
7 from his -- from the child's mother.

8 MR. RICHARDSON: Right. I -- I think hearsay is
9 allowed in this hearing. Case law that has been cited
10 and pre-filed with the Court.

11 MS. WINGARD: Judge, I would argue to the
12 contrary. As you're aware, under South Carolina Rules
13 of Evidence 11-01, there are specific proceedings that
14 do not have to follow the Rules of Evidence. This is
15 not one of those proceedings listed. And the Rules
16 are very specific about what proceedings there are.

17 THE COURT: I'm -- I'm familiar with the Rules
18 that you are citing. And while this proceeding is not
19 specifically mentioned, a reading of the existing case
20 law and information available concerning waiver
21 hearings leads me to conclude that this is, in
22 essence, a probable cause hearing as it relates to the
23 determination of waiver. It is not ad judicable in
24 nature. And, accordingly, I will allow the hearsay.

25 MS. WINGARD: Judge, I would ask that my objection

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1 continue. But this is something different from a
2 violation of confrontation laws. And although I think
3 it is a violation of confrontation laws, more than
4 that, South Carolina has been very specific -- and
5 there is not a case in South Carolina that addresses
6 this issue -- South Carolina Rules of Evidence are
7 very specific about those sorts of proceedings that
8 are not covered by the Rule..

9 And it specifically says that, "all other civil
10 and criminal trials and proceedings are guided." And
11 so I would note that objection.

12 THE COURT: I will note your objection for the
13 record. The exception is noted. And you are
14 protected as to that issue.

15 BY MR. RICHARDSON:

16 Q. Ms. Williams, you said that Jermaine was staying
17 with you because his mom couldn't handle it. What do
18 you mean by that statement?

19 A. Well, I'm not specific what all trouble he -- he
20 has been getting into, but he has been getting into a
21 lot of trouble and she was constantly calling as far
22 as for him to get his son.

23 Q. Okay.

24 A. So we talked.

25 Q. You and---

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1 A. Me and his father---

2 Q. Okay.

3 A. ---to make the decision to whether he would stay
4 with us. So we made the decision on -- He had to go
5 to court in August.

6 Q. Where?

7 A. In Virginia.

8 Q. Okay.

9 A. And we talked and we said well we see what went on
10 as far as the court in Virginia. And then we'll go
11 from there as far as him staying with us.

12 Q. Did you ever talk with Jermaine's mother directly?

13 A. No. I always talked to his father and his
14 grandmother.

15 Q. All right. So it was your understanding that he
16 was coming because of some problems that he was having
17 in Virginia?

18 A. Yes.

19 Q. Okay. Was he living with his mother up there in
20 Virginia?

21 A. Yes.

22 Q. All right. But this didn't concern you as far as
23 him being in your house with your kids?

24 A. I mean, it concerns me that he could be living in
25 the house around me and my children. So yeah. I have

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1 to be included in that.

2 Q. Were you -- Had you been made aware? Did you
3 think that he had been involved in any kind of violent
4 activities before?

5 A. No.

6 Q. Okay. So any concern in that regard -- You -- You
7 didn't feel uncomfortable as far as him doing anything
8 violent---

9 A. No.

10 Q. ---to the kids?

11 A. I was just felt like -- I just felt like he wasn't
12 getting enough attention with his mother. So with me
13 and his father, I felt like he could get what he
14 wasn't getting there.

15 Q. Okay. What was Jermaine like in the house? What
16 was his personality?

17 A. Like how he acted?

18 Q. Yes.

19 A. That's what you mean? He was the type that wanted
20 to keep to his self. He talked to me on occasion, but
21 not like, you know--. I don't -- He's just the type
22 -- He just was a quiet child that kept to his self.

23 Q. Okay. But did he ever indicate to you that he
24 didn't want to be there?

25 A. He -- He told me that -- How did he say it? Oh,

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1 goodness. I can't remember.

2 Q. That's fine. Ms. Williams, as far as Child 's
3 medical history, had he ever suffered from any kind of
4 brain injury before?

5 A. What do you mean by -- What do you mean by that?

6 Q. Had he ever had any head trauma? Had he ever been
7 -- had a concussion or anything like that that he went
8 to the hospital for?

9 A. He went to the hospital, but not for no head
10 trauma like that.

11 Q. What kind of injuries had he had in the past?

12 A. We wasn't -- I think he was like two (2) -- two
13 (2) years old. I was at one of my best friend's
14 house. And her son took one of the whatnots off the
15 table and threw it. And it hit my son in the head,
16 and it split him open right near his temple. And I
17 rushed him to the hospital then.

18 But she just said that it just cut the meat. It
19 didn't do any damage.

20 Q. Other than that, did he have any other injuries to
21 his head that you took him to the hospital for?

22 A. He was at his godmother's house. And I had just
23 walked through the door. Like I say, he always run up
24 to me. And he ran and tripped and hit this part right
25 here (pointing to head) of his eyebrow on the end of

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1 the table. It had cut through the eyebrow part.

2 Q. Well when -- When did that happen?

3 A. But -- Hm?

4 Q. When did that happen?

5 A. Oh. Whew. Like two (2) years probably before
6 this happened.

7 Q. Okay.

8 A. But it wasn't -- It just that the meat slipped.
9 I took him to the hospital both times, nothing major,
10 just bleeding.

11 Q. Okay. So after you took Jermaine and K.P. to
12 the hospital that day, you said Jermaine made that
13 statement to you in the car about separating them.
14 How did he act the rest of that time when you were
15 together at the hospital and in the car going there?

16 A. Like nothing was happening.

17 Q. Did he say anything else to you---

18 A. No.

19 Q. ---that evening?

20 A. He -- Only thing that he said to me, other than
21 before I went out, they really just tried to make this
22 out-of-the-blue thing. That was the last thing he
23 said. We were sitting in the living room.

24 Q. All right. Ms. Williams, the night y'all were at
25 the hospital with Child , did your house get broken

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1 into?

2 A. Yes.

3 Q. All right. So by the time y'all got back home, of
4 course, nobody was there?

5 A. No.

6 Q. To your knowledge, had anyone been in the house
7 with your sons and Jermaine the whole day while you
8 were gone?

9 A. No.

10 Q. Okay. Did Jermaine or K.P. make any statements
11 to the -- to say that an intruder had been in the
12 house that day?

13 A. No.

14 Q. Okay. Thank you, ma'am. I believe that's all the
15 questions that I have for now. Please answer any
16 questions Ms. Wingard has.

17 THE COURT: Ms. Wingard.

18 CROSS EXAMINATION BY MS. WINGARD:

19 Q. Ms. Williams, I know that you've been in court
20 before, and you understand what my role is. I'm
21 representing Jermaine.

22 A. Um-hm.

23 Q. And so there are questions I need to ask you so we
24 can better understand the situation. Let's start when
25 you got home on that Friday.

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1 A. Um-hm.

2 Q. Did I Understand yoU to say that Jermaine said
3 that Child had hit his head on the bunk bed?

4 A. He didn't say that Friday.

5 Q. Okay. When did he say that?

6 A. Thursday.

7 Q. Okay. All right. Well, now actually, I see that
8 you gave a statement to law enforcement.

9 A. Um-hm.

10 Q. And in this statement, it says that Child said
11 that we were playing in the room; and Child was
12 trying to climb on the bunk bed and hit his head. So
13 didn't K.P. tell you that he and Child were
14 playing and he hit his -- hit his head on the bunk
15 bed?

16 A. No. Jermaine was the one told me that when I got
17 in the hoUse Thursday night.

18 Q. Okay. Well I'm going to show you -- you remember
19 giving a statement to Investigator Lowder, don't you?

20 A. Yeah. I remember.

21 Q. Okay. And, in fact, you have reviewed that
22 statement and made one (1) correction in the
23 statement. BecaUse originally, the typed version said
24 that you really beat your children. Well then you
25 wanted it corrected to say yoU rarely beat your

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1 children. Do you remember that?

2 A. No.

3 Q. You don't remember that?

4 A. No. Because I know how I beat my children.

5 Q. But that's what I'm saying. You remember giving a
6 statement and -- and it first being typed up saying
7 that you really beat---

8 A. Somebody made a mistake---

9 Q. ---your children?

10 A. ---on what I said. But I rarely beat my children.
11 I don't beat my children.

12 Q. That's what I understand. The statement was
13 corrected. But I'm going to show you this part on the
14 second page of the statement, and you're responding to
15 questions by Investigator Lowder.

16 A. Um-hm.

17 Q. And what did you say there (pointing to document)?
18 "I saw that he had a bump on his head."

19 A. Yeah.

20 Q. And then what do you say? Could you read that?

21 A. So, oh, I see. " Child wasn't happy. And

22 K.P. would say we were playing in the room and

23 Child was trying to climb on the bunk bed. And he
24 hit his head."

25 Q. Okay. If you'd continue reading that paragraph.

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1 A. "I told -- I told y'all about playing rough,
2 didn't I? When y'all all want to play, y'all -- y'all
3 need to ask to go outside 'cause it's a lot of room.
4 Y'all all know there's a lot of furniture in there;
5 and you don't need to be running, ripping, and playing
6 and stuff like that through the house." Yeah. I used
7 to tell my children that all the time.

8 Q. But---

9 A. But that's what K.P. told me.

10 Q. Right. And that's what I'm saying. You indicated
11 that Jermaine told you that.

12 A. Because that's what he told me when I first walked
13 in the house before I -- not Friday, Thursday after- -
14 - evening. And I---

15 Q. But you didn't tell law enforcement that Jermaine
16 told you that. You told law enforcement that K.P.
17 told you.

18 A. Maybe it was because of how she asked me the
19 question.

20 Q. Well, she's not asking you a question. You're
21 just talking in a narrative form, are you not?

22 A. Could be, but --.

23 Q. I mean, obviously, this statement was given
24 shortly after this incident happened.

25 A. I didn't go talk to law enforcement until Monday.

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1 Q. Okay. But certainly July 29th is much closer to
2 when this incident happened than today is, obviously.
3 This was four (4) days after. And on that day, you
4 say, " K.P. said we were playing in the room. And
5 Child was trying to climb on the bunk bed; and he
6 hit his head."

7 A. I told her that's what K.P. said. But Jermaine
8 told me Thursday when I got home that they all three
9 (3) of -- all three (3) of them was playing in the
10 room. And Child just bumped his head.

11 Q. But you didn't tell that to law enforcement. Four
12 (4) days after this incident.

13 A. I would have told her what she -- what -- whatever
14 question that asked me, that's what I told her.

15 Q. Were you asked a question? You were talking in
16 narrative form about this---

17 A. Whenever---

18 Q. ---situation.

19 A. Whenever she asked me a question, I just talked
20 until she asked me another question.

21 Q. So you remembered that -- on that day that K.P.
22 was the one that who talked---

23 A. K.P. told me. He told me things. My son told
24 me things. And Jermaine also told me things.

25 Q. But you just forgot to mention to law enforcement

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1 that---

2 A. It was a lot---

3 Q. ---Jermaine said---

4 A. ---it was a lot of stuff going on, and I was
5 concerned about my son laying in that hospital bed.

6 Q. Well now, he's passed away by this time.

7 A. That still don't mean I wasn't thinking about it.

8 Q. But it---

9 A. It was just that Monday. Remember, they took him
10 off the respirator Saturday.

11 Q. I remember. He is a very rambunctious young man,
12 both of your children are, aren't they?

13 A. Um-hm.

14 Q. And you told us about two (2) incidents when he
15 was taken to the emergency room with injuries. But
16 let's see if we can talk with a little more
17 specificity---

18 A. Okay.

19 Q. ---about some of them.

20 A. Okay.

21 Q. All right. Do you recall -- Gosh, he would have
22 been a little thing -- in April of 2004, when he had a
23 bite on his head and he was taken to the emergency
24 room?

25 A. A bite?

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1 Q. Um-hm. He was taken there and said he had blood
2 and puss was noted. Do you remember that?

3 A. No. My memory is vague on that. But that wasn't
4 -- he said a concussion, something to the head.

5 Q. Okay. But I'm asking you---

6 A. Those two (2) incidents---

7 Q. ---I'm asking if you remember---

8 A. No.

9 Q. ---when you had to take him to the emergency room.
10 Let me see. I'll try to refresh your memory. He was
11 one (1) year and six (6) months old. And I'll ask you
12 if you want to review those medical records and see if
13 that refreshes your memory.

14 A. I still don't remember.

15 Q. Okay.

16 A. Other than I know that I took him because this is
17 my name and my address right here. But I don't
18 remember that.

19 Q. Okay. So you don't remember that incident when he
20 was at the hospital. But you acknowledge that there
21 are medical records showing that he was taken to the
22 hospital on the date that I---

23 A. Because those two (2) days, they were serious.

24 Q. Okay.

25 A. He was bleeding and his -- his skin was split.

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1 Q. Okay. But do you note here that he presented with
2 an abrasion to the scalp, that there was swelling on
3 the scalp.

4 A. When?

5 Q. April 27th, 2004, when he was a year and a half
6 old. You don't remember taking him on that occasion?

7 A. Um-um.

8 Q. And you don't recall telling the doctor that you
9 thought he had had a bite of some sort, or it appeared
10 to be a bite?

11 A. I mean, I'm not doubting I didn't take him. I
12 just don't remember specifically.

13 Q. "Complaint: bite to head on Sunday. Blood and
14 puss noted per mom. Unknown whether human or insect
15 bite." That doesn't ring a bell at all?

16 A. I think I do. But that wasn't no cut or nothing
17 like that. He just had some pusses. I think I know
18 what you're talking about. But it wasn't nothing
19 serious to where he fell or he hit his head or
20 anything.

21 Q. So that didn't — That didn't give you much
22 concern at that point?

23 A. No. Because mosquitoes were bad. And my son and
24 them got real sensitive skin when it comes to mosquito
25 bites and stuff.

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1 Q. All right. Now the next time was for pink eye.

2 But that, of course, is -- that's something happens
3 with children. He presented in February of '05 with a
4 laceration to the right face. And that's when you
5 were talking about he had gotten -- I believe you told
6 the ER that a two-year-old threw a glass ornament at
7 him;---

8 A. Um-hm..

9 Q. ---is that right? And you said that you were at a
10 friend's house. What friend's house were you at on
11 that time, on that occasion?

12 A. It's my daughter's cousin.

13 Q. And who -- what---

14 A. In Turbeville. Her name is Tiffany McFadden.

15 Q. Tiffany McFadden---

16 A. Um-hm.

17 Q. ---in Turbeville?

18 A. Yes. It was her son.

19 Q. And he had to have sutures; is that right?

20 A. Stitches.

21 Q. Um-hm. And, of course, obviously, they had to be
22 removed. Now do you remember taking him to the
23 emergency room on February 25th, 2006, with a
24 laceration to the right face just under the right
25 eyebrow?

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1 A. That is where he ran and slipped, and he hit his
2 head on a coffee table.

3 Q. That's right.

4 A. Um-hm.

5 Q. And that's what you told the ER, that he,
6 obviously, -- you told them he was playing?

7 A. No. I didn't.

8 Q. Okay. What was he doing?

9 A. He was running up to me like he normally do. And
10 he tripped and hit his face. He hit his head on the
11 coffee table.

12 Q. All right. And who else was there at that time?

13 A. It was -- his -- Vickie Nero, which is his
14 godmother; her daughters; her mother; his little
15 cousins. There was a lot of people in the house.

16 Q. Okay. And that was clearly just an accident?

17 A. Um-hm.

18 Q. Now do you recall in June of '06 when he went with
19 a swollen left nose? He had contusions and abrasions.

20 And at that time, you told the emergency room that
21 someone hit him in the face with a stick?

22 A. Oh, yeah. Oh, Lord, I forgot about that. Yes.

23 He was outside playing. And the next-door neighbor
24 across the street -- We lived in a housing development

25 -- and they was outside playing. And her son, the

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1 next-door neighbor's son, was swinging a stick and hit
2 him.

3 Q. And who -- who was that? Who hit him?

4 A. I can't remember the little boy's name.

5 Q. Okay. Where were you living at the time?

6 A. In Lake City. In Gren (phonetic) Village Housing,
7 832 Morning Glory Drive.

8 Q. 8---

9 A. 32----

10 Q. ---32---

11 A. ---Morning Glory Drive.

12 Q. All right. And it was the neighbor's child?

13 A. Um-hm.

14 Q. But you have no idea who the neighbor was?

15 A. I cannot remember her. I know her but I just
16 can't remember the son's name.

17 Q. Can you remember the neighbor's name?

18 A. Her name Felicia. But I don't know the last name.

19 Q. Felicia's son--. And then, do you remember in
20 November of '06 that he went to the emergency room?
21 You took him there because you said he fell, and he
22 twisted his foot and ankle and had a left ankle
23 sprain? Do you remember that?

24 A. No.

25 Q. Let me show you that record and see if it

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1 refreshes your memory.

2 A. I mean, if you got a record of where I took him.

3 I just can't remember that, what you talking about

4 right there.

5 Q. (Unintelligible) Lewis, this gentleman I'm talking

6 about. That's when you were living on Brentwood

7 Circle in Lake City?

8 A. Um-hm.

9 Q. Okay. And---

10 A. Are you sure that wasn't me? Because I twisted my

11 ankle.

12 Q. Okay.

13 A. I twisted my ankle, and I had to be out of work

14 for five (5) days.

15 Q. That says "Patient's Name: Minor Child ."

16 A. Okay.

17 Q. So that would have been him, wouldn't it?

18 A. Okay. Yes.

19 Q. Okay. All right. And---

20 A. I mean just when you said that---

21 Q. ---it shows you---

22 A. ---I just remember I---

23 Q. ---Well, I understand.

24 A. ---sprung mine.

25 Q. It shows Minor Child and that -- states

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1 "fell."

2 A. Was outside punting. Yeah.

3 Q. Okay. All right. So when did you then move from
4 Lake City to Florence?

5 A. In July, July, June. June.

6 Q. Of?

7 A. Eight (8). 2008.

8 Q. '08? Let me ask you: Can you recall any other
9 doctors that you took Child to between the time you
10 left Lake City and when you moved to---

11 A. No.

12 Q. So these are all the times that he sustained
13 medical treatment prior to---

14 A. No. Uh-uh.

15 Q. Okay.

16 A. He goes to the doctor.

17 Q. Okay. Who -- What doctor?

18 A. Dr. Neena Singh in Lake City at the McLeod
19 Regional Medical Center. All my children go there.

20 Q. Okay. And did law enforcement look at those
21 records?

22 A. I'm not sure.

23 Q. You don't know. Did you sign a release for that?

24 A. I signed everything that I can get for my
25 children.

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- 1 Q. Other than Dr. -- Now tell me that name again.
- 2 A. Neena Singh.
- 3 Q. Neena Singh?
- 4 A. Um-hm.
- 5 Q. Other than Dr. Neena Singh, has -- had Child had
- 6 any medical treatment?
- 7 A. No. He only go to the doctor when he gets sick
- 8 and his shots.
- 9 Q. Okay. So he didn't have any emergency room visits
- 10 to McLeod up here---
- 11 A. The day everything happened.
- 12 Q. Other than that?
- 13 A. Um-um.
- 14 Q. How about Carolinas?
- 15 A. No.
- 16 Q. So the only time he's ever been to the emergency
- 17 room---
- 18 A. From my knowledge, from me remembering, is the---
- 19 Q. Okay. Well -- Well think about it a minute.
- 20 Because I -- you know, we need -- we need to get this
- 21 information. You cannot recall any time he had any
- 22 other medical emergency or was taken to the---
- 23 A. Yeah. He has asthma. Or he had asthma.
- 24 Q. All right. Other than that, can you think of any-
- 25 --

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1 A. I cannot remember any.

2 Q. Let's talk a little bit about what the situation
3 is -- was in your home. You and Mr. Jerito were
4 living together; is that right?

5 A. Yes.

6 Q. How -- How long had you been living with him?

7 A. We was living together for two and a half (2-1/2)
8 years.

9 Q. And where did you first live together?

10 A. In Lake City.

11 Q. And then you moved up here?

12 A. Um-hm.

13 Q. And when you moved up here, ---

14 A. Um-hm.

15 Q. ---you moved to the Gilbert Drive address?

16 A. Yes.

17 Q. So how long when -- When this accident happened,
18 how long had you been on Gilbert Drive?

19 A. Just for them two (2) months.

20 Q. Just for two (2) months.

21 A. Um-hm.

22 Q. And during that time, you continued to work at the
23 Holiday Inn Express?

24 A. Um-hm.

25 Q. And it's took -- And at that point, were any of

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1 your children with you?

2 A. No.

3 Q. So it was just you and Mr. Jerito?

4 A. Yes. They stayed with my parents and their father
5 'til where I could get everything settled.

6 Q. Okay. So for -- for two (2) months then --. Were
7 they in school in Lake City?

8 A. Yes. This was during the summer time.

9 Q. That's what I was going to ask you. They -- They
10 didn't come to live---

11 A. They were going to tran -- I was going to get all
12 their transcripts and everything from Lake City to
13 Florence. I waited until they got out of school.
14 Then I moved to Florence.

15 Q. Where did your parents live?

16 A. In Olanta, South Carolina.

17 Q. And that's who you're living with now?

18 A. Well I'm living -- My father's deceased. I'm
19 living with my -- my stepmother.

20 Q. Okay. And that is where your two girls were
21 living during---

22 A. They wasn't living with her. They just was
23 visiting.

24 Q. But they had been visiting for two (2) months?

25 A. It's the summer.

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1 Q. I'm -- I'm not saying anything's wrong with it.

2 I'm just trying to understand.

3 A. My oldest daughter, my fourteen-year-old, she's --

4 she's been with my -- she's been going to visit my

5 father since she was a baby. My youngest daughter,

6 she's nine (9). She's always going to visit her

7 father with her grandmother during the summer.

8 Q. So tell me---

9 A. And this was the first summer that they were with

10 their father, sitting over there.

11 Q. Now, tell me your oldest daughter's name.

12 A. Daija Williams.

13 Q. Okay. And we heard reference to Daija's room?

14 A. Um-hm.

15 Q. And so -- But she had never stayed on Gilbert

16 Drive?

17 A. Yeah. They all -- They all stayed at my house,

18 just different times.

19 Q. And where is her father?

20 A. In Patterson, New Jersey. She was born and raised

21 in Patterson, New Jersey.

22 Q. Okay. When did she come down here?

23 A. We've been living down here, she was one (1). I

24 was fifteen (15) when I moved down here with my

25 father.

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1 Q. All right. And then your second daughter is---

2 A. Is from here. The rest of my children are from

3 South Carolina.

4 Q. Okay. And -- And how old is she?

5 A. My daughter, she's nine (9).

6 Q. She's nine (9).

7 A. Um-hm.

8 Q. And -- And who is her dad?

9 A. Sherod Burgess.

10 Q. And then you have -- have the two (2) boys?

11 A. With their father sitting over there.

12 Q. All right. You don't have any children with Mr.

13 Jerito?

14 A. No.

15 Q. That -- The boys have only been in the house with

16 Jermaine for four (4) days; is that right?

17 A. Since Saturday.

18 Q. Since Saturday.

19 A. I had them since Saturday because I was off for a

20 four-day period. So on Saturday, Sunday, Monday, and

21 Tuesday. I go back to work Wednesday.

22 Q. And when was this family gathering that---

23 A. Saturday.

24 Q. And -- And as I recall from your statement, you

25 and Jermaine actually went over there. And there was

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1 some discussion about your stepmom---

2 A. Me, Jermaine, and my two (2) sons. It was aft- --

3 It was before that -- I'm not sure whether it was --

4 No. Matter of fact, it was the day after. It was

5 Sunday. I know the discussion that you're about to

6 talk about.

7 Q. Okay. And there was a discussion about your --

8 your stepmom didn't want the little boys there while

9 she was trying to get ready for the party. Do you

10 remember talking to law enforcement about that?

11 A. No. Oh. Um-um. It wasn't even that. It wasn't

12 even like you're trying to say.

13 Q. Well tell me what it was like.

14 A. The children was supposed to go outside and play

15 while she prepared, cook, and everything. She didn't

16 want no children there so she could prepare. Children

17 get in the way when you're trying to prepare. I was

18 helping. He was old enough. So he was there to do

19 it.

20 Q. Right.

21 A. He went with my father to take off some trash and

22 just stuff like that.

23 Q. And he -- And he actually went with you---

24 A. Um-hm. That was Saturday.

25 Q. ---and was very helpful to you and -- and your

1 father. Is that what you're saying there?

2 A. I would say that.

3 Q. You would say that?

4 A. I mean, he went to take my father some trash --
5 with my father to take trash off.

6 Q. And he -- he generally did what you asked him to
7 do, didn't he?

8 A. Depends on what you mean by ask him what to do.

9 Q. Okay. Well let me -- Let me give you an example.

10 According to your statement, you indicated that all of
11 you were watching movies that night, as you've
12 testified,

13 A. Um-hm.

14 Q. ---and that you don't like to go to bed with dirty
15 dishes. And Jermaine was the one, before people went
16 to bed, who did the dishes that night. Do you recall
17 that?

18 A. Yeah. We asked him to do the dishes.

19 Q. And -- And he did the dishes.

20 A. At his own time, but he did it.

21 Q. Okay. All right. When did you know that Jermaine
22 was going to be responsible for these two (2) little
23 boys when you went to work on Friday?

24 A. He knew that Thursday.

25 Q. How did he know that?

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1 A. Because he knew his father was leaving. So I told
2 him that him and K.P. and Child was going to be
3 there.

4 Q. You did -- You did not tell -- According to the
5 statements, he didn't know his father was leaving
6 until---

7 A. I don't know why.

8 Q. ---the next morning.

9 A. Not to my statement.

10 Q. Okay. So let -- Let me understand what you're
11 saying. You're saying now that on Thursday night at
12 what time did you---

13 A. We all went to bed after two (2) o'clock---

14 Q. Okay.

15 A. ---that morning.

16 Q. That would be Friday morning?

17 A. Uh-huh.

18 Q. So I'm -- I'm -- What I'm asking you is when did
19 you have a discussion with him about keeping the boys?

20 A. Earlier that Thursday.

21 Q. That's what I asked you. What time?

22 A. I don't know the time frame. I just know I talked
23 to him.

24 Q. And -- And what did you talk to him about?

25 A. He -- He can watch. He can watch K.P. and

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1 Child while I go to work Friday until I get home.

2 Q. Did you leave your cell phone for him to have in
3 case there was any emergency?

4 A. No.

5 Q. So he had no way to call anybody or anything,
6 nothing in the home?

7 A. Not in the home, but he had a way because he went
8 to the next-door neighbor house and called somebody.

9 Q. That's what I'm -- But that was something he had
10 to figure out for himself. I mean, there -- there was
11 no landline, no cell phone or anything?

12 A. No. I had my cell phone on me.

13 Q. And -- And you were going to work?

14 A. Um-hm.

15 Q. Did you give him any sort of emergency contact
16 information?

17 A. My phone number because he knows my number.

18 Q. But now you told us that your cell phone wasn't
19 working.

20 A. It turned off. But how I got the message
21 afterwards when I listened to my voice mail, the next-
22 door neighbor was on my phone. He didn't call me. He
23 could have called me after he called the ambulance,
24 but he didn't. He could've left a message like the
25 woman did, but he didn't.

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1 Q. How about food in the house? What kind of food
2 was left in the house?

3 A. Anything from sandwich meats to frozen stuff.

4 Q. Did you have any discussion with him about what
5 type of -- of lunch to fix, or any kind of schedule
6 for the boys to be on, or anything of that nature?

7 A. No. They just fix. They get up in the morning.
8 They had cereal and milk. They had sandwich meat,
9 bread, cheese. And then he cooked half of the day.

10 Q. What do you mean he cooked half of the day?

11 A. He went in there and got French fries. He would
12 go in there and get chicken and stuff. And I would be
13 at home and he would go in there cooking.

14 Q. Okay. So you're saying that you watched him cook.
15 You're not saying on this day he cooked. You're just
16 saying that he has.

17 A. I don't know if he cooked. I was at work. But
18 I've saw him cook before. Even when I wasn't near
19 him, he cooked. He say he can cook because he cooked
20 at home.

21 Q. Did he -- Did he then cook for the family on
22 occasion?

23 A. No. I always cook for the family.

24 Q. You always cooked?

25 A. I always did the cooking.

1 Q. But you would let him go in the kitchen if he
2 wanted to cook something for himself?

3 A. If he hungry, he can go in there and cook him
4 something to eat. He's fifteen (15).

5 Q. You didn't feel like you had to take care of him.
6 You felt like he was -- could pretty much take care of
7 himself?

8 A. No. He's fifteen (15). I got a -- I got a
9 daughter that's about to be fourteen (14). She can't
10 fully take care of herself.

11 Q. I'm sorry?

12 A. She can't fully take care of herself. She can go
13 in there and do the normal, fix a sandwich or
14 something. But she can't take care of herself.

15 Q. Okay. But I -- I'm still not sure what you're
16 saying. Do you think Jermaine can take care of
17 himself?

18 A. It depends on what you mean by take care of
19 himself.

20 Q. Fix meals, do things of that nature.

21 A. Yeah. He's fifteen (15).

22 Q. So you -- you draw a big distinction between
23 fourteen (14) and fifteen (15)?

24 A. No. I'm just saying. What you mean by cooking
25 food? If he hungry, he can go in there and fix him

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1 something to eat.

2 Q. But you -- you never had any discussion with him
3 about expectations for the boys and what he needed to
4 do for the boys?

5 A. He know he be -- he know when they got up, all
6 three (3) of them, he fix them something to eat --
7 breakfast, lunch, until I get home from work. I work
8 from eight (8) to four (4). So what happened that
9 day, my schedule ran over a little bit.

10 Q. Okay. So -- But you didn't have a discussion with
11 him? You just thought that he would know this?

12 A. About fixing them something to eat?

13 Q. Um-hm.

14 A. Yeah.

15 Q. Were you going to compensate him in any way for---

16 A. That Friday?

17 Q. Yes.

18 A. Like pay him?

19 Q. Um-hm.

20 A. No.

21 Q. So you didn't have any discussion about that at
22 all?

23 A. About paying him Friday? No.

24 Q. Let me ask you now, when Mr. Jerito left, what --
25 what time did he leave?

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1 A. I wasn't sure because I went straight to bed.

2 Q. All right. And where did you think he was going?

3 A. All I know is he was going with his cousin

4 driving. Where he was, I don't know.

5 Q. Did you -- Did you register any concern with him

6 about taking off and -- and leaving Jermaine?

7 A. No.

8 Q. So you didn't say, "I'm not sure it's a good

9 idea," or anything like that. You just -- He said he

10 was going and you said fine?

11 A. No. He would watch my children all the time when

12 I left to work and stuff. I didn't -- I mean, I

13 didn't see no -- I didn't see no problem.

14 Q. He wasn't working, so he was home?

15 A. Yeah.

16 Q. You had to go to work. He knew you had to go to

17 work?

18 A. Uh-huh.

19 Q. But you didn't -- You had absolutely no

20 reservations about---

21 A. I didn't have a -- I didn't have a problem.

22 Q. You didn't have any reservations at all?

23 A. I didn't have no problem.

24 Q. There was nothing in the -- that was three (3)

25 weeks that Jermaine had been staying with you, that

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1 gave you any concern at all---

2 A. No. Because that -- Them four (4) days from
3 Saturday up until Friday was the first time something
4 big that my kids had been around him.

5 Q. And see that's what I'm asking you. In the time
6 that Jermaine was there, either with your children or-
7 --

8 A. I didn't see nothing.

9 Q. You saw absolutely nothing to give you any
10 concern---

11 A. No.

12 Q. ---at all?

13 A. Concern about what?

14 Q. Leaving your children with him.

15 A. No. He come -- He came off as completely fine to
16 me. I mean, I didn't see nothing.

17 MS. WINGARD: Indulge me a moment?

18 THE COURT: Yes, ma'am.

19 BY MS. WINGARD:

20 Q. Let's talk about discipline. You -- You readily
21 admit that you got out a belt on Wednesday. Is that
22 right?

23 A. Um-hm.

24 Q. And so, obviously, both of your boys saw you with
25 the belt?

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- 1 A. Um-hm.
- 2 Q. Now you were saying you used it. How?
- 3 A. on they hands.
- 4 Q. And how -- how did you---
- 5 A. Hold out your hand.
- 6 Q. Okay.
- 7 A. Same thing like that.
- 8 Q. All right. Did you -- Did you ever beat -- ever
- 9 beat either one of the boys anywhere other than their
- 10 hand?
- 11 A. No.
- 12 Q. Never?
- 13 A. No.
- 14 Q. Did you -- Tell me about this mirror. Do you know
- 15 what K.P. is talking about breaking your mirror?
- 16 A. No.
- 17 Q. So how about any glass---
- 18 A. No.
- 19 Q. ---like a picture or anything---
- 20 A. I didn't have nothing like that in my house.
- 21 Q. Okay. So you -- If he talks about getting in
- 22 trouble for breaking a mirror, you have no idea what
- 23 he's talking about?
- 24 A. No. I -- The only mirrors we had in the house was
- 25 that mirror in the bathroom.

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1 Q. And you have never fussed at him or disciplined
2 him for breaking a mirror?

3 A. Not that I know of.

4 Q. Or anything---

5 A. I -- I fuss at him.

6 Q. For breaking a mirror?

7 A. No.

8 Q. Okay. That's what I'm trying to focus on. You
9 don't of anything about a mirror incident?

10 A. No.

11 Q. Have you ever fussed at him for horse-playing and
12 rough-housing and that kind of thing?

13 A. I fuss at him for running through the house
14 because I don't want him to fall and get hurt.

15 Q. Okay. All right. And so that would be something
16 that would concern K.P. if he and Child had been
17 doing that on the day that Child got injured. That
18 would be something that would concern him because he'd
19 been disciplined in the past for that?

20 A. No. It wouldn't concern him because he would've
21 said it. If -- Whatever occurred on Friday, if
22 anything happened as far as him acting up or Child
23 acting up, he would've said it. My children are very
24 outspoken.

25 Q. So if he said that he was concerned that you were

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1 going to punish him---

2 A. He wasn't referring to that day.

3 Q. What do you think he was referring to?

4 A. I don't know. He wasn't referring to that day.

5 Q. But how do you know that?

6 A. How I know that?

7 Q. I mean, are what you're saying is that if

8 something had happened, if K.P. had known

9 something, he would have been forthright and tell it?

10 That's what you're saying?

11 A. Not if he was scared.

12 Q. Well let's -- But he said he was scared of you.

13 A. Not of me. He ain't did nothing that day.

14 Q. Well, but did -- Do you acknowledge that he's said

15 he was afraid of you?

16 A. My son is not afraid of me.

17 Q. So you're saying that he wouldn't have said that?

18 A. No. My son is not afraid of me.

19 Q. Are you saying that if he said that, he wouldn't

20 be telling the truth?

21 A. No. He'd be telling the truth, but, you know --.

22 Q. But you're saying he's not afraid of you?

23 A. No. He just like might be afraid of a spanking,

24 like all children are just afraid of spankings. But

25 as far as that day concerns, he had nothing to be

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1 scared about except for if he's scared of Jermaine.

2 Q. Who besides you gave K.P. a spanking?

3 A. Just me. I just pretty much would. Nobody else.

4 Q. You're the only person who disciplines him?

5 A. Um-hm. All four (4) of my children.

6 MS. WINGARD: I don't have any further questions.

7 THE COURT: Any re-direct?

8 MR. RICHARDSON: Just a little, Your Honor.

9 RE-DIRECT EXAMINATION BY MR. RICHARDSON:

10 Q. Ms. Williams?

11 A. Yes.

12 Q. You gave a statement to the police a couple of
13 days after your child died and before his funeral;
14 right?

15 A. Yeah.

16 Q. And you had four (4) kids; correct?

17 A. Yes.

18 Q. Was Child any more fragile or get injured more
19 often than any of the rest of them?

20 A. Yeah. I would say that. Yeah.

21 Q. Did you -- Have you taken your other children to
22 the hospital before to see a doctor before for---

23 A. Yeah.

24 Q. ---anything?

25 A. Um-hm.

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1 Q. Okay.

2 MR. RICHARDSON: That's all I have, Your Honor.

3 RECROSS EXAMINATION BY MS. WINGARD:

4 Q. Is it a fair statement to say that Child was
5 your most rambunctious of all your children, as you
6 indicated to law enforcement?

7 A. Can you be more specific?

8 Q. Is he the one who was always running and falling
9 and---

10 A. No.

11 Q. ---getting in trouble?

12 A. My daughter. I don't know about getting in
13 trouble. But my daughter is just as rough as my
14 youngest son. My nine-year-old is just as rough as
15 Child .

16 Q. But you would -- you would describe Child as he
17 was a rough -- he was a rough child; is that correct?

18 A. No.

19 Q. And you didn't tell law enforcement that he was,
20 that he was very rambunctious and played a lot?

21 A. He played a lot. But I wouldn't say he was rough.

22 Q. So if you told law enforcement that he played a
23 lot and was, in effect, a handful, that would have
24 been the truth?

25 A. What do you mean by a handful?

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1 Q. That he was -- was difficult to manage.

2 A. No. None of my children was difficult to manage.

3 I mean, he just played.

4 MS. WINGARD: Thank you.

5 THE COURT: I have no additional questions for
6 you, ma'am. You can return to your seat.

7 All right. Well I'm anticipating that our
8 pathologist is going to be arriving any time now.

9 MR. JEPERTINGER: She's here, Your Honor.

10 THE COURT: She's here. All right. I'll give you
11 a few minutes maybe to talk with the pathologist and
12 have a look at the exhibits. And so we're going to
13 break until 2:30. And this is an opportunity for you
14 to grab a quick bite to eat. Then we'll start back at
15 2:30.

16 (Court recessed.)

17 (Court reconvened; 2:49 p.m.)

18 Deputy: Order in the court. All rise.

19 THE COURT: Thank you. Please be seated.

20 Yes, sir?

21 MR. RICHARDSON: Your Honor, if it please the
22 Court? We have a matter to put on the record before
23 we call our next witness. We have items marked as
24 State's Exhibits number 3 through 13 and have been
25 agreed upon stipulation to be placed into evidence for

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1 the purpose of this hearing only.

2 MS. WINGARD: Judge, let me say that some of those
3 pictures are highly prejudicial, highly inflammatory.
4 Of course, I am cognizant that -- that there is no
5 jury involved. I don't mind the use of them. I think
6 it -- it will be helpful for the doctor to explain
7 some things. But I do not want to suggest that we
8 think they would be proper if this ends up before a
9 jury.

10 THE COURT: Any -- Any matters that are admitted
11 at this hearing -- I want to be clear on this, any
12 matters admitting -- admitted at this hearing, whether
13 it be exhibits or testimony, I want to be clear that
14 in no way it shall -- the defendant be bound by this
15 Court's ruling in any way, shape, or form. There are
16 evidentiary issues, which I believe would be treated
17 differently in an adjudicatory hearing than would be
18 treated in this hearing.

19 And so, clearly, there are matters that I am
20 letting in that I would in no way let in in an
21 adjudicatory hearing in Juvenile Court. And,
22 certainly, General Sessions would deal with it in the
23 same fashion. The exception is noted.

24 MS. WINGARD: All right. Thanks.

25 THE COURT: And you said 3 through 13; what about

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1 1 and 2?

2 MR. RICHARDSON: Your Honor, 1 and 2 were -- are
3 marked as diagrams, but the stickers were removed
4 because we just wanted to use them for demonstrative
5 purposes only. And the others are marked 3 through
6 13.

7 MR. JEPERTINGER: 1 and 2 are being withdrawn.

8 MR. RICHARDSON: 1 and 2 are being withdrawn.

9 THE COURT: Okay. And 3 through 13 are all
10 photos?

11 MR. RICHARDSON: Yes, sir.

12 THE COURT: Okay.

13 ***STATE EXHIBITS 1-2 MARKED***

14 ***STATE EXHIBITS 3-13 ENTERED***

15 THE COURT: All right. Are we ready to proceed?

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: All right. You may call your next
18 witness.

19 MR. RICHARDSON: Thank you, Your Honor. The State
20 would call Dr. Erin Presnell.

21 DR. SUSAN ERIN PRESNELL, being
22 first duly sworn, testified as follows:

23 THE COURT: Thank you, ma'am. Please have a seat.
24 And if you would state your full name and occupation.

25 WITNESS PRESNELL: My name is Susan Erin Presnell.

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1 And I'm a forensic pathologist in Charleston at MUSC.

2 THE COURT: Thank you, ma'am.

3 Yes, sir?

4 MR. RICHARDSON: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. RICHARDSON:

6 Q. Dr. Presnell, you said you worked at MUSC as a
7 forensic pathologist. What is a forensic pathologist?

8 A. Well, forensic pathologists -- actually, more
9 people are getting familiar with what a forensic
10 pathologist is. Forensic pathology is actually a sub-
11 specialty of the raw field of pathology. Pathology is
12 the study of disease. So anytime that a patient goes
13 to their physician and, say, gets a scan biopsy or,
14 for women, a
15 pap smear, or they go to a surgeon and have some type
16 of surgery and the tissues removed, that tissue goes
17 to the pathologist. These are surgical pathologists.
18 And they look at the tissue and diagnose disease.

19 Forensic pathologists go through that training,
20 but also sub-specialize in -- in the forensic area
21 where we're not just looking at a piece of tissue or,
22 you know, a portion of an organ that's removed. We're
23 looking at a whole entire person that's passed on.
24 And we're not just diagnosing -- We are looking for
25 disease processes, but not just diseases, also traumas

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1 and interpreting those traumas.

2 And, ultimately, -- Well that process that we're
3 doing is -- is called an autopsy. And, ultimately,
4 we're coming up with the cause and manner of death.

5 Q. Dr. Presnell, what kind of education and training
6 do you have to have to -- to do this work?

7 A. Well a forensic pathologist is an M.D., a medical
8 doctor. So you go through your four (4) years of
9 college, which I did at Clemson in micro biology. And
10 then four (4) years of medical school. After the four
11 (4) years of medical school, you receive your M.D.
12 And at that point, you take your specialty, whether
13 it's medicine or pediatrics or surgery.

14 I chose pathology, which is five (5) years
15 training beyond that. And then I did an additional
16 year sub-specialty training in -- in forensics. I've
17 taken the -- the national boards for general
18 pathology, which is anatomic and clinical pathology.
19 I'm also board certified in -- in forensic pathology
20 as well.

21 Q. So you've done approximately fourteen (14) years
22 past high school?

23 A. Right. Yes.

24 Q. Okay. Have you ever testified in court before as
25 an expert witness?

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1 A. Yes. I have.

2 Q. And were you qualified as an expert in forensic
3 pathology?

4 A. Yes.

5 Q. Okay. Approximately how many autopsies have you
6 conducted in your time working at MUSC?

7 A. I would -- I'd have to do an estimate, but I
8 imagine around two thousand (2000).

9 Q. Okay. And based on a number of those, you've
10 testified in a number of trials. Is that correct?

11 A. Yes. Just yesterday I was estimating between
12 seventy (70) and eighty (80) times test- -- an expert
13 testimony.

14 Q. Okay.

15 MR. RICHARDSON: Your Honor, at this time, I'd
16 move to have this witness qualified as an expert in
17 the field of forensic pathology.

18 THE COURT: Any objection?

19 MS. WINGARD: Without objection.

20 THE COURT: Without objection, she is so
21 qualified.

22 MR. RICHARDSON: Thanks, Your Honor.

23 BY MR. RICHARDSON:

24 Q. Dr. Presnell, how did you first become involved in
25 this case?

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1 A. I work with the coroner of the State, and so the
2 coroner of Florence County, Mr. Bubba Matthews,
3 responded to the notification of this death and
4 referred the case to us at MUSC. So transported the
5 person -- have the person transported to MUSC for our
6 exam, the out-postmortem examination.

7 Q. Okay. And do you have what -- what date you
8 received the body?

9 A. Well we -- we preformed an autopsy on the 27th of
10 July.

11 Q. Okay. When you receive a body via the coroner's
12 office, do you receive the medical report of the
13 attending physicians along with it, or how do you know
14 what you're doing as far injuries and whatnot?

15 A. Well as far as trying to get the case history on
16 what is suspected to have been going on, we get
17 information from the coroner. In this case, we also
18 had law enforcement in attendance of the autopsy. And
19 we also did receive medical records from -- from
20 McLeod Hospital all for our review, or my review.

21 Q. Okay. When -- When you began the autopsy or as
22 you progress through it, what's your protocol? What
23 do you look for?

24 A. Well all forensic autopsies are complete
25 autopsies. So we do pictures. We do diagrams. We

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1 document all the findings externally. And then we
2 also look at all the -- all the organs internally.
3 And this also includes the brain.

4 We will often times take samples of the tissue to
5 send to the histology lab. They make slides of them,
6 and they come back to us. And we look under the
7 microscope again to -- and attempt to discern more
8 information from them. And that's what we did in this
9 case as well.

10 Q. Okay. When you conduct an autopsy, after it's
11 completed you generate a report to send out to law
12 enforcement and the coroner and what-have-you; is that
13 right?

14 A. We send it to the coroner. Yes.

15 Q. Send it to the coroner. In every autopsy, do you
16 make a finding of a cause of death?

17 A. Occasionally there is an undetermined cause of
18 death, but more often than not, yes.

19 Q. In this particular case, what was that finding?

20 A. The -- On the receipt named Minor Child , his
21 cause of death was considered blunt trauma to the head
22 sustained in a beating. And we also contributed other
23 -- other factors that would not be the ultimate cause
24 of death, but we felt contributed, which was blunt
25 trauma to the chest, the arms, the buttocks, and the -

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1 - the legs.

2 Q. Okay. At this time, I'm going to show you a
3 couple of items here. This document I'm showing you
4 now, do you recognize what that is?

5 A. Yes. This is a copy of the diagram that I made at
6 the time of autopsy, and I've also used a highlighter
7 to show where the -- some of the injuries were.

8 Q. Okay. Now just for the record purposes, this had
9 formally been marked as an Exhibit number 1, but was
10 withdrawn. This is for demonstrative purposes only.

11 And, Dr. Presnell, I'm going to show you this one.
12 If you could identify what that is?

13 A. This is another diagram just because of the number
14 of findings on the -- this event, we used two (2)
15 diagrams to not overlap too much. But it shows some
16 of the medical therapy, but also some additional
17 injuries.

18 Q. Okay. Now do the injuries -- This document that
19 you produced, these two (2) documents, are they just
20 kind of summaries or -- or diagrams on paper of what
21 you saw on the body and took photographs of?

22 A. Yes. This is what I would use to dictate the
23 autopsy report from.

24 Q. Okay. I'd like to show you at this time what's
25 been marked Exhibit number 3 -- State's Exhibit number

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1 3 for identification. Could you tell what that
2 photograph is?

3 A. There's two (2) photographs on the page. And one
4 is a photograph of the -- of Child when he -- as he
5 came to us to autopsy, the way he appeared at autopsy.
6 And that -- the other picture is a picture
7 demonstrating some of the bruising on the -- the
8 chest, abdomen area.

9 MR. RICHARDSON: I apologize, Your Honor, I said
10 for identification. But this picture is already in
11 evidence.

12 THE COURT: Yes, sir.

13 BY MR. RICHARDSON:

14 Q. Could you explain or show the Judge with these
15 photographs, in conjunction with your diagrams, what's
16 going on in these pictures as far as injuries?

17 A. Okay. What I think would be easiest is if I went
18 over the diagrams first, and then we can look at some
19 of the pictures that -- that show some of the bruises.
20 He's pretty dark skinned. So the diagrams, I think,
21 kind show the overall pattern better.

22 And we'll start with the -- the chest, abdomen,
23 and extremities first. Then we'll do head last.

24 THE COURT: Counsel, do y'all want to come up here
25 behind her so y'all can see what she's showing me.

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1 And if you'll just--. Y'all can step back to the --
2 behind her there so you can fairly see what she's
3 showing there.

4 WITNESS PRESNELL: Okay. In -- In this diagram,
5 I've highlighted all the bruises or contusions, which
6 are a result of blunt trauma, in blue here. And,
7 again, I'll just kind of go over some of the
8 significant things. There are some injuries that are
9 patterned, and I'll go over what that means. There
10 are some injuries that are not patterned. Again, all
11 bruises.

12 The red ones, the red marks are areas of abrasions
13 or scratches, those being non-specific.

14 But first on the chest, we have this, what we call
15 a tram-tracking pattern. See that linear nature of
16 the bruise there, extends all the way from the left
17 abdomen here, across the chest and the upper chest,
18 onto the arm. There's -- The blue marks are the areas
19 of bru- -- of bruising with the light areas in between
20 being blanched.

21 This is classic for a whip-type injury, something
22 long, typically straight: maybe a belt, maybe a whip.
23 That causes -- When it strikes the skin, the belt or
24 the -- the whip actually causes compression in the
25 vessels and causes the red blood cells to squish out

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1 either side of it. So that the hemorrhage is actually
2 on either side of the item that makes the mark. It
3 creates kind of an outline pattern of the, something
4 we call tram tracking.

5 There's additional contusions or bruising
6 associated with those marks around, kind of around the
7 area.

8 THE COURT: As you talk about each one of these
9 marks, do you have any idea of how old the marks were
10 at the time of the examination?

11 WITNESS PRESNELL: We take some samples of some of
12 the -- the cutaneous injuries and other contusions.
13 And the samples that we, actually, that we took of the
14 -- of all the injuries that we sampled, they all
15 showed an acute inflammatory response, meaning that --
16 it's a neutrophil, which is a type of inflammatory
17 cell that usually shows up with six (6) to twenty-four
18 (24) hours.

19 Then as the injury or as healing progresses, we
20 would expect to see a different type of inflammatory
21 cell come in. He still was at the early stage.

22 When -- The way he was found on the 25th, he was --
23 he survived in the hospital and was pronounced dead,
24 I'd say, approximately twenty-four (24) hours later,
25 about a day later. So we do have some intervening

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1 time between, that we know he didn't sustain the
2 injury, from when he was found and the time in the
3 hospital.

4 They're all approximately the same time. However,
5 could this happen in the morning and a different one
6 happen, you know, at early afternoon? Yes. I can't
7 tell that anatomically. They all just -- They appear
8 throughout acute injuries, most likely right around
9 the time of the injury.

10 THE COURT: Would there be any change in what you
11 would expect to see as a result of the death of the
12 child? In -- In other words, would there be a change
13 in the tissue or whatever that would occur after the
14 death of the child, that if you had taken a sample
15 while the child was still alive?

16 WITNESS PRESNELL: No. There wouldn't be any
17 change. When the death -- When the death occurs, --
18 Well, let me back up. He was pronounced dead and at
19 some time later he was taken off life support. As
20 long as he was on life support, the healing mechanism
21 would still continue. So again, we're seeing an acute
22 inflammatory response. You see them initially around
23 six (6) hours. And this is in a healthy too, not one
24 that might be critically ill.

25 So just general, vague -- vague generalizations.

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1 But again, the neutrophils are in the six (6) to
2 twenty-four (24) hour period, is when you see them,
3 consistent with him being found the afternoon of the -
4 - of the 25th, happening sometime in that time period.

5 THE COURT: Okay. Thank you.

6 WITNESS PRESNELL: Uh-huh. Again there's the
7 other area also, these other blue areas are also
8 contusions. There's -- We see some across the top of
9 the chest, one under the nipple there. There's one
10 along the hip area here. Reflection of the skin
11 actually shows the little cavity, kind of avulsed
12 area, what we would call an avulsion, where the skin's
13 kind of pulled away from the underlying soft tissue.

14 We have some non-specific contusions across the --
15 the front of the thighs. This one right down here is
16 kind of an inverted Y-shape, so it did have a little
17 bit of a pattern to it, not quite as informative as --
18 as this mark here.

19 On the back, again you have some non-pattern, or a
20 non-pattern contusion there. But we have another
21 additional parallel, linear bruise that appears again
22 to be a tram track appearance that is consistent with
23 a whip-like injury.

24 We see several bruises on the backs of the arms.
25 The most significant soft tissue injury is along the

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1 buttocks and the -- the legs, the thigh area. Here on
2 the right side of the body, we have a fourteen (14)
3 inch area, pretty much confluent all the way from the
4 buttock, all the way down to the lower thigh there.

5 So the fort- -- area of the hemorrhage that
6 extends all the way through the -- the body tissue.
7 And I think this is one of the photographs that we
8 have, just showing you the extent of the severity of
9 it, down to the muscle, and also at the area of
10 avulsion, where again the skin has been -- and the
11 underlying soft tissues have been separated.

12 And again on this area of the thigh area, across
13 this buttock, plus a couple on the back of the thigh
14 and -- and the lower leg. Those are the primary
15 bruising patterns for his chest and extremities,
16 chest, abdomen, extremities, and back.

17 **THE COURT:** And again, all of those would have
18 occurred within twenty-four (24) hours of death. Is
19 that what you're indicating?

20 **WITNESS PRESNELL:** It -- Twenty-four (24) hours is
21 really a generalization. Remember he's -- What is the
22 definition of death? He's declared dead on the
23 afternoon of the 26th. But---

24 **THE COURT:** But the time -- Maybe I should say
25 twenty-four (24) hours of life support being removed.

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1 WITNESS PRESNELL: It's consistent with that. It
2 -- I guess the way -- it could support a number of
3 scenarios. And the one scenario that came to my mind
4 initially is when he was found. When he was found in
5 the afternoon of the 24th, excuse me, the 25th, the
6 afternoon of the 25th. These injuries are consistent
7 with that time period.

8 So looking at some of the -- the photographs that
9 illustrate the -- these injuries, he's relatively
10 dark-skinned so sometimes it's a little difficult to
11 appreciate it. So we just showed the ones that were
12 just big enough to show and the ones that -- that
13 actually had a pattern to it. And then also the back
14 posterior part where we cut down into it so you can
15 see -- see the extent of it.

16 This is---

17 MR. JEPERTINGER: Just -- Just tell her the
18 exhibit number.

19 THE COURT: Okay.

20 WITNESS PRESNELL: Exhibit number 3.

21 THE COURT: We're looking at Exhibit 3.

22 WITNESS PRESNELL: And this picture is just how he
23 arrived to us. This photograph here illustrates that
24 tram track appearance across the chest and abdomen and
25 extends up onto the arm showing that pattern of

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1 injury. And again the -- secondary to the skin
2 pigmentation, it's kind of difficult to make out the
3 other marks in that area.

4 BY MR. RICHARDSON:

5 Q. Dr. Presnell, this is Exhibit number 4.

6 A. Okay. Exhibit 4 is the back of the buttocks and
7 the right leg. This kind of purple shade here is not
8 necessarily a contusion. It's just the light
9 reflection off of -- of his buttock. But it's just
10 showing some minor abrasions, which actually we didn't
11 discuss.

12 I have a separate diagram demonstrating some minor
13 abrasions that we've seen -- actually, it is on this
14 diagram. But the red marks are some minor abrasions
15 that don't really have a pattern to it. Did this --
16 This doesn't really show too much. This area right
17 here, which is on the back of this leg, has a
18 suggestion of a tram track pattern to it with a little
19 branch in between.

20 THE COURT: And you're pointing at what is the
21 back of the right leg?

22 WITNESS PRESNELL: Yes, sir.

23 THE COURT: Okay.

24 BY MR. RICHARDSON:

25 Q. Dr. Presnell, Exhibit number 5.

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1 A. Exhibit 5 is a picture of the back. Again, a
2 little bit difficult to make out the bruising because
3 of the skin color. But close up on the back, we can
4 see that tram track appearance on the back, the left
5 back, the left lower back. That tram track appearance
6 suggestion of a whip-type injury.

7 Q. Exhibit number 6.

8 A. Exhibit 6, we haven't talked about the head
9 injuries yet, so I'll just wait.

10 Q. Exhibit 7.

11 A. Exhibit 7 is a close-up, again, of the belly,
12 showing the tram tracking bruising and also kind of
13 shape there, confluent bruising that kind of extends
14 from it. That's not to say, not necessarily patterns.

15 THE COURT: Now, when you talk, -- for the record,
16 when you're talking about the injury to -- the tram
17 track injury across his chest, it actually begins
18 below what I would call his chest, kind of about mid-
19 abdomen?

20 WITNESS PRESNELL: It extends from the left
21 abdomen, across through the chest, to the right upper
22 chest and onto the right upper arm.

23 BY MR. RICHARDSON:

24 Q. Let's skip to Exhibit 10.

25 A. This is a more disturbing picture. One of the

1 things that we do when we're looking for injuries is
2 reflect out the skin, is to make cut-downs in it. And
3 what we're demonstrating is areas of hemorrhage. We
4 make an incision, a postmortem incision, like right
5 here. This is what we're looking at. It's his back,
6 his buttocks, and his thighs.

7 We make a postmortem incision. The heart's no
8 longer beating, so you don't get a hemorrhage into the
9 soft tissues. So that's what it looks like, that
10 yellow tissue there. However, if they were injured
11 prior to death, then you have associated bleeding with
12 that from the bruising.

13 And this is demonstrating the extent, just the
14 confluent nature of -- of the (unintelligible) blood
15 here. And you can see where it stops, right below on
16 the legs here. There's none on this right leg. We
17 have excessive hemorrhage; it's down into the muscle
18 along this -- his body, the soft tissue on his
19 buttocks and thighs.

20 Q. Okay. Dr. Presnell, briefly while you're going
21 over that, what can you determine by the -- the
22 bleeding in those areas, other than the fact that
23 there was some sort of -- Can you -- Can you
24 determine how severe it was?

25 A. Well, just the confluent nature of it suggests a

1 very severe injury. It also extends down to muscle.
2 And I think we'll see in a -- in a moment that this
3 area right here is avulsed, meaning the skin and some
4 of the -- of the underlying soft tissue. It's not
5 patterned, so I can't really say much about that. But
6 there is a significant amount of hemorrhage into that
7 soft tissue.

8 Also looking at the lungs microscopically, there's
9 a couple areas where we see fat emboli, where fat from
10 the -- that's kind of pulverized from the soft tissue,
11 gets into the bloodstream and -- and gets kind of
12 caught up in the capillary vessels, which is
13 consistent with the -- the blunt trauma to the soft
14 tissue.

15 Q. You're at number 11.

16 A. Two (2) different views. One is a arm,
17 demonstrating the focal on the hemorrhage, just areas
18 of bruising, not -- not confluent like the backs and
19 thigh. Here is a portion of the left buttock that
20 demonstrates that kind of laceration. And that just -
21 - It's right in this area here on the side of the left
22 buttock, just the pulpified tissue in that area.

23 Q. Number 12.

24 A. Just another -- a close-up of the top of the
25 buttocks and the back of the right thigh, showing that

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1 there's muscle right there. That purple tissue right
2 there is muscle, so the hemorrhage is going down to it
3 through the soft -- through the fatty tissue.

4 Q. Number 13.

5 A. Here's -- We already saw this photograph. The
6 right -- The left buttock, demonstrating the pulpified
7 soft tissue. And this is the area of avulsion on the
8 back of the right thigh, the -- the skin is separating
9 from his -- around soft tissue.

10 Q. And again, you mentioned like a -- you can see
11 blood and tissue, but different colorations. Can you
12 explain, I guess, the level of blood you see as
13 compared to the level of trauma? If that makes sense.

14 A. Um---

15 Q. If it's a harder hit, would there be more blood?

16 A. I don't -- I'm not sure. I'm not sure exactly
17 what the question is. There's -- There's bleeding all
18 the way to the -- to the muscle. So that's pretty
19 extensive. And it's -- it's confluent, not in
20 localized areas of impact. So it's -- it's diffusely
21 bleeding from multiple impacts.

22 Q. So if this injury occurred to someone while
23 they're alive, would it be a painful, long-lasting
24 injury?

25 A. Long-lasting, I -- I'm not sure how long it would

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1 last or how, like when you say long-lasting, if it
2 would've never healed. Yes; I'd expect it to heal.
3 But some -- somebody with this severe of an injury,
4 absolutely expect to be in pain.

5 Q. Okay. Let's skip now back to Exhibit number 8.
6 Well, actually, we can go to the one you have over
7 there first.

8 A. Okay. So that was the -- There's no internal
9 organ damage. That's the -- the contiguous and soft
10 tissue damage to the chest, abdomen, and extremities.
11 The more severe, the fatal injury is to the head.
12 There's a number of superficial injuries that you can
13 see to the head, these right areas just around the
14 face there, areas of abrasion. A non-specific, some
15 on the -- the right temple area as well.

16 He does have a number of abrasions around his
17 mouth. Also his frenulum, which is the little piece
18 of skin that attaches your lip to your gums, both the
19 upper and the lower one are bruised. The -- We
20 consider that secondary to a blunt trauma, some kind
21 of impact.

22 Q. What could cause -- I forget the word you use. --
23 frenulum -- what could cause the injuries that are
24 shown?

25 A. Through some type of blunt trauma. And in younger

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1 infants we might see from somebody forcing a spoon
2 into the mouth, a closed mouth. Certainly it could be
3 from a blunt impact from a fist, perhaps a book, any
4 type of blunt--. It's not a pattern injury like the
5 ones we were seeing with the whip marks.

6 Here's the lips, just demonstrating the abrasions
7 or scratches around the -- the mouth. This yellow
8 area there is probably from the medical tape, from the
9 inter-tracheal tube and that injury that sustained at
10 the time that he was found.

11 This is looking up at the top of his front --
12 along here that little contusion areas -- area of
13 bruising.

14 Q. Identify that photo one time for us please.

15 A. It's -- It's 8.

16 Q. Okay. Let me show you number 9 now.

17 A. All right. 9 is showing some of the contusions
18 under -- on the right lower lip, and a non-specific
19 abrasion on the left, on the left cheek. And then,
20 that was Exhibit 9. And then Exhibit 6 shows the
21 right cheek. I'm sorry, the abrasion on the -- the
22 right cheek area.

23 What we don't -- we don't have any pictures of --
24 we have as yet to see any pictures -- I'll just be
25 more descriptive. -- of the head injury. When he

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1 sustained the head injury, and he was taken to the
2 hospital; they saw on the CT scan subdural hemorrhage,
3 which is blood that's between the skull and the brain.

4 Actually, it's between -- Actually, what your
5 setup for the head is -- is brain, covered by dura,
6 which is a soft fibrous tissue, and then skull. So,
7 subdural hemorrhage is between the brain and the dura.
8 So they saw some right subdural hemorrhage, some
9 subdural hemorrhage on the -- on the right, which is
10 from a blunt -- some type of blunt trauma. And they
11 saw some head swelling, or some brain swelling.

12 And let me just take a moment here to comment
13 about brain swelling and injury. When -- When you
14 injure yourself like on your arm or your leg or -- or
15 your chest, anywhere that you have an injury,
16 typically you have splu (phonetic) that comes in and
17 inflammatory cells. And you get swelling.

18 It's usually not a problem if the swelling, you
19 know, the contusion or bump that's swelling on your
20 arm, it's no big deal. However, when your brain
21 sustains an injury and it starts to swell, it's
22 surrounded by this really hard bone called the skull.
23 And -- And if it swells too much, then the brain
24 starts to compress; and the neurons and the cell that
25 make it up can die.

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1 The other thing that could happen is that it can
2 herniate or squish out any opening that is-- is to
3 the skull. In particular, there's a hole at the base
4 of the skull called the foramen magnum. There's also
5 some other fibrous tissue in that -- that the brain
6 could herniate through it.

7 But anyhow -- But in this -- in his case, he had
8 an -- They noted the cerebra on the CT scan. So they
9 went in, and they did what they call a craniotomy,
10 which took a big oval piece of bone out the right of -
11 - the right side of the head. This was in hopes to
12 relieve -- alleviate some of the pressure. They also
13 evacuated or took out some of the subdural blood
14 there.

15 That didn't -- It didn't improve. He didn't
16 improve. His brain began to continue having massive
17 swelling and response to his blunt brain injury. And,
18 actually, they declared him brain dead.

19 So when he came to autopsy, what we see and the
20 way we get into the head is to make an incision, which
21 -- being from behind one ear to behind the other,
22 reflect the scalp forward. When we do that, we see
23 that he has diffuse hemorrhage -- similar to the back
24 of the leg, just diffused, not -- not a localized
25 impact -- on the right scalp here, the right scalp

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1 area.

2 Now that being said, there's been surgical
3 intervention. So I'd expect some bleeding there
4 anyhow. so you can't necessarily differentiate which
5 may have been the pre-mortem cause of the bleeding or
6 if there was some surgical cause of that as well. He
7 does also have a localized area on the left side of
8 the scalp of some hemorrhage or -- or where an impact
9 site was.

10 The craniotomy site was intact. The brain was so
11 swollen that the -- the brain itself had started to
12 herniate out of the craniotomy site that they had made
13 to relieve the pressure. And also the cerebellum,
14 which is the bottom part of the brain, had started to
15 herniate out the foramen magnum.

16 The brain -- When the brain dies it becomes very
17 friable. They actually call trauma to the brain when
18 it -- when it undergoes death, even -- let's say even
19 localized like a stroke, it undergoes liquefactive
20 necrosis. It just, you know, starts to liquefy. So
21 the brain's very difficult to -- to examine. So then
22 there's a lot of damage in the area where it's coming
23 out of the craniotomy. But again, it's herniating.

24 He has subdural hematoma remaining, blood, acute
25 blood, over the right and left sides, not something

1 that they saw on CT, which isn't actually -- isn't
2 unexpected to be able to -- or to not be able to see
3 something like that, an acute bleed on a radiograph
4 study. Sometimes they -- they can't see them until
5 some, you know, they either get bigger or they start
6 to organize or something like that.

7 So he has subdural blood over the right side, also
8 over the left side. And he also has it on the base of
9 the brain. So you have massive subdural---

10 Q. Okay.

11 A. ---actually, the amount isn't massive. But he has
12 subdural blood surrounding, you know, basically all
13 sides of the brain. And then again, like the -- the
14 massive cerebral adema with the herniation as well.

15 This is the fatal injury. It's the blunt -- a
16 blunt trauma to the head causing injury to the brain.
17 And it's response to swelling and ultimate herniation.
18 That's why I put the cause of death -- we put blunt
19 trauma to head.

20 MR. RICHARDSON: Your Honor, I have some more
21 questions, but---

22 THE COURT: Yeah. I think we've done -- we've
23 gone through most of the exhibits. So if you'd be
24 more comfortable for everyone to return to their seat.

25 MR. RICHARDSON: Dr. Presnell,---

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1 THE COURT: Hold on a second.

2 BY MR. RICHARDSON:

3 Q. Dr. Presnell, what is your -- As part of your
4 examination, you didn't find any fractures; correct?

5 A. No. We found no fractures.

6 Q. Well how can you have such a severe brain injury
7 when you have no --. You know, you've got the skull
8 between whatever hit the head and the brain. How does
9 the skull not get broken?

10 A. Well, that's actually not necessarily infrequently
11 occurring. So it's not uncommon for us to see that in
12 -- in a number of -- of cases in our autopsies suite.
13 But also, you remember the kid -- the kids' brains are
14 -- excuse me, their skulls are -- may not -- they're a
15 little bit more friable. They may not be as -- as
16 rigid as adult.

17 But, basically, ultimately the answer is that that
18 blunt trauma is transmitted through the skull, without
19 injuring the skull, to -- directly to the brain.

20 Q. Okay. So the skull -- Does the skull -- When it
21 does not fracture, does the skull absorb impact?

22 A. It -- It may absorb some. And remember when we
23 have hemorrhages as well, it may not just be the
24 scalp, is also what we call subgaleal, which is the
25 tissue over the -- over the skull, the part that's

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1 adhered directly to the skull. But you remember he
2 does have diffuse hemorrhages in that area.

3 Q. Okay. When -- When you have a case come in like
4 this where there is no skull fracture, can you deduce
5 from that perhaps what sort of a -- an object or
6 surface may have been used? Like, for example, if you
7 have -- you know, if somebody used a hammer and hit
8 somebody on the head, and you have a -- a fracture
9 right at that impact point--. Of course, we don't
10 have something like that in this case, but---

11 A. Right.

12 Q. ---does that tell you anything about a surface
13 that may have used or---

14 A. Again, it's just -- it's the descriptive term,
15 which is blunt force trauma. It's some type of blunt
16 instrument, not a round, circular hammer head, not a
17 knife. It's some type of blunt object. So there's
18 not a pattern site. I really can't definite --
19 definitively say what would have caused it.

20 Q. Okay. You said that the -- the brain was severely
21 injured, and it was swollen through the back and both
22 sides, so that this injury covered basically the whole
23 head or brain. Is that---

24 A. This was a massive cerebral injury, massive.

25 Q. So hypothetically, if -- if someone received a

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1 bump on the head from, for instance a bunk bed or some
2 other inanimate object during a fall or what have you,
3 and the injury was mobilized in one spot that may have
4 caused a goose egg; could something like that end up
5 with what he had? I mean could that---

6 A. What he had is not the result of a -- a bump on
7 the head from a bunk bed or a fall from the bunk bed.

8 Q. How can you -- Is there any way you can relate it
9 to what may have---

10 A. Well, you know, there's a number of ways to -- to
11 -- Let me back up. First of all, most short simple
12 falls will not result in fatality. Now that being
13 said, occasionally they can. One of the ways is to
14 cause skull fracture and cause an epidural hemorrhage,
15 which is not what he had. Another way is to have a
16 subdural, like to -- to fall down, not necessarily
17 fracture the skull, but get a subdural hematoma. This
18 is something that we've seen more often in alcoholics.
19 You have atrophy brains or small brains and there's a
20 -- a bigger space between the brain and the skull.

21 And -- And I guess it would -- to explain that to
22 get a subdural hematoma, what is happening is that the
23 vessels, the veins that -- that go between the brain
24 and the skull, those -- that's what's tearing. And
25 that causes the bleeding into that subdural space.

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1 With alcoholics and with elderly people who have
2 small brains where typically we see a fall, for them
3 because they have a bigger space to cause some type of
4 -- of subdural hemorrhage that could ultimately result
5 in death.

6 In this case, his -- he had a subdural hemorrhage
7 on the right. We don't even know how much because it
8 was evacuated by the surgeons. He's got subdural
9 hemorrhage on the left; and he has subdural hemorrhage
10 at -- across the base of the brain, and just massive,
11 massive swelling of the entire brain. This is a --
12 This is not consistent with a simple fall or a
13 localized trauma to cause -- to cause the amount of
14 injury that he had in his head.

15 Q. Dr. Presnell, when you make a determination of a
16 cause of death like you did in this case or -- or what
17 may have caused the injury, -- of course, the fatality
18 resulted from the head injury. -- but how do you use
19 what happened to his body as far as the trauma all
20 over his body in your decision-making?

21 A. Well, typically, we come -- we try to pinpoint a
22 cause of death and then add other significant
23 conditions. In this case, like I said, the blunt
24 trauma to the head due to a beating was considered the
25 cause of death. We considered his trauma to the rest

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1 of his body also contributory or significant,
2 partially due just to the extent of hemorrhage into
3 the soft tissues.

4 We have had several -- a couple cases over the
5 years of children that have sustained a -- a extensive
6 beating, who actually have no head trauma, who have no
7 internal organ damage, just have massive bleeding into
8 the soft tissues. So basically, they would bleed to
9 death into their own soft tissues.

10 He had, definitely, extensive soft tissue
11 hemorrhage. Whether that caused some low blood
12 pressure and may have contributed to -- to some of
13 the, you know, his -- his poor condition, we thought
14 it was significant enough to include it in the cause
15 of death statement.

16 Q. Dr. Presnell, when Child suffered this head
17 injury, -- I guess this goes for -- for anyone. --
18 what would've been his ability to function? When he
19 received this injury, could he have gotten up and
20 walked around, had supper, anything like that? Or
21 would he be immediately out? What's your---

22 A. Well, if he -- if this head injury was sustained
23 at one period, one time, then he would be very -- he
24 would be symptomatic after -- after the beating.

25 There would -- There's no way that he's walking, going

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1 to bed and waking up, and functioning normally the
2 next day.

3 If those injuries are spread out over a period of
4 time, then he may have had some functionality in
5 between that and the -- and the fatal beating.

6 Q. But as far as the immediacy of the injury, from
7 the time that he was sent to the hospital, is it your
8 opinion within a reasonable degree of medical
9 certainty that -- that that injury could not have been
10 more than twenty-four (24) hours old?

11 A. Well, if he lay there for twenty-four (24) hours,
12 that's -- that's a possibility. Although, again, he
13 did -- he did -- After he was found, he didn't last
14 that long in the hospital. But he didn't sustain
15 injury and then be functional prior to him then being
16 found unconscious or unresponsive.

17 Q. so he would have presented immediate, severe
18 symptoms?

19 A. He would've definitely been symptomatic after the
20 fatal brain injury. Yes.

21 Q. Okay. Thank you, Dr. Presnell. Please answer any
22 questions Ms. Wingard has for you.

23 THE COURT: Ms. Wingard?

24 MS. WINGARD: Thank you.

25 CROSS EXAMINATION BY MS. WINGARD:

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1 Q. Dr. Presnell, let me understand. Is your
2 testimony that the brain injury and the body injuries
3 did not necessarily happen at the same time; is that
4 correct?

5 A. I can't -- Again, I can't pinpoint exactly when
6 they happened. So, yes. They could have been
7 separated by hours, probably not days.

8 Q. So if the -- the injuries to the body could've
9 taken place say the night before he was symptomatic
10 for the head injury?

11 A. It possibly could have happened that long ago. It
12 -- Again, that's really -- shows acute inflammatory
13 changes. So perhaps, although I would have expected
14 him to have some complaints with the extent of the --
15 the injury.

16 Q. So -- So if in fact he woke up in the morning and
17 said, "I don't feel good. I don't feel like getting
18 out of bed," that could perhaps be explained by the --
19 the beating to his buttocks and back area?

20 A. Yes. He probably would not have felt good after --
21 -- after that beating. Yes.

22 Q. But he would have been able to eat and -- with
23 just the body injuries?

24 A. Probably. Yes, ma'am.

25 Q. Now, the head injuries. Let's -- Let's talk about

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1 that. If he -- If he had the -- I know that there's
2 been some discussion about a goose egg being hit on
3 the bunk bed the night before. But is it possible in
4 your medical opinion for him to have been playing on a
5 bunk bed and falling off a bunk bed shortly before the
6 head injury manifested itself?

7 A. Meaning that the -- the bunk bed fall caused the
8 head injury?

9 Q. Exactly.

10 A. It's unlikely, not with the extent of his head
11 injury.

12 Q. It's unlikely but not impossible; is that what
13 you're saying?

14 A. It's -- I've never had a case of a single impact
15 that actually -- that actually resulted in death
16 having such wide-spread hemorrhage on all aspects of
17 the -- on all sides of the brain.

18 Q. Suppose somebody was playing and got flung around
19 and hit the bunk bed with their head, or hit the wall.
20 Is the injury possible in -- under that scenario in
21 your opinion?

22 A. Again, a single impact seems -- it's very unlikely
23 to account for the force that caused this massive head
24 injury.

25 Q. Can you give us an idea of the kind of force you

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1 think is necessary for this head injury?

2 A. Actually, no. I -- I can't say that. I heard
3 somebody speak about comparing it to a -- a car
4 accident or where somebody gets hit -- struck by a
5 car, so definitely not that much force. Because in
6 that instance, we would expect fractures and -- and
7 additional injuries from the car, including internal
8 organ injury.

9 But -- But more force than falling off the bunk
10 bed or -- or having a single impact with say like the
11 side of the bunk bed. I don't have a number to -- to
12 offer.

13 Q. Let me ask you about your history that you got
14 that we have in your autopsy report. It says on the
15 seventh page, second paragraph, "that he was seen by
16 neighbors to be playing at home with his seven-year-
17 old brother and fifteen-year-old babysitter during the
18 afternoon of July 25th." Where did you get that
19 information; do you know?

20 A. This is a compilation of -- of information we had
21 at the time of autopsy and shortly thereafter. So it
22 would've been from the coroner and -- and law
23 enforcement, Officer Lutkin.

24 Q. Okay. But do -- do you know who the neighbor was,
25 or do you have -- I mean, you -- you've just taken the

1 word of law enforcement? You don't really know?

2 A. But this a case -- This is -- We rely upon them to
3 give us anything that, you know, might -- that they
4 might know surrounding the case. So, yes. This is
5 what was offered to us from the coroner and law
6 enforcement.

7 Q. Okay. And you -- you have -- that he was -- "that
8 the fifteen-year-old did proceed to beat him to beat
9 him with a belt on the afternoon, and after he found
10 it upon himself, he continued to hit the decedent and
11 hit him with his fist while he was sleeping." Where
12 does that come from?

13 A. This is from law enforcement.

14 Q. Okay. So you took what law enforcement gave you
15 without corroborating it and included it in your
16 history?

17 A. No. It's not a function of the forensic
18 pathologist to corroborate it. This is what we're --
19 This is information that we're provided with.

20 Q. Okay. Now let -- let me ask you, how -- how did
21 you use that information in reaching the conclusions
22 that you did?

23 A. Actually, that information is more of, again, a
24 proposed scenario. our anatomic findings remain the
25 same at autopsy, regardless of the history that's

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1 provided. That -- And frequently we do use history to
2 come up with a final conclusion.

3 In this case, he has his anatomic findings,
4 regardless of the case history we have. He definitely
5 shows signs of beating, with the -- you know, a whip-
6 like instrument with the repeated, I would think,
7 numerous contusions across the chest, abdomen, back,
8 the legs and arms. And then he has the massive -- the
9 massive head injury.

10 That being said, with the -- the case history
11 presented, again it comes down to does the autopsy
12 support that scenario. Yes. It does. Does it mean
13 that's the -- the scenario that actually happened?
14 No. No; it's not. It doesn't change the -- again,
15 our anatomic findings or our cause of death. But---

16 Q. So -- So you did not in any way use this history,
17 that you got from either the coroner or the sheriff's
18 office, in reaching your conclusions?

19 A. Well in this instance, the cause of death stands -
20 - stands by itself, regardless of the case history.

21 Yes.

22 Q. Let's talk a little bit about the timeline because
23 that confused me when you were talking to the Judge.
24 When you talked about, and I think you were talking
25 about the -- the thigh and leg bruises, that they

1 would have occurred six (6) to twenty-four (24) hours
2 prior to death. Now when we say death, do we mean the
3 time he was taken off of the respirator?

4 A. Wait. Let me back up. So as far as when -- when
5 injury occurs, we expect an inflammatory response to
6 occur at -- during intervals after that. And like I
7 said, compare yourself to getting hit, getting a
8 bruise, and getting swelling.

9 So first comes adema fluid in there. Between six
10 (6) to twenty-four (24) hours, -- and that's a pretty
11 broad -- pretty broad area, and unfortunately forensic
12 pathology is riddled with broad areas -- but between
13 six (6) and twenty-four (24) hours in -- in a
14 relatively healthy person we would expect to see acute
15 inflammatory cells.

16 Now they don't all disappear at twenty-four (24)
17 hours. But that they are alive by then. All right?
18 Q. But -- But now what I -- what I need is -- I ask
19 you, do you mean at the time of death, the time not
20 that he was taken to the hospital and considered to be
21 brain dead, but actually the time he was taken off the
22 respirator? Is that what you use as the time of
23 death?

24 A. Okay. And maybe I misunderstood when -- when the
25 Judge was asking me about time of death. What the --

1 If the decedent's pronounced deceased or brain dead
2 and he's not taken off life support, his body will
3 continue to function. He will continue to -- you
4 know, inflammatory cells will continue -- continue to
5 come in. He'll continue to swell just like, you know,
6 with his brain.

7 So it would stop, that process would stop when
8 they took him off of life support and -- and he no
9 longer was breathing or heart beating.

10 Q. So what you were -- you've said then was that you
11 think the -- the pattern marks on his body occurred
12 six (6) to twenty-four (24) hours prior to the time he
13 was taken off the life support?

14 A. No. You keep referring the six (6) to twenty-four
15 (24) hours being when injury occurs. No. It's six
16 (6) to twenty-four (24) hours is when we would expect
17 -- after injury when we would expect the inflammatory
18 cells. So could the injury happened a day before.

19 Yeah. It could've happened two (2) days before. Yes.

20 We're seeing the acute inflammatory cell without a
21 lot of -- of the inflammatory cells that come in later
22 to clean things up and organize. We're in the early
23 stages of it. Again, it's -- it's a broad area.

24 Could it have been a day before he was taken off life
25 support and -- and that possibility with his body dead

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1 as well. Yeah.

2 It could have been twenty-four (24) hours it
3 could've been forty-eight (48) hours. There's a
4 period of time in there that it's -- it's in that
5 period of time. So certainly when proposing
6 scenarios, it's not a week. It's not, you know, four
7 (4) days, where we'd expect to see some other
8 inflammatory cells coming in.

9 Q. Okay. So it could have been, say he was taken off
10 life support the afternoon, Saturday afternoon or
11 Saturday evening. These bruises could have taken
12 place Thursday then? That's within the forty-eight
13 (48) hour period you've talked about.

14 A. Yes. Perhaps they could have. Yes.

15 Q. Okay. How about could they have taken place
16 Wednesday?

17 A. It's more likely it would be closer to the time of
18 death because all you see is the acute inflammatory
19 cells without the other cells responding. We -- After
20 about forty-eight (48) or seventy-two (72) hours, we
21 would start to see other types of inflammatory cells,
22 macrophages, etcetera. Again,---

23 Q. So he---

24 A. ---in a healthy person who---

25 Q. ---you can see -- I'm sorry.

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1 A. Well, I mean, I was just going to say that, you
2 know, this is -- not only do we have broad ranges, but
3 this is in a healthy person. And so you interpret it
4 all with -- with a grain of salt. I mean, that --
5 there are -- If somebody that is in critical condition
6 may not respond exactly like a normal person, or a
7 healthy person.

8 Q. Okay. Did you -- Was your information that this
9 child was healthy and he didn't have any sort of other
10 problems? Did you, in conducting the autopsy, did you
11 rule out any other problem that he may have had
12 medically?

13 A. They had put that he might have had some asthma.
14 And then at autopsy, we did, like I said, we typically
15 take samples of the tissues. And he had some
16 bronchiolitis, which is a -- a cold basically.

17 Q. He had a cold? And--.

18 A. And a reactive spleen, which would make sense
19 going along with a cold. The spleen is an
20 immunological organ, and so it was reacting to the
21 cold. But that's all that -- that's all we found.

22 Q. Is there any medical condition that would make a
23 child have more of a trauma to the brain of -- from a
24 fall or being slung around or something? I mean, is -
25 - is there any underlying medical condition that any

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1 child could have---

2 A. Well---

3 Q. ---that -- that would exacerbate this sort of head
4 injury he had?

5 A. Well, I'm sure if children with bleeding defects
6 or like the -- like the hemophiliacs and all might be
7 more susceptible to falling with bleeding injuries.
8 There's also some other things that cause the subdural
9 uni-sinus. He didn't -- He didn't show any signs of
10 any evidence of disease. He -- He appeared to be
11 healthy.

12 Q. And did you consider that when you did the
13 autopsy?

14 A. We would expect to find something else that's
15 going on. And when we do the autopsy, we're looking
16 at everything. We're looking for all the reasons,
17 all, everything. I believe that we also did a
18 metabolic screen on him, while it looks for some of
19 the, what they call the inborn errors of metabolism,
20 which can sometimes present in funny ways that -- And
21 his was normal.

22 Q. So you -- You feel like you would -- you would
23 have found any kind of special problem with this
24 child?

25 A. Maybe, but I saw no evidence of special problems.

1 Q. You reviewed the medical records from McLeod prior
2 to doing the autopsy?

3 A. Yes. We -- I got -- I think I got most of them.

4 Q. You are familiar with Dr. Rhea's summary? And Dr.
5 Rhea was the -- one surgeon who operated on him. And
6 he -- In his report, he says that the chief complaint
7 is subdural hematoma. And -- And in it -- Let me --
8 I'll go get my copies so--.

9 It says here that the CT scan was reviewed and
10 showed a very small white hemispheric subdural
11 hematoma. Could that suggest that it was some sort of
12 slow bleed? What is the significance of -- of the
13 scan showing a very small hematoma?

14 A. Well the significance of that is a radiologic
15 study. And frequently, or often, I mean, we -- in a
16 case that I'm involved in, a CT scan may not actually
17 pick up acute blood very well when -- when it -- when
18 the injury is very recent. Sometimes it may not,
19 especially if it's a smaller amount, -- might not be
20 able to be seen until there's some organization to
21 that -- to that subdural.

22 So he -- he saw some, what he claimed that -- what
23 he wrote was that he saw a very small right subdural
24 hematoma. And we know that with autopsy, when he came
25 to autopsy that he also has left-sided subdural

1 hematoma as well as subdural hematoma along the base
2 of the -- the skull.

3 So as far as the significance, it's just something
4 that -- that I would think that the CT scan did not
5 reveal.

6 Q. So that doesn't suggest to you that it was some
7 sort of slow bleed?

8 A. Oh, no; no; no. No.

9 MS. WINGARD: That's all, Your Honor.

10 THE COURT: All right. Any re-direct?

11 MR. RICHARDSON: Very briefly, Your Honor.

12 RE-DIRECT EXAMINATION BY MR. RICHARDSON:

13 Q. Dr. Presnell, you said he had a cold?

14 A. He did.

15 Q. Hypothetically speaking, the day he was beaten and
16 woke up and said he didn't feel good and didn't want
17 to get out of bed, would he have a cold at that time?
18 Can we tell that far?

19 A. Nope. Uh -- Yeah, I wouldn't -- I would not have
20 expected a cold to appear in a day, certainly it's
21 consistent with him having it two (2) days before.

22 Q. Okay. And also, I know it's tough to put a -- to
23 put a time frame on the bruising. But the brain
24 injury that killed him, that couldn't have happened
25 forty-eight (48) hours before or the night before he

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1 was sent to the hospital, without any symptoms showing
2 up?

3 A. Correct.

4 Q. Okay. Thank you.

5 MR. RICHARDSON: I don't have any more questions
6 for this witness.

7 RE CROSS EXAMINATION BY MS. WINGARD:

8 Q. Could you give us the time frame on the head
9 injury?

10 A. Again, my findings are more supportive than
11 definitive. In going back to the case history, which
12 I know was provided, -- but again, I -- our autopsy
13 findings are supportive or not supportive. It is
14 supportive of a head injury on the afternoon of the
15 25th. Yes.

16 Q. Could it be supportive of a head injury on the
17 morning of the 25th, absent the -- the history?

18 A. Yes.

19 Q. How about late night on the 24th?

20 A. It possibly could have been then. We normally
21 expect the symptoms after the fatal head injury.

22 Q. But he could have survived? What -- What is the
23 outside that he could have sustained it? The
24 afternoon of the 24th or early evening of the 24th?

25 A. That sounds reasonable.

1 MS. WINGARD: Thank you.

2 EXAMINATION BY THE COURT:

3 Q. Well, obviously, you have the findings that you
4 made from your autopsy. And I know you have your case
5 history that was provided from various sources. But
6 you also had the records from McLeod where the surg- -
7 - neurosurgeon and the other doctors were working.
8 And, of course, I guess you gained some insight about
9 the amount of swelling that was occurring on the
10 evening of the 25th, what they were faced with.

11 Given the amount of swelling that they were
12 looking at at that point in time, does that help you
13 narrow down the amount of time it would have passed
14 from the -- from the time of the blunt force trauma?
15 A. The -- It means to me it's acute. And, again,
16 they're expecting inflammatory cells for six (6) to
17 twenty-four (24) hours. And that's based on anatomic
18 findings. I -- I can't say that it didn't happen
19 earlier in the afternoon or late morning. You know,
20 again going to the day before, could it have? I -- I
21 can't say that it didn't.

22 But it's more likely to have happened around --
23 you know, around the time that he was found, or within
24 hours of the time he was found as opposed to going
25 back another day or two. Anatomically, I can't prove

1 it one way or the other.

2 Q. One of the things that has come out during
3 testimony is that this young man may have vomited
4 shortly before he was removed from the residence by
5 ambulance. What significance would that have in terms
6 of what you would expect as a result of this type of
7 brain injury?

8 A. Vomiting is a typical response. It's one of the
9 symptoms that you might see in somebody with severe
10 head injury: vomiting, lethargy, not being to be
11 aroused, not being able to communicate.

12 Q. And how quickly would that -- I guess I'm trying
13 to see a nexus between the severity of the injury and
14 -- and how it's developing versus this -- this symptom
15 of vomiting.

16 A. The -- Looking at this injury, not necessarily
17 compared to the -- the vomiting -- And maybe I'm not
18 going to be, you know, I'm not answering your question
19 of whose -- But his brain injury is massive. He -- It
20 seems to have happened relatively quickly. From the
21 time he was found, within twenty-four (24) hours
22 they'd already declared him brain dead.

23 Sometimes when we might see some children with
24 injuries, that they're on life support, but they don't
25 necessarily get declared brain dead for several days

1 and -- and are subsequently taken off life support
2 then. His was a massive injury. The vomiting, I
3 don't know that really relates to -- to indicate how
4 severe it was. More of the anatomic findings and the
5 radiology findings indicate the severity of it.

6 Q. Then would this be characterized, maybe by some
7 physicians, as a closed head injury?

8 A. Yes.

9 Q. Okay. And in terms of the -- One thing I'm struck
10 by is that you've indicated that there was -- there
11 was blunt force to both sides of the head as well as
12 the back of the head from your examinations as best
13 you can tell.

14 A. No. There's -- There's bleeding on all sides of
15 the head. We do have an area of hemorrhage in the
16 scalp, which would be a blunt impact, on the left
17 side. And then we do have that diffuse hemorrhage on
18 the right, which you can't differentiate necessarily
19 because of the surgical intervention.

20 The blue, the subdural blood, there's injury over
21 the brain. Most of it actually appears to be centered
22 on the right side of the brain. But just the shaking
23 of the brain inside the skull is going cause -- will
24 cause the ripping of those vessels that bridge the
25 brain and the vessels that go between the skull and

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1 the brain.

2 So it doesn't necessarily mean the trauma was
3 delivered to the left side or it certainly can deliver
4 trauma to the base of the brain. Those areas are
5 injured as well due to the repeated blunt trauma.
6 And, again, his right side showed the most amount of
7 damage.

8 Q. I guess I -- I've had cases before with a shaken
9 baby syndrome where the -- the child has no force
10 applied directly to the skull, but there's the force
11 of moving backwards and forwards. Is there anything
12 in this injury that would indicate a similar type of
13 situation? And can you -- I guess that would be my
14 first question. The second question is a child of
15 this age, could you do that kind of injury---

16 A. Right. Actually, the shaken baby -- and there's a
17 lot of controversy of whether that truly exists
18 because most people actually do find the impact site.
19 But the injury is -- is a different mechanism. It's a
20 shearing injury, a rotational injury versus direct
21 impact with a damaging of the underlying brain. It's
22 more of a location where the axons or the nerve fibers
23 shear from the stop and go rotation of it.

24 He's five (5) years old. He's not a good
25 candidate for, -- like you were suggesting, for a

1 shaken baby. He's got -- His brain's myelinated and
2 was by the time he reached two (2) years of age.
3 You've got enough myelin to help prevent some of that
4 shearing injury. The neck muscles are good.

5 His mechanism is to the -- to direct trauma of --
6 of the beating, transferred through the skull to the
7 brain. And -- And because of that, the massive
8 swelling. And the subdural hemorrhages themselves
9 aren't necessarily what's fatal, there's -- they're
10 markers.

11 The trauma that the brain went under and the
12 ripping of the vessels, the problem is with the direct
13 injury to the brain, it started to swell. And, again,
14 the swell -- the brain has nowhere to go. And -- And
15 just suffered irreversible damage because of that.

16 Q. When counsel asked you about a slow bleed, whether
17 it was a slow bleed or a fast bleed, what you're
18 telling me is if they had drained blood from the
19 skull, that still wouldn't have alleviated the
20 condition because it was actually the swelling that
21 was causing the -- that was the cause of death, not
22 the -- a bleeding in the brain?

23 A. Yes.

24 Q. When I -- When you were talking about the injury
25 to the left leg, the long line that you showed on your

1 diagram, which is also reflected in Exhibit 12, I
2 believe, a dissected area, is -- is the injury itself,
3 the blunt force trauma in a line like that? And is it
4 a fairly thin line? Or can you tell from the injury
5 site?

6 A. No. It's not in a line. It's a -- It's a, again,
7 looking at the diagram, it's the large area, confluent
8 diffuse area in the middle of the thigh. And it--
9 it's not really a line, it's a -- I think we tape-
10 measured it. -- about a inch -- about a inch thick.
11 And it's diffused. It's not a linear pattern.

12 Q. Okay. And you indicated that the -- the skin in
13 essence had separated from the muscle from the trauma.
14 What amount of force does it take to cause that as a
15 general rule? Was that a substantial amount of force?

16 A. That's more -- That would be more force than,
17 obviously, than just causing the hemorrhage or
18 contusions. Typically, we see avulsion injuries and -
19 - well, I hate to say car accidents or car crashes
20 because that's where we do see a lot of them.

21 But, basically, what's happening is not only do
22 you have the blunt trauma, but you have almost a
23 shearing so that the -- the trauma to the area not
24 only causes hemorrhages from -- hemorrhaging from the
25 vessels that are bursting, but also you're -- you're

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1 actually kind of -- I guess pulpifying would be a good
2 word -- that tissue area so it separates that whole
3 connected area between the skin and the underlying
4 muscle.

5 Q. And if this injury had occurred -- Well,
6 obviously, it did occur. -- but how long would it be
7 before there would be some demonstration of that kind
8 of injury such as limping or, I mean, obviously, it
9 was swelled. It had begun to swell already from your
10 testimony. But how long would it before you would
11 have the child limping or showing some definite signs
12 of that injury?

13 A. Well, I said earlier that it seems like if -- if a
14 child had this type of injury that there would be
15 complaining. Actually, I don't know that. I mean,
16 repeatedly beaten children -- not this person. This
17 person did not show signs of repeated beatings. --
18 but, you know, have a remarkable ability to hide
19 things.

20 He doesn't have a fractured bone. He would have -
21 - I suspect would have been in a fair amount of pain.
22 But could he have hidden it? You know, he may have
23 been able to. You know, I can't say that for sure
24 that he -- that he would have had a limp per se.
25 There wasn't anything fractured.

1 Q. Well, for instance, would it have been painful for
2 him to sit?

3 A. Oh, yes. Yes.

4 Q. I'm not sure I understood your testimony about one
5 matter. You said if the head injury had occurred one
6 time, you would have seen almost immediate symptoms.

7 Is it possible that this injury occurred over a period
8 of time through more than one blunt force trauma?

9 A. What I'm suggesting is that there's repetitive
10 blows to the head. He may have had some non-
11 significantly injuring blows earlier. I can't say
12 that. The scenario doesn't sound like that -- that's
13 what occurred. But I wouldn't anatomically be able to
14 say that he didn't sustain some blows earlier that
15 were not fatal, and he could function, and then -- and
16 sustain the fatal blows at a later time.

17 But what I can say is that because of the degree
18 of -- of injury, then he would be symptomatic. He
19 wouldn't be getting up and walking outside and playing
20 on the swing set or functioning as a child that was
21 not injured.

22 Q. You -- You told us about some injuries to his
23 mouth. And you didn't mention that he had been -- had
24 he injuries to his nose if I understood you testimony,
25 such as a bloody nose or a broken nose or anything

1 like that?

2 A. No. He does not.

3 Q. So that if he had the blunt -- some trauma to the
4 mouth, it did not involve the nose at that same time?

5 A. Yes. I mean, correct.

6 Q. Thank you. That's all the questions I have.

7 THE COURT: Counsel, do y'all have any additional
8 question arising from the questions I asked?

9 MS. WINGARD: I have a couple.

10 MR. RICHARDSON: No, sir.

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

12 RE-RECROSS EXAMINATION BY MS. WINGARD:

13 Q. If -- If a person struck this child with a fist
14 hard enough to cause the injuries that -- that you
15 identified, would that person be expected to have some
16 sort of injury to his person, to his fist or --.

17 A. If only fists were used? He may have an
18 abrasion. He might have some injury. I -- I don't
19 that he would necessarily have to. But it certainly
20 wouldn't be unreasonable that he might have something.

21 Q. And did you see any injury, any evidence that the
22 healed injuries, head -- head or body injuries with
23 this child?

24 A. I think he had -- I didn't highlight it. -- he had
25 a healing abrasion, which is a scratch, on the inside

1 of the right arm. That's -- That's all we found as
2 far as healing injuries.

3 Q. And how about head? Did you -- Did you find any
4 partially healed---

5 A. Well---

6 Q. ---head injuries?

7 A. He had some abrasions that were -- and we've kind
8 of seen them -- that were relatively fresh. Remember
9 he lived in the hospital for twenty-four (24) hours,
10 and then after until they took him off life support.
11 They all have a -- a small degree of some drying and
12 not just that fresh -- fresh abraded area. But the
13 only that really had a good scab area of peeling would
14 be the -- the right arm.

15 Q. Had he bumped his head, say Wednesday night,
16 keeping in mind that -- or Thursday night, either one
17 -- keeping in mind that he presented to the hospital
18 Friday about five (5) or six (6), would you still
19 expect to see any -- any injury from---

20 A. From a bump in the head?

21 Q. Yeah.

22 A. If it was severe enough to cause an injury, yes.
23 We would expect that within two (2) days we still
24 might be able to see it. However, let me point out on
25 -- on Child , one of the things they do in the

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1 hospital is -- is hook IVs to you and put fluids in
2 you to try to keep your blood pressure up. And he had
3 a lot of edema fluid.

4 I think you can appreciate that round of pictures
5 where his face is just markedly swelling from fluid,
6 not necessarily bleeding, but just fluid. And that
7 makes it real difficult to actually appreciate say a
8 goose egg or some discreet area of swelling. We made
9 note of the abrasions, and that's about it.

10 Q. And could it -- Could it be a cumulative thing?
11 Could the goose egg have started a process and
12 exacerbated his stableature (phonetic)?

13 A. It's not likely.

14 Q. So you -- you don't think that it -- it would have
15 been kind of like the straw that broke the camel's
16 back scenario? That's not possible in your medical
17 opinion?

18 A. No.

19 Q. Okay.

20 THE COURT: Thank you. I don't have any
21 additional questions.

22 WITNESS PRESNELL: You're welcome.

23 MR. RICHARDSON: I thought I'd ask could Dr.
24 Presnell be excused from her---

25 MS. WINGARD: Sure.

1 THE COURT: Thank you, ma'am, for being here; and
2 you may be excused.

3 WITNESS PRESNELL: Thank you.

4 THE COURT: All right. Counsel, let's take a five
5 (5) minute break at this time to let everybody refresh
6 themselves before we take the next witness. How long
7 will the next witness take?

8 MR. RICHARDSON: Maybe an hour.

9 THE COURT: For you or total?

10 MR. RICHARDSON: I don't expect mine to be that
11 long.

12 THE COURT: Okay. All right. Then that -- that
13 will work well with our time frame for today. We'll
14 take five (5) minutes.

15 (Court recessed.)

16 (Court reconvened.)

17 Deputy: All rise.

18 THE COURT: Thank you. Please be seated.

19 Yes, sir?

20 MR. RICHARDSON: Thank you, Your Honor. The
21 State's next witness will be Dr. Joel Heffler.

22 THE COURT: Dr. Heffler, if you'll come forward
23 please. Place your left hand on the Bible and raise
24 your right.

25 DR. JOEL BARTON HEFFLER, being

1 first duly sworn, testified as follows:

2 THE COURT: Thank you, sir. Please have a seat
3 there. If you'd state your full name and occupation?

4 WITNESS HEFFLER: Joel Barton Heffler. I'm a
5 licensed clinical psychologist.

6 THE COURT: Thank you, sir. Yes, sir?

7 MR. RICHARDSON: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MR. RICHARDSON:

9 Q. Dr. Heffler, where do you work?

10 A. I work the South Carolina Department of Juvenile
11 Justice.

12 Q. And what are your duties with the DJJ?

13 A. I'm a psychologist. I do evaluations,
14 consultations, -- evaluations, all the activities
15 psychologists do at the DJJ.

16 Q. Okay. What kind of education background training
17 do you have in clinical psychology?

18 A. I have a bachelor's degree, master's degree, a
19 doctorate. (coughing) Excuse me. I did a residency
20 program in Columbia, at South Carolina, taught at
21 Francis Marion, the University of South Carolina
22 Medical School, was in private practice for a long
23 time, was at the mental health center for five (5)
24 years, and six (6) years practicing at the Department
25 of Juvenile Justice.

1 Q. Okay. And how long have you been a practicing
2 clinical psychologist?

3 A. Since 1973.

4 Q. Okay. Have you been qualified in court as an
5 expert before?

6 A. Many times.

7 Q. As a clinical psychologist?

8 A. That's correct.

9 MR. RICHARDSON: Your Honor, at this time, I'd
10 like to have Dr. Heffler qualified as an expert in the
11 area of clinical psychology.

12 THE COURT: Any objections?

13 MS. WINGARD: No objection.

14 THE COURT: Without objection, he will be so
15 qualified.

16 MR. RICHARDSON: Thank you, Your Honor.

17 BY MR. RICHARDSON:

18 Q. Dr. Heffler, you prepared the waiver evaluation in
19 this case; correct?

20 A. That's correct.

21 Q. And when something like this hits your desk, an
22 order for a pre-waiver evaluation, what -- what
23 procedures do you follow?

24 A. Well, we usually wait a period of time for the
25 individual to adjust to the circumstances, which is

1 usually at the detention center. In this case it
2 wasn't. Then we started gathering some history
3 information that the county office prepares for us.
4 Then I go, and I see the individual. Usually I meet
5 with the parents first, then I will see the
6 individual.

7 We do some testing. Sometimes that takes two (2)
8 to three (3) sessions. In this case, I think I saw
9 him on four (4) different occasions. I also talked
10 with his uncle. I talked to his mother on the phone.
11 I met with his father at the Department of Juvenile
12 Justice.

13 I put that information together, scored the tests,
14 come up with a formulation of what this particular
15 individual was -- is like at the time of evaluation.
16 It's sort of a snapshot of the intellectual and
17 emotional functioning, how well they understand things
18 and what they're capable of.

19 And I guess we could determine how much of that
20 would be the same as his situation at the time that
21 the crime was committed that he's been accused of.

22 Q. Okay. And this particular case, what historical
23 information did you consider when making your report
24 with regard to Mr. Mayweathers.

25 A. Well, at that particular point in time, there was

1 some -- some records that had been gathered about him.
2 The school records about his performance at school
3 prior to being there. There was -- There were some
4 records from the Virginia Department of Juvenile
5 Justice. There were some police reports about the
6 date of incident, what occurred. The questions and
7 the answers he eventually gave me and his father had
8 given me, his uncle provided, and the things he
9 provided.

10 Q. Okay. And when you talked to all these people and
11 considered this information, how does that help you
12 with regard to your opinion? What -- What do you use
13 it for?

14 A. Well, the -- the primary basis of any opinion that
15 I would come up with have to do with the psychological
16 tests. That the tests that compare him to other
17 people in his age group, how does he compare to them.
18 The other background factors provided by the family
19 and the social factors, those go into establishing the
20 -- the background of that picture.

21 So I know what grade he's in, what kind of
22 environment he's been in, what kind of circumstances
23 he's exposed to. So that when the tests are given and
24 he gets compared to other people in his age group, I
25 know in what ways to look at him as a part of his age

1 group. Then there is the fact then in this kind of.
2 situation, I don't (unintelligible).

3 Q. Okay.

4 A. It doesn't really affect the test interpretation
5 though.

6 Q. All right, sir. Would you say it's an accurate
7 statement that the most important thing to you in this
8 evaluation process are his test results?

9 A. The test results are -- are the main thing as long
10 as there's no major inconsistencies. You know, if I
11 find out that this particular individual is in a
12 school for the mentally retarded and has been there
13 his whole life, but his test scores indicate that he's
14 a very bright individual, then I would have to
15 reconcile those.

16 Q. Right.

17 A. But if he's in a regular school, in regular
18 classes, making good grades, he gets along with his
19 peers, gets along with his family, and the test scores
20 are in keeping with that picture, then it's mainly
21 about the test scores.

22 Q. Was that the case in this particular one?

23 A. Yes. It was.

24 Q. Okay. What types of tests did you give him?

25 A. I gave him a standard set of tests that we use in

1 terms of the waiver evaluation. I did use more tests,
2 I believe, than we normally would use. I gave him
3 some intellectual tests. That's usually where we
4 start.

5 Q. If you could, could you go test by test and
6 describe the test and---

7 A. Okay.

8 Q. ---give the results?

9 A. Okay. I gave him the Wechsler Intelligence Scale
10 for Children, Forth Edition, based on his age. He was
11 15,6 -- fifteen (15) years, six (6) months at the time
12 that I evaluated him. So he was not given the adult
13 test. He was given the -- the children's version of
14 the test, which goes up to age sixteen (16). It's a
15 general test that's used by the schools, mental health
16 centers, hospitals, medical practitioners. It's the
17 most widely used intellectual test in his age group.

18 It measures eleven (11), twelve (12), thirteen
19 (13) different areas of functioning. Each one
20 measures a different type of skill. And the composite
21 picture enables us to compare him to other people in
22 his age group in several categories.

23 In terms of his vocal skills, talking to other
24 people, mostly school-related kinds of things, he had
25 a score in the middle of the average range. He's

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1 certainly as bright as anybody else. In his
2 performance scores, his perceptual reasoning, non-
3 verbal tasks, he had a slightly lower score in the
4 low-average range.

5 On both of those tests, however, he had a tendency
6 sometimes to miss some of the easier items and got
7 some of the harder items correct. So that's -- That's
8 often a sign of either a learning difficulty or
9 stress. And certainly in the situation he was in, I
10 took it to be stress-related. It was consistent with
11 a lot of different areas.

12 And it says that his true scores are the ideal
13 conditions or probably even higher than that. So
14 we're talking about somebody in the -- the average
15 range, maybe a little bit better than that in some
16 ways.

17 His working memory score, his ability to recall
18 events on the test, his working memory score was
19 higher than the others in the average range. He did
20 have a -- a lower score in processing speed when he
21 was given certain information, how fast could he come
22 up with a conclusion. That was a little bit lower.

23 Again, very stressful kind of phenomenon, his
24 score was just barely in the low average and would
25 easily have been in the average range and maybe a

1 little higher than that. So intellectually speaking,
2 he's a very typical teenager. He can things most
3 teenagers can do without any kind of major, major
4 difficulties.

5 Q. So you'd say he's age appropriate for a fifteen-
6 year-old?

7 A. Absolutely.

8 Q. Okay.

9 A. Maybe a little better than many in -- in his peer
10 group.

11 Q. Okay.

12 A. I gave him the Wechsler Intelligence -- the
13 Wechsler Individual Achievement Test, Second Edition.
14 This is a standard school performance test. It
15 measures -- The test that I gave him had to do with
16 reading and math operations. His reading score
17 was in the average range. His math score, ability to
18 do math problems, that typical people his age would be
19 able to do, was also in the average range. But his
20 math score was even higher, significantly higher.
21 Even though they're both in the average range, one was
22 considerably higher than the other.

23 He was in the ninth grade or he was repeating the
24 ninth grade. His reading level was just under the
25 ninth grade level. And his math score was like almost

1 twelfth grade. So he's an individual who is quite
2 capable of learning and understanding things.

3 I gave him the Substance Abuse Subtle Inventory,
4 the SASSI, S-A-S-S-I, the SASSI. It is a drug and
5 alcohol test where people will answer questions about
6 their use of drugs and alcohol. And based on their
7 responses, the test gives a prediction of the person's
8 likelihood of having a substance abuse problem, which
9 could be substance abuse, could be substance
10 dependency. He had a -- an average score, did not
11 indicate any high probability of that.

12 I gave the Reynolds Adolescent Depression Scale.
13 It's a scale that compares him on depression's
14 symptoms. There are many different symptoms of
15 depression, and he's compared to people at his own age
16 group. It is an adolescent test. And he did not have
17 any high scores at all in terms of different areas of
18 depression, comparing him to other people his age.

19 I gave him the -- the long adolescent inventory,
20 which measures fifteen (15) or twenty (20) different
21 adolescent personality areas. Some of these include
22 conformity, anger, juvenile delinquency
23 predispositions, a wide range of general personality
24 characteristics. All of his scores were in the
25 average range. There were no signs of emotional

1 disorders, anxiety, depression.

2 He made one score that seemed to say that he was
3 maybe a fraction more easily influenced by peer
4 pressure than some other people. But this is
5 certainly a -- a very typical scenario in the
6 adolescent population.

7 I gave him the -- the Justice Inventory, Revised
8 Edition. And this is a test that is -- it samples
9 twelve (12) or thirteen (13) different areas, usually
10 in the juvenile delinquent population, personality
11 measures, likelihood to be like these people who
12 commit this kind of crime, or like these people commit
13 that kind of crime, several different groups. All of
14 his scores were relatively insignificant. He didn't
15 stand out a lot.

16 The actual type that he came up with is called the
17 introspective and the pragmatist, meaning that he is
18 often -- it deals with things that are very based
19 social circumstance kind of level, that he sees things
20 that most people his age see. He doesn't seem to be
21 strange or unusual in his responses.

22 People with this kind of pattern, they -- they
23 tend to accept parental authority pretty well.
24 They're somewhat introverted, less social; but they
25 conform to the norms of social behavior of the eight

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1 (8) or nine (9) different types. It's the type that
2 is least likely to be in the juvenile delinquent
3 population. It's the least likely to have major
4 charges.

5 And on the last one sentence completion test, his
6 responses were very, very typical. I mean, he -- he
7 made comments that he cared about his family, they
8 seemed to care about him. He felt well taken care of.
9 He -- He was able to write sentences that are very
10 clear and cogent kind of a way. He did not express or
11 demonstrate any kind of mental or emotional
12 difficulties.

13 I mean, in general the tests show him to be a
14 intelligent young man who could express himself very
15 well, knew right from wrong. He -- He knew what
16 expectations of a typical teenager were, and felt
17 quite able to -- to deal with those, although he did
18 admit in another part he made some mistakes along the
19 way, that he wasn't perfect. But in general he has
20 all the capabilities you would expect a teenager to
21 have.

22 Q. Okay. So taking all these tests together as a
23 whole, your job as a DJJ psychologist, what -- what
24 does his final results mean to you?

25 A. He's a intelligent young man who can express

1 himself well, process information, knows right from
2 wrong. It's unlikely that he would be led into some
3 big major crime by peers that were going to do
4 something. He would know what's right, what to do,
5 what not to do.

6 He's most likely to get along well family and
7 friends and be successful at school and be able to get
8 a job, work, be a productive member of society. No --
9 No unusual things noted at all.

10 Q. Okay. In your report after the test information,
11 I think on page 13, you delineate several factors
12 under the heading Likelihood of Reasonable
13 Rehabilitation. Would you please describe these
14 negative factors and how you arrived at them?

15 A. The -- The rare (phonetic) evaluation, of course,
16 is to assess his capabilities, his knowledge, how much
17 he can know, and -- Of course, we don't have tests
18 that would ever be able to indicate whether somebody's
19 guilty or innocent.

20 One of the things that we do with these -- these --
21 - this information that has been gathered, is that if
22 a person were in fact guilty -- if the person were in
23 fact to be found guilty of the crime, in terms of
24 sentencing and things of that nature, what kinds of
25 factors would all of this test data lead to. And

1 that's what we have here.

2 The negative factors, which would indicate
3 difficulty with rehabilitation kinds of factors, is
4 that he was charged with a very serious offense that
5 involved the death of an individual. And if in fact
6 he were guilty of such an offense, that would be a
7 negative factor in terms of rehabilitation. The more
8 serious the crime, the lower the likelihood. It's
9 certainly not a -- a guarantee either way, but
10 statistically speaking.

11 Secondly he had a history of minor infractions.
12 And persons with that pattern, if they are steadily
13 increasing over, getting worse and worse and worse,
14 that would be a negative indicator if in fact he were
15 guilty. But he continuously maintained that he was
16 innocent. That's often a negative predictor as
17 compared to the person who would admit guilt and
18 accept responsibility.

19 And lastly the -- his family indicated that at
20 times he was influenced by other people. Now if we
21 take that out to the maximum capability, the -- of
22 course, that is a -- a negative factor. And if you're
23 exposed to a lot of negative people, certainly like in
24 a prison situation, then this person likely would be
25 able to be influenced by certain people.

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1 Those are just assumptions. On the other side,
2 what positive factors do we have that the test would
3 support in terms of this individual. He certainly has
4 the intellectual capacity to understand and benefit
5 from any kind of help and assistance; that's assuming
6 he were guilty. But he would -- He certainly has the
7 ability to benefit from some counseling, from
8 interventions, from training to help him do a better
9 job.

10 During the tests, and I was with him for eight
11 (8), ten (10) hours, -- That was on four (4) different
12 occasions. -- he was able to sustain his attention and
13 his motivation. He would adapt to the situations. I
14 gave him a lot of hypothetical kinds of things, and
15 "what would you do under these conditions," how he
16 handled those things. He was very consistent, very
17 reasonable. He acted in a mature way in dealing with
18 those kinds of things.

19 So we would -- Again, I would assume that he could
20 benefit from intervention programs that were designed
21 to help people who commit serious problems.

22 Third factor, he was fifteen (15) years old.
23 Therefore, he had a considerable period of time for
24 rehabilitative efforts in the juvenile justice system.
25 And, of course, if he's found guilty, at seventeen

1 (17) he'd be moved over to the youthful offender
2 program, which again has more rehabilitative kinds of
3 things available than going into the general
4 population in a typical South Carolina Department of
5 Corrections prison.

6 Lastly, if he could -- if in fact he were guilty,
7 if he could help -- if he could be helped to make
8 better decisions, rather than be influenced by others,
9 he's got lots of adequate time, adequate ability to
10 benefit from that and apply that in his life and make
11 better decisions in the future.

12 Q. Okay. You mentioned his ability to adapt.

13 A. Yes.

14 Q. Hypothetically, the negative -- if he was facing a
15 negative situation, he would be able to ascertain that
16 situation and quickly adapt, maybe more so than --
17 than other kids typically his age?

18 A. Adapt, you mean in a sense that he would know that
19 this is wrong and to take a different course of
20 action?

21 Q. Right.

22 A. Yes. I think so.

23 Q. Okay. You also mentioned the youthful offender
24 program.

25 A. Yes.

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1 Q. The youthful offender program does not have the
2 same amount of rehabilitative programs as the
3 Department of Juvenile Justice. Would that be a fair
4 statement?

5 A. That's correct. The Juvenile Depart-- Department
6 of Juvenile Justice has more rehabilitative,
7 therapeutic intervention kind of systems. Now if you
8 went to the adult system in the youthful offender
9 program, which is in three (3) or four (4) different
10 prisons, has more of an adult population, the general
11 population programs. So it's sort of a continuum.
12 You get more at the lower level, and as you get higher
13 and higher, the prison sentence gets longer and
14 longer, there's less and less available.

15 Q. So it's more penal as you go?

16 A. Yes. I think that's a correct statement.

17 Q. Okay. The next section in your report deals with
18 adequate protection of the public.

19 A. Um-hm.

20 Q. Now, hypothetically, if Jermaine were guilty of
21 the offense,---

22 A. Okay.

23 Q. ---what is your opinion in regards to adequate
24 protection of the public?

25 A. Well, if he were guilty and he were, based on

1 trial, convicted, he would spend a significant amount
2 of time in a penal institution. He would be in the
3 Department of Juvenile Justice. He'd be sentenced at
4 least until he's twenty-one (21), but he would only be
5 with DJJ until he's -- until he's seventeen (17).

6 Offenders, typically at the age of seventeen (17),
7 are moved to the adult corrections system. And that's
8 where they would be eligible for the youthful offender
9 program.

10 Q. Right. On the other hand, if he were tried as an
11 adult, how would that affect adequate protection of
12 the public?

13 A. Well, as long as he's in jail, I guess they'd be
14 protected. But if his sentences could be
15 significantly longer, it might take even to have the
16 trial. Then he'd be older, and he'd be in detention
17 until that trial took place.

18 MR. RICHARDSON: Your Honor, I'd like at this
19 point to introduce the report. But I'd ask -- I
20 believe you may have a copy already in the file, and
21 I'd ask that you take judicial notice of Dr. Heffler's
22 waiver evaluation in this case.

23 THE COURT: Any objection?

24 MS. WINGARD: No objection.

25 THE COURT: All right. The report has been filed

1 with the Court, and I do take judicial notice of that
2 report at this time.

3 MR. RICHARDSON: Thank you, Your Honor.

4 BY MR. RICHARDSON:

5 Q. Dr. Heffler, if Jermaine committed this offense,
6 would -- would you recommend -- Do you believe that he
7 could properly rehabilitated through the juvenile
8 process, given what you know as far as history, test
9 scores, everything you considered?

10 A. And give him the treatment that he would get in
11 the adult correctional system as well?

12 Q. Right. The adult correctional system as well as--

13 -

14 A. I believe any juvenile, including he if he were
15 guilty, would have more time with more treatment with
16 more rehabilitation by starting in the juvenile
17 justice system; and I believe that given this
18 particular individual that the test scores, the
19 history and stuff -- Yes. I believe there would be a
20 significant amount of time to -- to do a significant
21 amount of intervention with him. Yes.

22 MR. RICHARDSON: The Court's indulgence, Your
23 Honor?

24 THE COURT: Yes.

25 (Pause.)

1 MR. RICHARDSON: I have no more questions, Your
2 Honor. Please answer any questions Ms. Wingard has.

3 THE COURT: Cross examination.

4 MS. WINGARD: I have no questions.

5 MR. RICHARDSON: Your Honor, I ask if Dr. Heffler
6 -- If the Court has no questions, I'd ask Dr. Heffler
7 be excused from the subpoena, including of the Court's
8 questions.

9 THE COURT: Ms. Wingard caught me off guard with
10 this deception so. She didn't ask any questions. I -
11 - Obviously, I have just a couple of questions.

12 EXAMINATION BY THE COURT:

13 Q. I mean, this is, of course, one of the factors
14 that I have to analyze. It's Kent v. United States
15 analysis of this situation. And I've reviewed your
16 report as a part of the Court's file. And if I
17 understand your opinion correctly here today, you
18 believe that this young man, if I choose not to waive
19 jurisdiction in this case, would benefit from
20 detention and incarceration within the juvenile
21 justice system and then in the YOP system, as opposed
22 to being in the adult system. Is that correct?

23 A. That's correct. I believe he has the capability
24 of benefitting from those types of things if needed.
25 And you could talk about a six (6) to seven (7) year

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1 period of time.

2 Q. Would your opinion change if he was not kept in
3 the juvenile justice system and the YOP system for
4 that six (6) to seven (7) year period of time?

5 A. I'm not sure what you're asking, Your Honor.

6 Q. Well if he was released in two (2) years?

7 A. If he was released in two (2) years? That
8 decision will have to be made by the people who are
9 working with him at that time. Each individual
10 responds to treatment interventions in a different
11 manner, at a different rate. It has to be assessed
12 periodically by the health service providers, the
13 parole board, and -- and all of those kinds of -- that
14 would have to be assessed.

15 It also depends on circumstances. I mean, if
16 somebody were guilty of a deliberate, malicious kind
17 of an act, aggression designed to kill somebody, then
18 I would question that. If somebody were involved in
19 an incident of an accident or something, I mean, that
20 might be more than adequate. It would have to be
21 assessed by the people doing the treatment.

22 THE COURT: With this report, that's all the
23 questions I have. Anything further?

24 MR. RICHARDSON: I just have one -- one more
25 question.

1 THE COURT: Yes, sir.

2 RE-DIRECT EXAMINATION BY MR. RICHARDSON:

3 Q. Dr. Heffler, wouldn't it be true if he were waived
4 to General Sessions court and convicted in the General
5 Sessions court, at his age he wouldn't go straight
6 into a general population. Isn't that true?

7 A. Not necessarily. My understanding -- I don't work
8 for Department of Correct- -- This is within -- on
9 numerous occasions at the youthful offender program,
10 my thing is that based on space and limit -- space and
11 availability, somebody gets considered for the youth
12 offender program or not -- not considered. The
13 individuals coming from the DJJ system into the youth
14 system get first priority.

15 Q. So based on his age, if he were convicted as an
16 adult, he may still be placed with youthful offenders-
17 --

18 A. He might. He might; he might not. In fact, that
19 would have to be determined at that point in time
20 based on their space availability.

21 Q. Right. But there's still a possibility?

22 A. It's a possibility, sure.

23 Q. Thank you.

24 MS. WINGARD: No questions.

25 THE COURT: All right. Thank you, sir. Any

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1 objection to him being excused?

2 MS. WINGARD: None.

3 THE COURT: All right. Thank you for being here.

4 You are excused.

5 All right. Counsel, let's talk for just a second

6 and see what we have if y'all would approach please.

7 (Bench conference was held off the record.)

8 THE COURT: All right. We're going to break at

9 this time. I -- I think if we tried to start another

10 witness today, we would potentially go over

11 substantially. And I would rather go ahead and break

12 at this time. We didn't take much of a lunch break

13 today. So we will break today and start back in the

14 morning at 9:30. Please be here at 9:30 in the

15 morning when we start because I am going to start at

16 9:30 regardless.

17 All right. See y'all tomorrow at 9:30.

18 MR. RICHARDSON: Thank you, Judge.

19 (Court recessed.)

20 THURSDAY, MARCH 19, 2009

21 (Whereupon, court reconvened on Thursday, March

22 19, 2009, at 9:46 a.m.)

23 Deputy: Order in the court. All rise.

24 THE COURT: Thank you. Please be seated.

25 MR. JEPERTINGER: Your Honor, just for -- for the

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1 record, we provided a copy of the autopsy from this by
2 way of CD to the defense, and so I'm going notify Ms.
3 Wingard and just add that as part of the record since
4 she's accepted it this morning.

5 MS. WINGARD: Yes, sir. I did, in fact, get a CD
6 that was marked as autopsy.

7 THE COURT: All right. Thank you. And the record
8 will reflect that.

9 MR. RICHARDSON: Your Honor, I'd also like to put
10 on the record the State and Defense have come to an
11 agreement on the statement given by the defendant to
12 have that marked and entered in as evidence. And I'd
13 just like to place on the record and have it marked.

14 MS. WINGARD: Judge, I -- I think what we've
15 agreed to is to use that, so we need to mark it for
16 identification. But Investigator Lowder will need to
17 go through the appropriate waiver and things of that
18 nature.

19 THE COURT: Yes. All right. So this will be, I
20 think, Defense---

21 MR. RICHARDSON: 14.

22 THE COURT: ---14 -- or State's 14. Yes.

23 Madam court reporter: And ID only at this point?

24 MR. RICHARDSON: Right.

25 THE COURT: ID only at this point.

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1 *****STATE'S EXHIBIT 14 MARKED*****

2 **THE COURT:** Anything else we need to put on the
3 record before we begin taking testimony today?

4 **MR. RICHARDSON:** Not from the State.

5 **THE COURT:** Anything from the defense before we
6 begin taking testimony.

7 **MS. WINGARD:** No.

8 **THE COURT:** All right. The State may call its
9 next witness.

10 **MR. RICHARDSON:** The State calls Renee Lowder.

11 **THE COURT:** If you would come forward please.
12 Place your left hand on the Bible there and raise your
13 right.

14 **RENEE LOWDER,** being first duly
15 sworn, testified as follows:

16 **THE COURT:** Thank you, ma'am. Please have a seat.
17 State your full name and occupation.

18 **WITNESS LOWDER:** My name is Renee Lowder. I'm an
19 investigator with Florence County Sheriff's Office.

20 **THE COURT:** Thank you, ma'am. Yes, sir?

21 **MR. RICHARDSON:** Thank you, Your Honor.

22 **DIRECT EXAMINATION BY MR. RICHARDSON:**

23 **Q.** Investigator Lowder, you say you work for the
24 sheriff's office. How long have you been employed
25 there?

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1 A. I've been employed there approximately eight (8)
2 years.

3 Q. Okay. And how long have you been an investigator
4 at the sheriff's office?

5 A. I've been an investigator for two (2) years. I've
6 been in law enforcement fifteen (15).

7 Q. Okay. Please tell the Court how you came to be
8 involved in this case.

9 A. I was notified by the responding deputy of a child
10 that was unconscious, not breathing, at McLeod's ER.

11 Q. Okay. Upon that notification, were you the on-
12 call investigator---

13 A. That's right.

14 Q. ---at the time?

15 A. I was.

16 Q. You were the lead investigator on this case?

17 A. That's right.

18 Q. Okay. Upon receiving that notification, what did
19 you do?

20 A. I responded to the emergency room at the ER.

21 Q. Okay. And when you responded, what did you find?

22 A. When I responded, Child was already back having
23 brain surgery, or surgery on his brain. I did not get
24 to physically see him. But I did meet with his
25 mother, Deborah, and K.P. , talked with K.P. , and

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1 briefly talked to Jermaine.

2 Q. Okay. And what was the product of that meeting?

3 A. Basically, preliminary investigation to find out
4 what was going on. What did they know? What -- What
5 had happened to this child?

6 Q. Okay. At that point, what were you able to find
7 out?

8 A. Not a whole lot. K.P. was very scared, and he
9 didn't talk very much. Deborah was not at home, so
10 she really didn't know what had happened. And
11 Jermaine didn't really have a whole lot to say. He,
12 most of the time, was sitting in the lobby with his --
13 with a sheet over his head, totally covered up -- or a
14 blanket or a coat or something.

15 But he -- no one really knew a whole lot of what
16 was going on. I had to go on what the deputy was
17 telling me and what he had learned from EMS.

18 Q. Okay. After the meeting with the family at the
19 hospital, how did you proceed after that?

20 A. Well, we, of course, got information from doctors
21 and -- and found that it certainly was a traumatic
22 injury to head. So we knew it had to be something
23 that caused it. It wasn't just any little accident.
24 We also obtained consent to search, and went to the
25 house, and looked around to try to find any evidence

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1 there.

2 Q. I'll stop you there. Were you able to, when you
3 went to the house, did you find anything that stuck
4 out in the way of blood or fingerprints or any broken
5 off objects, anything like that?

6 A. We found, in the bedroom where Child was laying,
7 we found where he had thrown up, and the soiled
8 carpet, and a few soiled items there, but no object at
9 that point that we thought would have caused the
10 injury. We did see a -- a stick outside, but nothing
11 inside that we thought would have caused the injury.

12 Q. Okay. I interrupted you before you -- you said
13 you went to the house. Where'd y'all go after that?

14 A. Well then, of course, steadily checking on
15 Child 's condition at the hospital and talking to
16 doctors. And, of course, then I led into
17 investigating, you know, family members, friends,
18 neighbors, and so forth.

19 Q. Okay. So at that point, is that when you began
20 bringing people in to take statements?

21 A. Right.

22 Q. Okay. Who did you bring in for statements?

23 A. I brought in Deborah, which is the mother of

24 Child . I brought in Jermaine, his father Willie.

25 And then, of course, -- you want me to go into all of

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1 the neighbors, friends?

2 Q. Sure. List who you took statements from.

3 A. Okay. I also took a statement from Jack Fulmore.

4 And I interviewed---

5 THE COURT: Who is Jack Fulmore?

6 WITNESS LOWDER: He is a friend or family member
7 of Willie. And he gave me a statement excluding
8 Willie from the household because they had left---

9 MS. WINGARD: I need to object at this time. And
10 I don't know if you want me to continue to object.
11 We've had this discussion, but I would object to the
12 hearsay being admissible generally in this type of
13 hearing.

14 THE COURT: Out of an abundance of caution, I
15 would like for you to object each time you have
16 objection so that it's clear what you are objecting
17 to. So I have no problem at all with that. And I am
18 going to allow the hearsay. But I don't need to know
19 everything that each -- if I ask you who a witness is,
20 you don't have to tell me everything about what they
21 told you.

22 WITNESS LOWDER: Okay.

23 THE COURT: I was just curious as to who Mr.
24 Fulmore was as this played out. Okay. Thank you, Ms.
25 Wingard. Objection is noted.

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1 BY MR. RICHARDSON:

2 Q. Going back to the house a moment, in which --
3 which bedroom did you find the vomit and the soiled
4 carpet? Do you remember?

5 A. There's two (2) bedrooms that was on the back,
6 opposite end of the mobile home from the master
7 bedroom. And it was the first bedroom to the right
8 that did not have the bunk beds in. There was no TV
9 in there at that time.

10 Q. Okay. So you mentioned that you interviewed
11 Child 's mother; right?

12 A. Yes.

13 Q. All right. At the conclusion of that interview,
14 what did you deduce as far as her whereabouts during
15 the time this incident may have happened?

16 A. She stated to me that she was at work.

17 MS. WINGARD: Objection on the hearsay.

18 THE COURT: Thank you.

19 WITNESS LOWDER: Your Honor, I am simply---

20 THE COURT: No, no, no, no, no. You don't have to
21 respond. I've taken care of it. Thank you.

22 WITNESS LOWDER: She stated to me she was at work.

23 And I did investigate that, followed up with her
24 manager, got her time card and everything. And she
25 was at work that entire day. I mean, I could give you

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1 her exact times if you need it. But she was at work
2 during that day, and so she did not know what had
3 happened to Child .

4 BY MR. RICHARDSON:

5 Q. Okay. What did you learn about the whereabouts of
6 Mr. Jerito?

7 A. During talking with Jermaine, during talking with
8 Mr. Jerito, and during talking with Mr. Jack Fulmore
9 and Deborah, all of them gave me statements stating
10 that he had left the home the night before in the
11 a.m., approximately between one (1) to two (2) a.m.
12 So he was not there. He had left with Mr. Jack
13 Fulmore, so he was not at the residence the entire day
14 on Friday.

15 MR. RICHARDSON: I beg the Court's indulgence,
16 Your Honor.

17 THE COURT: Was he at the hospital when you
18 arrived on Friday evening?

19 WITNESS LOWDER: Mr. Jerito?

20 THE COURT: Yes.

21 WITNESS LOWDER: No, sir.

22 BY MR. RICHARDSON:

23 Q. Investigator Lowder, other than taking the
24 statements, what else did you do during--?

25 A. Steadily continued to check on K.P. 's

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1 condition, meet with doctors.

2 Q. Investigator, did you interview a neighbor who
3 stated that she may have heard some noise coming from
4 the residence in the wee hours of the morning?

5 A. I did. I interviewed several -- several people.

6 And there was a neighbor that I talked with. If
7 you'll give me just a minute, I was going to look
8 through my notes here.

9 Q. I believe her name may have been---

10 A. Tequila Durant?

11 Q. Yes.

12 A. I did. She was -- She did give me a statement. I
13 wanted to talk to everyone around to see -- to see
14 what they could tell me. And she did say that she had
15 heard some noise over at the house, early in the
16 morning hours. She wasn't real positive about the
17 time. She was saying she thought it may have been
18 around three (3) a.m.

19 But, you know, as you've heard from Ms. Williams,
20 they all stayed up late the night before. And all of
21 them gave me statements saying they had stayed up
22 watching movies, and was up until late. And then Mr.
23 Jerito left at one (1) or two (2) in the morning. So
24 she could -- I don't know what she heard, but she
25 could have heard any of that.

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1 Q. But didn't she say that she heard loud noises and
2 bumping sounds coming from the house, something of
3 that nature?

4 A. Saw a lot of shadows and bumping.

5 Q. Okay. And what did you make of that statement she
6 made as far as the -- pursuing your investigation?

7 A. I didn't make a whole lot out of it because she
8 wasn't real certain about everything. And as far as
9 timing into his -- Child 's actual medical condition
10 -- I mean, just as the pathologist stated yesterday,
11 any injury to his brain would've been immediate---

12 MS. WINGARD: Objection, Your Honor. I don't
13 think she can testify to what the pathologist said
14 yesterday. The pathologist actually had a much longer
15 time frame than Investigator Lowder is suggesting.
16 But I don't think she can testify.

17 THE COURT: I am going to exclude that testimony.

18 BY MR. RICHARDSON

19 Q. You also took a statement from Jermaine; is that
20 correct?

21 A. Yes.

22 Q. Do you remember what day he came in to give a
23 statement?

24 A. July the 28th.

25 Q. So that would've been three (3) days after the

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1 incident?

2 A. Yes.

3 Q. Okay. Who came with him?

4 A. His father.

5 Q. All right. Were they together the whole time?

6 A. They came in and met with myself and Lieutenant
7 Lutkin. And we went over what we were going to do as
8 far as the statement and the Miranda.

9 Q. Okay. Did you give Jermaine his Miranda warning?

10 A. I did.

11 Q. Do you recall what method you used to give those,
12 whether you read them off of a card or from memory or
13 from a sheet of paper?

14 A. We have a sheet of paper, and we read them off of
15 the sheet of paper. His father was present when that
16 was done. And his father initialed and signed also
17 with him.

18 Q. Okay. So you say Jermaine initialed the sheet of
19 paper with those writings?

20 A. Right.

21 Q. Could you please read what's on that sheet of
22 paper?

23 A. "You have the right to remain silent. Anything
24 you say can and will be used against you in a court of
25 law. You have the right to talk to a lawyer and have

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1 him present with you while you're being questioned.
2 If you cannot afford to hire a lawyer, one will be
3 appointed to represent you before any questioning if
4 you wish. You can decide at any time to exercise
5 these rights and not answer any questions or make any
6 statements.

7 "Do you understand each of these rights as I have
8 explained them to you?" And the person should answer
9 yes or no. "Having these rights in mind, do you wish
10 to talk to us now?" And they will answer yes or no.
11 Initialed by both Jermaine and Mr. Jerito. And then
12 Jermaine also would sign at the bottom and so did Mr.
13 Jerito.

14 Q. Okay. So you read those to Jermaine so he could
15 understand what -- what you were saying?

16 A. Yes.

17 Q. Okay. Did he give any kind of indication that he
18 might have been confused about what you'd said?

19 A. No. He seemed to be very smart.

20 Q. Okay. At that point, you commenced the interview;
21 correct?

22 A. Right.

23 Q. And how many law enforcement personnel were in the
24 room when you were conducting the interview?

25 A. Myself and Lieutenant Lutkin.

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1 Q. Okay. I want to show you what's been marked as
2 State's Exhibit 14 for identification purposes. Do
3 you recognize this document?

4 A. Yes.

5 Q. Okay. What is that?

6 A. That is the statement of Jermaine Mayweathers.

7 MR. RICHARDSON: Okay. Your Honor, at this time,
8 I'd move to have this statement placed into evidence
9 as State's Exhibit number 14.

10 MS. WINGARD: I think they've got to show finding
11 that it's freely and voluntarily given and properly
12 preserved. I don't think that's been established.

13 THE COURT: I have not done that yet.

14 MR. RICHARDSON: Okay. Well, Your Honor, the
15 investigator's testified that he was given his Miranda
16 and seemed to understand those rights and made this
17 statement after those warnings. I'd ask the Court to
18 make a finding that the statement was freely and
19 voluntarily given.

20 THE COURT: Yes, ma'am?

21 MS. WINGARD: Judge, I would suggest that the
22 suspect, in that he was accompanied by his father, --
23 clearly his father was one of the persons who had been
24 in the home some twelve (12) to fourteen (14) hours
25 before the child was taken to the hospital. So I

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1 would object to it as -- as his rights were not
2 properly preserved because of -- that his dad is the
3 parent with him. And, obviously, he has got to be one
4 of the persons who may be a suspect in this situation.
5 So I would object to it.

6 THE COURT: All right. You -- Would you like to
7 lay additional foundation relating to that objection--
8 -

9 MR. RICHARDSON: Sure.

10 THE COURT: ---for this witness?

11 BY MR. RICHARDSON:

12 Q. Investigator Lowder, at the time you took the
13 statement from Jermaine, had you already taken a
14 statement from Mr. Jerito?

15 A. No. I did Mr. Jerito's after.

16 Q. Okay. At the time you took this statement, was
17 Mr. Jerito a suspect?

18 A. Yes.

19 Q. What time -- Excuse me. When you took the
20 statement from Jermaine, was Mr. Jerito in the room
21 with him?

22 A. No. And as far as Mr. Jerito being a suspect,
23 everyone at that time was a suspect. Even Deborah was
24 a suspect. So at that time, we're just investigating,
25 trying to get statements from everyone.

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1 Q. So---

2 A. And Mr. Jerito was not in the room when Jermaine
3 gave his statement.

4 Q. So at the time the statement was made, it was just
5 two (2) law enforcement officers and Jermaine?

6 A. Right. And DSS, Ms. Katrina Andrews was sitting
7 in there.

8 Q. Okay.

9 MR. RICHARDSON: I beg the Court's indulgence for
10 a moment. Your Honor, again I'd ask the Court, based
11 on this testimony, to find the statement was freely
12 and voluntarily given, given the fact that Mr. Jerito
13 was not in the room with Jermaine when the statement
14 was made.

15 THE COURT: Ms. Wingard?

16 MS. WINGARD: Judge, I would just renew my
17 objection.

18 THE COURT: Do you wish to voir dire this witness
19 concerning this issue at all for the record?

20 MS. WINGARD: I can do that.

21 THE COURT: Yes, ma'am.

22 VOIR DIRE BY MS. WINGARD:

23 Q. At the time that you had Jermaine come in with his
24 dad, you had not excluded Mr. Jerito as a suspect. Is
25 that the gist of your testimony?

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1 A. That's correct.

2 Q. Did -- You got Mr. Jerito to sign the waiver for
3 him, but then you excluded him from the room during
4 the actual statement?

5 A. That's correct.

6 Q. And in the room was you, Lieutenant Lutkin, and
7 Katrina Andrews?

8 A. That's right.

9 Q. And he was by himself at that point?

10 A. Yes. He was.

11 MS. WINGARD: That's all.

12 THE COURT: Was Mr. Mayweathers cooperative in the
13 process of -- I'm talking about the defendant Mr.
14 Mayweathers. -- cooperative during this process of
15 being Mirandized and then giving his statement?

16 WITNESS LOWDER: Yes. He was.

17 THE COURT: Did he seem to be under any stress,
18 any duress, or anything that would cause you to be, or
19 cause you to notice anything unusual about him?

20 WITNESS LOWDER: No, sir.

21 THE COURT: And you indicated that you believe
22 that he was -- he seemed to be a, I believe your word
23 was a smart person?

24 WITNESS LOWDER: Yes, yes. He was very smart and
25 very smart in the way he answered his questions.

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1 THE COURT: All right. At this time, noting the
2 objection of defense counsel, I am going to allow the
3 statement to be entered into evidence as State 14.

4 STATE'S EXHIBIT 14 ENTERED.

5 BY MR. RICHARDSON:

6 Q. Investigator Lowder, at this point in time, nobody
7 was in custody regarding this case; were they?

8 A. No, sir.

9 Q. Okay. So everybody that came to make a statement
10 came of their own volition?

11 A. Yes, sir.

12 Q. Okay. In the interview with Jermaine, you and
13 Lieutenant Lutkin asked him a number of questions.
14 How did you start out?

15 A. Basically telling him that we were trying to
16 investigate what had happened to Child and his
17 injuries, and for him to tell us anything that he knew
18 that might help us figure out what had happened.

19 Q. Okay. And what was he able to tell you?

20 MS. WINGARD: Judge, I believe the statement
21 speaks for itself. And I think you could read it and
22 shortcut to this testimony.

23 THE COURT: I -- I think that I would like to take
24 a moment to read the statement. And then if you have
25 some specific matters that you need to bring to the

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1 Court's attention from the statement in some way other
2 than the statement itself, I'll be glad to let you
3 question her concerning that. But the statement is
4 now in evidence. It does speak for itself.

5 MR. RICHARDSON: Your Honor, may we approach for
6 one minute?

7 THE COURT: Certainly.

8 (Bench conference with attorneys)

9 THE COURT: Yes, sir?

10 MR. RICHARDSON: Your Honor, regarding the
11 statement that was just placed in evidence, State's
12 Exhibit number 14, there is a portion of that
13 statement that has been redacted. And we'd just like
14 to place that on the record at this time for the
15 Court's consideration.

16 THE COURT: All right. And the witness is aware
17 of -- of that portion that has been redacted?

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: All right. Anything that you need to
20 place on the record related to that?

21 MS. WINGARD: No, sir.

22 THE COURT: All right. What I'm going to do is --
23 as I may have some questions that arise from this
24 statement for this witness -- and so I do need to take
25 a few moments to read this statement. Rather than sit

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1 here and make you all sit in complete silence and
2 making you uncomfortable watching me read the
3 statement, I'm going to step back in my chambers and
4 read this statement. And then I'll be right back. So
5 we'll stand at ease for a few moments.

6 (Court at ease; 10:10 a.m.)

7 (Reconvened at 10:28 a.m.)

8 **THE COURT:** All right. We're back on the record
9 now. I've had an opportunity to review State 14,
10 which is the statement of the defendant. I've read
11 that. And, of course, I did not read any of the
12 redacted portions. You can continue with your direct
13 examination.

14 **MR. RICHARDSON:** Thank you, Your Honor.

15 BY MR. RICHARDSON:

16 Q. Investigator Lowder, during the course of the
17 statement, did Jermaine ever seem to be reluctant to
18 talk about anything with you?

19 A. Yes. At times he was.

20 Q. What was that?

21 A. As far as not informing us what occurred to

22 Child .

23 Q. Did he give any indication of -- at all what it
24 was?

25 A. No. He -- He gave a statement as to far as what

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1 had happened during the course of the day. And pretty
2 much up until about four (4) o'clock that day, it was
3 determined that Child was fine; playing, eating,
4 and was fine.

5 Q. Well up until the point where he -- When he
6 described what happened from that morning until early
7 afternoon, did he have any hesitation or reluctance in
8 his statement to you?

9 A. The only thing that he did bring up was that he
10 bumped his head Thursday.

11 Q. Okay. So the portion, I guess, the questions
12 dealing with what happened later that Friday
13 afternoon, you're saying that's when he became
14 hesitant?

15 A. He -- He talked about that he had bumped his head
16 late Friday afternoon. And he also, you know, told
17 that they had watched movies and they had stayed up
18 late. And I asked him if Child was fine.
19 Obviously, during that time, yes.

20 During the next morning, we went through what they
21 had done, and what they had ate for breakfast; and
22 well Child was fine; yes. Did he tell you he was
23 feeling bad; no. So, basically, through that night
24 before and the day Friday, his statement was -- to me
25 was that Child was fine.

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1 Q. Okay. Considering all the evidence that you
2 received from interviews throughout this process:
3 doctors, lay witnesses, back witnesses, everyone you
4 came in contact with; what ultimately made you decide
5 to charge Jermaine to the exclusion of all others?

6 A. Of course, checking with the doctors and
7 determining the impact, the blunt force trauma impact
8 to the head, the onset would have been fairly
9 immediate to the time that he was taken to the ER.

10 And knowing that Deborah was at work with her work
11 schedule that I got from her manager, and also Mr.
12 Jerito giving me a statement that he wasn't even in
13 the home, Jermaine gave me a statement that Deborah
14 and Mr. Jerito wasn't in the home, and then I also
15 took a statement from Mr. Jack Fulmore, who
16 substantiated Mr. Jerito's statement, and everyone
17 else is saying that Willie was with him in New Jersey.

18 Q. So from what you gathered, the only people who
19 were in the home were Jermaine, Child , and K.P. ?
20 Is that accurate?

21 A. Exactly.

22 Q. Okay. And based on that, you felt that you had
23 enough to charge Jermaine?

24 A. Yes. Because K.P. is only seven (7) years old.
25 And as I was informed and everyone here was yesterday

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1 from the pathologist that it -- the impact---

2 MS. WINGARD: Objection, Your Honor.

3 THE COURT: Wait one second please. You can
4 testify about information that you had prior to
5 yesterday in your investigation that led you to make
6 the decision to charge this defendant. But that --
7 What you heard yesterday would not be relevant to this
8 inquiry.

9 WITNESS LOWDER: Okay. I obtained information
10 from the pathologist stating that the blunt force
11 trauma that happened to Child 's head was comparable
12 to being in a severe car accident. And it was such a
13 hard impact that a seven-year-old would not have the
14 strength to initiate that kind of force and that kind
15 of impact.

16 BY MR. RICHARDSON:

17 Q. So that's how you were able to exclude K.P. as
18 a suspect?

19 A. Exactly.

20 Q. And that just left Jermaine; correct?

21 A. Right.

22 Q. Okay. Please answer any questions that Ms.
23 Wingard or the Court may have for you.

24 THE COURT: Ms. Wingard?

25 CROSS EXAMINATION BY MS. WINGARD:

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1 Q. Investigator Lowder, you don't mean to imply that
2 he was uncooperative, rude, belligerent, or anything;
3 do you? When I say he, I mean Jermaine.

4 A. No.

5 Q. What you're saying is that he did not give you the
6 answers that you wanted, because you wanted him to
7 say, "I beat this child." He -- He did not give you
8 those answers.

9 A. I wanted him to tell us what happened to Child .
10 And I felt since he was the only one there, he should
11 know.

12 Q. But the---

13 A. He was in charge, in care and custody of them.

14 Q. But there were people there up until eight (8) or
15 nine (9) o'clock that day. And in fact, the mom was
16 there.

17 A. Eight (8) or nine (9) o'clock what day?

18 Q. The day that he was taken to the hospital.

19 A. All right. Now are you saying eight (8) or nine
20 (9) o'clock at night or in the morning?

21 Q. In the morning. The mother, I believe, went to
22 work -- She said she was late. And I guess you would
23 know exactly because you have her timecard.

24 A. Yes. If you'll give me just a minute, I'll let
25 you know what time she went to work. She was at work

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1 at 8:28 a.m.

2 Q. And where is -- Where does she work?

3 A. She works at the Holiday Inn Express.

4 Q. And where is that located?

5 A. On Radio Drive.

6 Q. And where is Gilbert Drive?

7 A. Across town, near National Cemetery.

8 Q. So fifteen (15) minutes to get to work?

9 A. I'm -- I'm not sure. I mean, it could be twenty
10 (20), could be thirty (30), could be -- according to
11 traffic. I -- I wouldn't know.

12 Q. So---

13 A. I don't know what she encountered on her way to
14 work that morning.

15 Q. So you didn't try to -- define that timeline?

16 A. No, ma'am. Not according to what the medical
17 doctors and the pathologist informed me.

18 Q. Did you have a lengthy discussion with them about
19 the history of this situation?

20 A. The history of--?

21 Q. In order for them to do the autopsy, did you have
22 a discussion with them about the history? For

23 instance, in the autopsy report, it says he was seen

24 by neighbors to be playing at home with his seven-

25 year-old brother and fifteen-year-old babysitter

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1 during the afternoon of July 25th, 2008. Did you give
2 that information to the pathologist?

3 A. No.

4 Q. Do you know where that information came from?

5 A. I do not.

6 Q. Do you have that information anywhere in your
7 file?

8 A. No.

9 Q. So that---

10 A. I have the same autopsy report that you have.

11 Q. So that is something that you have no idea where
12 she would have gotten that information?

13 A. I do not, unless it came from Lieutenant Lutkin.
14 It could have.

15 Q. If it had come from Lieutenant Lutkin, wouldn't
16 that be in -- in your file? I mean, you don't have a
17 file and Lieutenant Lutkin doesn't have a file; it
18 would be all one file, isn't it?

19 A. I have the same autopsy report that you have. I
20 interviewed several people, and even the park manager
21 stated that he'd never seen the children play outside.

22 Q. Okay. But that's what I'm trying to understand.
23 You have no idea where that statement came from?

24 A. No. I don't and as -- well, you -- you heard the
25 pathologist yesterday. They do preliminary reports.

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1 Q. Similarly, do you know where the statement came
2 from that he continued -- that is, Jermaine continued
3 to kick the decedent and hit him with his fist while
4 he was asleep?

5 Do you know where that statement came from?

6 A. I know that when K.P. was interviewed at the
7 Care House, that he made the statement that Jermaine
8 kept kicking him, hitting him with the belt. It could
9 have come from that.

10 Q. But as -- But there is no independent information
11 other than the information that we already have from
12 K.P. from the two (2) interviews at the Care House
13 and his testimony?

14 A. None that I'm aware of, unless the pathologist has
15 it there on her autopsy report.

16 Q. But that's what I'm asking you. Do you know where
17 this came from?

18 A. Ms. Wingard, you have questioned me several times
19 and said hearsay and that to -- I can't tell you.

20 That is the pathologist's report. And I do not have--

21 -

22 Q. Okay.

23 A. ---anything but what you have.

24 Q. But what -- But the pathologist would have gotten
25 the information from you.

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1 A. Not necessarily.

2 Q. Or someone in law enforcement. And I just trying
3 to ascertain if there is anything in your file that --
4 that I don't know about to support that. I mean, we
5 obviously have K.P. 's two (2) statements and then
6 his testimony. And that would---

7 A. The only thing I can tell you is the pathologist
8 is just investigating and doing a supplement, just
9 like we would, as far as trying to figure out what's
10 going on. And I did not give her that information. I
11 think I've already told you that.

12 Q. All right. And there is nothing in your file to
13 support that statement if it did not come from
14 K.P. ?

15 A. No. I did not give her that information.

16 Q. I understand that. Now my next question is:
17 Having read that to you, is there anything in your
18 file, other than K.P. 's statement, to suggest that
19 information?

20 A. K.P. 's statement and the doctor's examination.

21 Q. How can the doctor's examination say that he
22 continued to kick and hit him with his fist while he
23 was asleep?

24 A. I wasn't referring to that. I was referring to
25 his injury.

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1 Q. That's what I asked you. My question is: Is
2 anything in your file to support that specific
3 statement, other than K.P. ?

4 A. Doctor's reports and injuries showing that it's
5 repeated. It's a repeated -- It wasn't once; it was
6 numerous injuries.

7 Q. The doctor's testified they specifically could not
8 say how the injuries occurred, did they not? Did she
9 not?

10 A. I don't know. I can't testify to what she
11 testified to. I -- I don't know.

12 Q. Okay. All right.

13 A. I mean, I---

14 Q. Do you have---

15 A. ---I don't understand what you're asking?

16 Q. Do you have a report, not a medical report, other
17 than K.P. ---

18 A. No.

19 Q. ---that said that?

20 A. No.

21 Q. There's nothing else in the file regarding it?

22 A. There was no one else at the home besides K.P.
23 and Jermaine.

24 Q. And so you just made up your mind that Jermaine
25 did it? I mean, that was -- that was what you

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1 thought?

2 A. I did not make up my mind. I went by evidence
3 from doctors and medical exams.

4 Q. Did you -- Did you do a timeline? When -- When do
5 you think -- What is the State's theory of when this
6 injury would occur? Your---

7 A. Friday afternoon, before EMS was called.

8 Q. And you did not look any beyond that? That was
9 your -- those were your parameters?

10 A. In my investigation, I interviewed several people.
11 And -- And even Jermaine himself said that Child was
12 fine all the way up until four (4) o'clock that
13 afternoon.

14 Q. Physical evidence linking Jermaine to this
15 incident, did you find any? Did you search and seize
16 some belts and such?

17 A. And that would be forensics. And they should
18 testify to that.

19 Q. Okay. But you're the witness that the State has
20 chosen to call. So I need to know from you---

21 A. I can go through---

22 Q. Take your time.

23 A. ---what was confiscated.

24 Q. Go ahead.

25 A. I can go through his list of what he took. If

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1 you'll give me a minute. I've got a lot of notes.

2 Okay. I'm ready. What -- What is your question?

3 Q. Okay. I want to know what was found at the home
4 when y'all searched.

5 A. Forensics collected: one wooden chair brace from
6 behind the breakfast table; one yellow colored
7 washcloth from the bathroom toilet seat; one white and
8 peach color washcloth from the back bathroom toilet
9 seat; one pump bottle of hand cream from underneath
10 the rear bedroom bunk; one pink, white, and blue color
11 bed sheet from the bottom bunk.

12 That's what -- That's what I see in this report.
13 I haven't read it completely and fully. I'm just
14 sitting here going through it right now with you.

15 Q. Is there anything in your report, any physical
16 forensic evidence to link Jermaine to any weapon,
17 belt, anything of that nature?

18 A. The belt, due to K.P. 's testimony.

19 Q. Physical, forensic evidence, not the testimony of
20 an inconsistent seven-year-old, but physical evidence.
21 Did you get any sort of fingerprints?

22 A. We got the report from the pathologist that
23 explained the loop pattern of the belt striking the
24 body.

25 Q. But do you have any physical evidence linking

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1 Jermaine, any fingerprints, any DNA, anything linking
2 Jermaine to any of the belts or any other items that
3 were seized from the Gilbert Drive home?

4 A. Nothing but him being at the home during the time
5 of the incident, and being the person strong enough to
6 inflict the injuries.

7 Q. You made up your mind that that was the theory of
8 the State's case early on and didn't look any further.
9 Is that what you're telling me?

10 A. No, ma'am. I have plenty of paperwork here to
11 show I dug a whole lot.

12 Q. All right. At what point did you decide to charge
13 Jermaine?

14 A. On 7-29 at about 7:30 p.m.

15 Q. And was there some benchmark event that caused you
16 to go ahead and charge him at that point?

17 A. Based on the evidence that I had and him being the
18 only person in the house that could inflict the
19 injuries. And also that he had family in New Jersey
20 and Virginia, I felt like he might be a flight risk.

21 Q. Well, he has been essentially out since that time;
22 and he's still here. So you were wrong about him
23 being a flight risk, weren't you?

24 A. Well.

25 Q. I mean, he hasn't run. He's here.

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1 A. Well I don't know exactly where all he's been, but
2 I know he's had some -- some problems in Charleston.
3 But I don't -- yeah. He's sitting here right now.

4 Q. And so he did not run?

5 A. I guess he -- I don't know what he did in between
6 that time and here, but he's sitting here today.

7 Q. All right. You did a report, and you say in your
8 report, and I'll -- if you want to refer to your
9 report, 7-26-08. In that report, you say that Dr.
10 Atwood stated that his injury occurred several hours
11 before EMS was called.

12 A. In an early -- early hours of the onset of EMS
13 being called.

14 Q. Your -- I'm reading from your report. And it
15 says, "Dr. Atwood stated this injury occurred several
16 hours before EMS was called." EMS was called
17 approximately five (5) o'clock in the afternoon; is
18 that correct?

19 A. I believe it was a little after five (5). And I -
20 - I'm sure Dr. Atwood will testify also, but---

21 Q. I'm trying to get your understanding of the---

22 A. Several hours, during that afternoon, is what he
23 informed me. Several hours. And several hours could
24 be from one (1) to two (2) to three (3), in my
25 opinion. I didn't look at it as being twelve (12) to

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1 twenty-four (24).

2 Q. So several hours to you is more than one (1),
3 obviously. One (1) would be several -- not be
4 several; it would be one (1).

5 A. And the onset of the injury occurs almost
6 immediate.

7 Q. All right. Let me ask you about Tequila Durant's
8 statement. Do you have that? It's next to the last
9 page. And this says you interviewed her on July 29.
10 She is the neighbor to the right side of this
11 property. She said, "The older boy came over to her
12 house and asked if he could use her phone to call 9-
13 11. She told him yes, that he would come in and use
14 the house phone.

15 "He stated to her, no, he wanted to use the cell
16 phone. So he went up to her brother, Dwone Durant,
17 and asked if he could use the cell phone to call 9-11.
18 And he let him. Ms. Durant said that her cousin had
19 been staying there to help her with her broken leg.
20 The cousin, LaDonna Smith's, cell phone number
21 (unintelligible). And that she had heard a lot of
22 commotion at the house Thursday night, Friday morning
23 around 1:00 a.m., and that the noise went on until
24 around 3:00 a.m.

25 "She said she was sitting on the front porch steps

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1 and saw a lot of shadows and heard thumping. I ask
2 her," -- that is you -- "I asked her if it sounded
3 like horse playing; and she said no. It was more than
4 horse playing."

5 Now at that time, the mother was still in the
6 home. Is that correct?

7 A. Yes. And so was the -- the whole family was at
8 home that night and they stayed up watching movies and
9 playing and--.

10 Q. And maybe, or maybe not, Mr. Jerito was still
11 there. Because we know he left in the early morning
12 hours.

13 A. Right.

14 Q. But it is true that this Tequila Durant told you,
15 obviously, what you have reported here and that you
16 put in your report. Is that correct?

17 A. That is correct. She -- She wasn't exactly sure
18 on time. It was estimated. And this family -- Well,
19 actually, it wasn't Ms. Durant. That was Ms. LaDonna
20 Smith. But this family, the Durants, did not want to
21 get involved in this case at all. And so their
22 statements was -- was varied. And it didn't make a
23 big impact on me, because the whole family stated that
24 they had stayed up late playing and watching TV and
25 movies.

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1 Q. Isn't it---

2 A. And also Mr. Jerito had left around that time. It
3 could have been bumping in the yard from Mr. Fulmore
4 pulling up or -- or whatever. I mean, there was a lot
5 of commotion going on up until one (1), two (2), three
6 (3) in the morning.

7 Q. So you just completely discounted what this woman
8 said. But let -- I do need to understand---

9 A. And especially since Child was fine. And he was
10 fine all the way up until four (4) or five (5) on
11 Friday afternoon.

12 Q. Well, I -- You -- Did you get this statement that
13 there was a lot of commotion at the house from LaDonna
14 Smith or did you get that from Tequila Durant? I need
15 to be clear about that.

16 A. LaDonna Smith.

17 Q. And you just discounted that information?

18 A. I didn't discount it, because I put it in my
19 notes. I certainly took it into account. But I used
20 it in with all my other evidence as far as even to
21 what Jermaine stated. I mean, Child was fine all
22 day. He ate. He played. He watched TV up until four
23 (4) o'clock that afternoon.

24 So I certainly made relevance to it, or it
25 wouldn't be in my notes. But I did take it into

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1 account. But with all the other evidence that I had,
2 it didn't stand out to be heavy in my investigation.

3 Q. Did you photograph, or someone in your department
4 photograph the house?

5 A. Someone with forensics would've done that.

6 Q. Well did you go to the house?

7 A. I went once.

8 Q. Do you recall the bunk beds at the house?

9 A. Yes.

10 Q. Do you recall that they were -- they're not
11 flimsy, metal bunk beds; they are substantial, wooden
12 beds?

13 A. They are wooden.

14 Q. Do you have the pictures of the house with you?

15 A. I do not.

16 Q. But you recall that they are substantial, wooden
17 bunk beds?

18 A. I remember that they were wooden. I'm not sure
19 exactly what substantial -- I mean, they were normal,
20 wooden bunk beds.

21 Q. And you -- you don't have today for court the
22 copies of the -- of the pictures or any forensic
23 information or anything of that nature?

24 A. I do not have those. Forensics would have them.

25 I do not have them in my file. David may have them in

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1 his.

2 Q. How about field notes? Do you have field notes in
3 your file? I guess I'm asking you because
4 everything's been given to the prosecution that you
5 have in your file and turned -- has that been turned
6 over to the public defender?

7 A. I can't answer for forensics. I'm not the
8 forensics investigator.

9 THE COURT: The question was: Has everything in
10 your file---

11 WITNESS LOWDER: Everything in my file, David has
12 it.

13 BY MS. WINGARD:

14 Q. But there would be different information in
15 forensics' file?

16 A. I don't testify for forensics. Forensics is---

17 Q. But this is your case, isn't it?

18 A. Yes. And if you need to hear from forensics, then
19 you need to subpoena the forensics investigator. I'm
20 -- I am not the forensics investigator.

21 THE COURT: But have you reviewed the forensics
22 file? Have you looked at that file?

23 WITNESS LOWDER: I have. I have their summary.

24 THE COURT: Was Defense provided with a summary of
25 the forensics file?

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1 MS. WINGARD: I -- I believe I was, but I was -- I
2 was provided some pictures on a list. What I am
3 trying to get are pictures of the bed.

4 MR. RICHARDSON: Your Honor, maybe we have the
5 pictures on disc. If the Court would like to see
6 them, we could have somebody in our office run those
7 off within the next twenty (20) to a half hour.

8 THE COURT: Well, I mean, if it's something that
9 the defense or the State desires that I look at, I'll
10 be happy to look at them when they're introduced into
11 evidence. I mean, if that's something that needs to
12 be introduced with -- with this witness, then we do
13 need to take time to make copies of those photographs,
14 if that's something that the defense or State desires
15 to introduce.

16 MS. WINGARD: I would like copies of the
17 photographs of the bunk beds.

18 MR. RICHARDSON: We can have those within the next
19 few minutes.

20 THE COURT: All right. Well let's -- let's go
21 about getting that done while we continue with this
22 witness. I'll give you just a few moments to make
23 arrangements to do that.

24 While he's doing that, let me ask you a question
25 about something you testified. In direct examination,

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1 you said that Tequila Durant told you about the noise
2 and the shadows. But do I understand that it was
3 actually LaDonna Smith who told you about the noise
4 and shadows?

5 WITNESS LOWDER: Yes, sir.

6 THE COURT: And, specifically, how did she
7 describe the noise that she heard? I mean, was it
8 human voices? Was it doors slamming? What -- What
9 did she describe as the noise that she heard?

10 WITNESS LOWDER: She said she saw shadows---

11 THE COURT: Right.

12 WITNESS LOWDER: ---and bumping. And she heard a
13 bumping. And I asked if it was horse playing. And
14 she said it sounded more than horse playing. But she,
15 of course, couldn't see. She was just going by what
16 she could hear from outside.

17 THE COURT: And how far was she from the home in
18 which Defendant resided?

19 WITNESS LOWDER: Well, I'm not good at
20 measurements.

21 THE COURT: Further than the distance of that
22 wall?

23 WITNESS LOWDER: Yes.

24 THE COURT: Twice that distance?

25 WITNESS LOWDER: Probably about twice.

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1 THE COURT: Now I'm talking about the distance
2 from the witness stand to the back wall, which looks
3 to be about twenty (20) to twenty-five (25) feet, I
4 think. So we're talking about something approaching
5 fifty (50).

6 WITNESS LOWDER: This -- yeah. This is a mobile
7 home park.

8 THE COURT: Right.

9 WITNESS LOWDER: And so it would have been the
10 mobile home right behind this one, where the incident
11 occurred.

12 THE COURT: All right. Thank you. Yes, ma'am?

13 BY MS. WINGARD:

14 Q. When you saw the trailer, was it disarray; or was
15 there anything in your summaries from forensics to
16 indicate that the trailer was in disarray?

17 A. There was a broken back of a chair. There was
18 some clothes on the floor in the bedrooms. And -- Not
19 so much as disarray, but it did appear that this
20 family was just getting moved in, hadn't been there
21 long. But most of it was organized.

22 Q. And how about Jermaine. Did you observe
23 Jermaine's physical appearance that day? Obviously,
24 you talked to him. Before you took his statement on
25 the 28th, 29th maybe took that statement, you first saw

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1 him at the hospital immediately after this; did you
2 not?

3 A. That's correct.

4 Q. And you talked for some time at the hospital. Is
5 that right?

6 A. Very briefly. It wasn't long.

7 Q. How -- How long would you estimate it was?

8 A. I'm not sure. I got general information from him,
9 like who he was, and who his dad was, and who his mom
10 was, and contact information, and -- and asked him if
11 he knew what had -- what had happened.

12 Q. And at that time, you knew he was the person who
13 had called 9-1-1; is that correct?

14 A. That's correct.

15 Q. You talked to him in the emergency room?

16 A. Outside in the waiting area.

17 Q. So, obviously, a well-lighted area?

18 A. That's right.

19 Q. Did you observe any bruises, marks, anything on
20 his person?

21 A. When I spoke with him, I actually spoke with him
22 off into a -- a little room on the side. I did not
23 see any marks on his body. But I did notice that he
24 went off and was very to himself and had covered his
25 whole head and body and was over in the corner not

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1 showing a whole lot of emotion.

2 Q. But you talked to him, and he was not covered up.

3 Is that correct?

4 A. At -- Right.

5 Q. Would that be unusual for someone in that
6 situation to have called 9-1-1 before going into
7 distress, and be extremely waiting at the hospital?

8 Most people, I would think, would be subdued under
9 those circumstances. I guess what I just can't --

10 What importance did you ascribe to that?

11 A. To---

12 Q. To---

13 A. ---him being at the hospital?

14 Q. And -- And you said being sub- -- you know,
15 getting kind of off to himself and quiet. What -- Did
16 you ascribe any importance to that?

17 A. He didn't seem to be real concerned. He wasn't
18 upset.

19 Q. So it's not that you were saying he was withdrawn.
20 You're saying that he didn't appear concerned and
21 interested? Do you know why he would have stayed at
22 the hospital if he wasn't concerned? I mean, he --
23 nobody was keeping him there, were they? He was free
24 to go.

25 A. No. Unless it's because he's fifteen (15), and he

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1 rode up with Deborah. And he just stayed there.

2 Didn't -- His dad was not there.

3 Q. Now, who else was at the hospital? Do you recall?

4 A. The ones -- The people that I spoke with was
5 Jermaine, and Deborah, and K.P. .

6 Q. Thank you.

7 THE COURT: Any re-direct?

8 MR. RICHARDSON: Just briefly, Your Honor.

9 RE-DIRECT EXAMINATION BY MR. RICHARDSON:

10 Q. Investigator Lowder, when you were speaking about
11 what items had been taken from the house and placed in
12 evidence, were taken by forensics, are you referring
13 to Corporal Byrd's narrative?

14 A. Yes, sir.

15 Q. On page 3 of that narrative, does it state that
16 also eight (8) belts and a cable lock were seized as
17 well?

18 A. Yes. It does.

19 Q. And that's all that you're aware of that was
20 taken?

21 A. Yes, sir.

22 MR. RICHARDSON: No further questions.

23 RECROSS EXAMINATION BY MS. WINGARD:

24 Q. And again, you did not have any fingerprints, DNA,
25 any kind of forensic evidence linking Jermaine to

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1 those items. Is that correct?

2 A. No.

3 EXAMINATION BY THE COURT:

4 Q. I did not hear any mention during your testimony,
5 if I recall correctly, of a black polka-dot belt or a
6 polka-dot belt, I should say. Did -- Was there a
7 polka-dot -- polka-dot belt ever identified at the
8 home of Mr. Mayweathers?

9 A. I did not physically take the belts out of the
10 mobile home. And I did not go back whenever this
11 warrant-- I -- I don't have a description of all of
12 the belts. I -- I just have the summary.

13 Q. When you went to the home for your visit, did you
14 see belts in the home?

15 A. I did.

16 Q. And do you recall seeing a polka-dot belt?

17 A. There was a lot of belts. And I -- It's hard for
18 me to describe every one of them. I do believe there
19 was, but---

20 Q. Were they -- Were they kind of hanging up in a
21 closet or in a room somewhere?

22 A. In the drawer in the bedroom.

23 Q. Okay. Did you see any belts that were just left
24 outside on a bed or -- or other piece of furniture or
25 on the floor?

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- 1 A. I don't remember if I did.
- 2 Q. Do you recall if there was a television in the
3 bedroom with the bunk beds?
- 4 A. Yes. I believe there was.
- 5 Q. And was there a television in the -- the living
6 area of the home?
- 7 A. Yes.
- 8 Q. Was there a television in the room with the
9 pallets on the floor?
- 10 A. No.
- 11 Q. The day that you went to the home was on Saturday?
12 At this incident -- the ambulance went to the home on
13 Friday. Did you go to the home the next day, on
14 Saturday?
- 15 A. 7-25. The time -- The date that -- that I went
16 with forensics was on 7-29. So that would have been -
17 -.
- 18 Q. Tuesday.
- 19 A. No. That's right.
- 20 Q. After the incident. And that's when they took
21 physical custody of those items that you mentioned
22 that were obtained by forensics; is that correct?
- 23 A. Yes, sir.
- 24 Q. So that any physical evidence obtained would have
25 been obtained three (3) or four (4) days after the

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1 date that the ambulance went to the home?

2 A. Yes, sir.

3 Q. All right.

4 A. A consent search wasn't done on that Friday night.

5 Q. That -- That's what I was asking about. Was that
6 the night that you went?

7 A. No. I did not go. I stayed at the hospital.

8 Q. All right.

9 A. And forensics went that night.

10 Q. Okay. Did they take physical custody of items on
11 that night? That's why I was getting confused.

12 A. I will have to read from Investigator Byrd's note
13 here.

14 Q. That's -- That's fine. Just review the notes and
15 -- and let me know if they indicate they took --
16 retained custody of items from the home on that
17 consent search.

18 A. I know that he collected the tree branch. I had
19 made comment of that earlier, that there was a -- a
20 branch out in the yard. And he -- he did collect the
21 tree branch that was approximately five (5) feet in
22 length, and collected it into evidence.

23 Q. And that's the only thing he took that evening?

24 A. Your Honor, it's hard for me to testify to what he
25 did without being able to review this in --. Like I

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1 said, I was not there that night. I stayed at the
2 hospital. I know they -- they took a lot of photos.
3 And I know that there was a lot of evidence collected.
4 Based on his narrative here, it looks like the items
5 collected was collected on -- some on 7-25 and some on
6 7-29.

7 **THE COURT:** All right. That's all I have for this
8 witness at this time. Do either of you have any
9 follow up questions to my questions? Mr. Richardson,
10 Ms. Wingard? I know we're also waiting on those
11 photographs.

12 **MR. RICHARDSON:** None, Your Honor, at this time.

13 **THE COURT:** Ms. Wingard?

14 RE-RE-CROSS EXAMINATION BY MS. WINGARD:

15 Q. I just need to note, in looking at your -- at the
16 summary, the eight (8) belts, do you -- you don't have
17 any description of those or a description of the belts
18 are not in your file. That would be in forensics'
19 file; is that correct?

20 A. He would probably have a better description. I
21 have his summary. And it says a total of eight (8)
22 belts and one cable lock was seized as evidence.

23 Q. Well and that's why I'm asking. That's the only
24 description you have. You don't have any further
25 information about what the belts looked like?

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1 A. No.

2 Q. Investigator Lowder, this is -- this is what I
3 wanted to show the Court. Can you identify this
4 picture?

5 A. This is the bunk beds in the back bedroom.

6 Q. Okay. And then this would be a dresser as well in
7 the bedroom.

8 A. Chest of drawers and a dresser.

9 MS. WINGARD: I'd move to introduce---

10 THE COURT: Any objection?

11 MR. RICHARDSON: No, Your Honor.

12 THE COURT: Without objection, it'll be marked and
13 entered as Defendant's 3.

14 DEFENDANT EXHIBIT 3 ENTERED.

15 THE COURT: All right. Thank you, ma'am. You may
16 return to your seat. May this witness be excused if
17 she desires to leave?

18 MR. RICHARDSON: Yes, sir. But she's the chief
19 investigator, and I believe she wishes to remain
20 present.

21 THE COURT: You may be excused when you desire to
22 leave, ma'am.

23 WITNESS LOWDER: Thank you.

24 MR. RICHARDSON: Your Honor, our next witness is
25 out there now.

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1 THE COURT: All right.

2 Dr. Atwood, if you'd come in please, sir. And if
3 you'd place your left hand on the Bible and raise your
4 right.

5 GERALD ATWOOD, being first
6 duly sworn, testified as follows:

7 THE COURT: Thank you, sir. Please have a seat
8 there in the witness stand. And if you would, state
9 your full name and occupation.

10 WITNESS ATWOOD: My name is Dr. Gerald Atwood. I
11 am a pediatric critical care specialist that work --
12 who works at McLeod Regional Children's Hospital.

13 THE COURT: Thank you, sir. Yes, sir?

14 MR. RICHARDSON: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MR. RICHARDSON:

16 Q. Dr. Atwood, you say you're a medical doctor
17 working with -- with children. What kind of
18 education, training, and background do you have in
19 that area?

20 A. Well I, obviously, went to medical school. I did
21 training in both internal medicine and completed
22 training in pediatrics, and then also did additional
23 training in pediatric cardiology. And I'm boarded in
24 pediatrics, pediatric cardiology, and pediatric
25 critical care medicine. And for the last ten (10)

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1 years or so, I've also been working in the field of
2 forensic pediatrics as well.

3 Q. How long have you been a medical doctor?

4 A. Forty-four (44) years.

5 Q. And during that time, have you worked a lot with
6 cases involving children?

7 A. Almost exclusively with children; yes.

8 Q. Okay. Have you ever testified in court before as
9 an expert witness?

10 A. Yes. I have many times.

11 Q. In what areas have you been qualified as an expert
12 witness?

13 A. In the field of, I guess, pediatrics and critical
14 care, and also in child sexual abuse and child
15 physical abuse.

16 Q. Okay

17 MR. RICHARDSON: All right. Your Honor, at this
18 time, I'd move to have Dr. Atwood qualified as an
19 expert witness in the areas of pediatrics, critical
20 care, and child abuse.

21 THE COURT: Any objection?

22 MS. WINGARD: No objection.

23 THE COURT: Without objection, he is so qualified.

24 MR. RICHARDSON: Thank you, Your Honor.

25 BY MR. RICHARDSON:

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1 Q. Dr. Atwood, how did you become involved in this
2 particular case?

3 A. If I can refer to the medical record to be
4 accurate as far as need sometimes. On the 25th of
5 July of 2008, as I recall I received a phone call from
6 Dr. Andrew Rhea, who is a neurosurgeon at McLeod, who
7 was seeing a child, Minor Child , in the emergency
8 room.

9 He wanted an opinion as to whether that an x-ray
10 or cat-scan that he had that showed fairly extensive
11 brain injury, but also showed a very small line of
12 clot over the right part of the brain, he felt it was
13 small and it was not contributing significantly to the
14 child's condition, but was unsure whether that he
15 should intervene or not.

16 And my recommendation to him was to, if the
17 patient was otherwise stable from a (unintelligible)
18 standpoint, to take the patient to surgery and remove
19 the clot, just to take it out as -- even if he felt
20 that it wasn't creating the problem, it was there. In
21 hindsight, we would never know whether maybe things
22 would have been different if you took it out versus if
23 you didn't. So that's what he did.

24 And the patient then went from the operating room
25 after he finished his surgery to the pediatric

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1 intensive care unit where I was waiting for the
2 patient and took over care of the patient at that
3 time.

4 Q. Okay. When you were given the opportunity to
5 examine the victim in the case, what did you observe?

6 A. Oh. Well, that's a -- that's kind of an open-
7 ended question for sure. The patient, obviously, was
8 unconscious, not moving, and in fact on neurological
9 exam, the child really showed no evidence of
10 neurological function whatsoever, both, I guess,
11 grossly from the standpoint of being able to move arms
12 and legs and open eyes and talk and those kind of
13 things, but also some of the more subtle things,
14 pupillary responses, certain types of eye movement,
15 etcetera.

16 So, basically, the child at that point in time,
17 and I understand also on his exam in the emergency
18 room, met at least the clinical condition for brain
19 death, meaning there was absolutely no evidence of any
20 brain function at any level. And on -- In addition to
21 that, he did have a number of unusual bruises, if you
22 want to use the term, on his chest, on his arms and
23 legs that were linear in nature that were red and
24 appeared to be relatively recent.

25 And then he also had a -- an abrasion or a slight

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1 tear at -- at six (6) o'clock on his opening to his --
2 his anus. That was a little bit external to the --
3 the anal -- anus itself, but in -- in that area. And
4 those were mean physical findings that I noted when I
5 first examined him.

6 Q. After that examination, what conclusions or
7 findings did you reach with regard to a diagnosis of
8 his current condition?

9 A. Well, in addition to my exam, obviously, we had
10 the findings that Dr. Rhea had in -- in the operating
11 room. And we also had cat-scans that were done in the
12 emergency room prior to his going into surgery. And
13 all that pointed to the fact that this child had a
14 rather severe head injury and most likely secondary to
15 trauma, and also these bruises on his body appeared to
16 be inflicted trauma as well.

17 Q. Okay. Were you made aware by Dr. Rhea or any of
18 the tests that were performed of any skull fractures?

19 A. No. There was no evidence of skull fractures on -
20 - on his CT scans. And I believe he also had follow-
21 up skull films that did not have any fractures either.

22 Q. How could he have a brain injury and not have a
23 problem with the skull?

24 A. When -- When the head is involved in any kind of
25 trauma, whether it be accidental or inflicted trauma,

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1 there's a certain amount of energy or force that, you
2 know, is -- is transmitted to the head. Now that
3 force impacts upon, you know, the skin, obviously, and
4 the tissue underneath it, and then the skull, and then
5 below that the brain.

6 As that force is transmitted, some of it is
7 absorbed into that tissue and the other, rest of it
8 passes on through. A child's skull is a little bit
9 more elastic or mobile than an adult's skull, for one.
10 So as a result, that energy tends to kind of bend or
11 bow that bone rather than break it as it transmits
12 through.

13 Also it depends upon what the surface of the, say
14 any type of an impact type head injury, the surface of
15 the object that is striking the head, if it's -- if
16 it's a small -- if all that energy is in a smaller
17 area, it's more likely that that's going to be
18 impacted onto the bone, and regardless of malleable it
19 is, it's probably going to -- to fracture.

20 On the other hand, if it's a larger surface that's
21 impacting on the head, then it's less likely that it's
22 going to cause a fracture. And it -- it'll dissipate
23 that energy over a larger surface rather than over a
24 smaller surface. But you -- it's unpredictable.
25 There can be minor, minor trauma that can result in a

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1 skull fracture. There can be major, major trauma; and
2 there'll be no skull fracture.

3 And it depends upon, like I say, a lot of factors
4 as to -- as to how that blow is delivered. And it
5 depends somewhat on the condition of the skull that
6 receives it.

7 Q. So you're saying in a situation like this where
8 there is no skull fracture but a large area of damage,
9 that it's more likely a wide surface perhaps the point
10 of impact instead of a small object?

11 A. That would be my impression.

12 Q. Okay. Could you explain -- First, you had an
13 opportunity to view the child before surgery. Is that
14 right?

15 A. No. I did not. I saw him after surgery.

16 Q. Okay. When somebody gets a -- a head injury from
17 a large impact on the head, what have you, how could
18 there not be any swelling or bruising or immediate
19 evidence on the outside of the head when you have all
20 this damage on the inside?

21 A. Well, again, part of it relates to what I
22 explained earlier is, where is this energy force
23 absorbed the most. It -- It can pass through tissues
24 and not -- not create a lot of damage in that area,
25 and -- and then severely injure other tissues through

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1 on through.

2 There's also some differences in -- in the scalp
3 area compared to other areas of the body. One is that
4 there's not a lot of -- of tissue, the little bit of
5 muscle over the -- the skull; and there's a little bit
6 of, you know, tissue, part of the skin over that. And
7 it's pretty open. So bleeding, when it can occur,
8 doesn't usually form a knot. You know, occasionally
9 you'll see somebody get a knot in their forehead.

10 But a lot of times, especially if it's deeper down
11 by the skull itself, it seeps along the edge of the
12 skull and can -- can go all the way down to about the
13 cheek bones as well as all the way back across the
14 head. So again, the amount of blood could spread out
15 over a large area, and you may not see a lot of
16 swelling.

17 Bruising, depending upon superficial trauma, can
18 give you redness and some maybe irritation appearing
19 area. But deeper bleeding down in the muscle area and
20 down closer to the skull, it might be days before you
21 would see discoloration in that area. So you -- you
22 might have if you, I'm sure when Dr. Rhea opened the
23 area up he may have seen blood in the tissues as he
24 went through there, but you wouldn't necessarily see
25 that on the outside.

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1 Q. Okay. So it's -- it's possible to have a pretty
2 devastating brain injury without being able to see a
3 whole lot on the outside of the skull?

4 A. Acutely -- Acutely that's almost always the
5 factor. You can have very severe injury, and you can
6 find evidence of bleeding and hemorrhage in the
7 tissues underneath it, but you don't see anything on
8 the outside.

9 Q. Okay. Back to the skull fracture issue. If you --
10 -- If you have a -- a skull fracture versus a non-skull
11 fracture, you talked about absorption of the force.

12 A. Um-hm.

13 Q. What's the difference in absorption of force
14 between a skull fracture and what happened in this
15 case with no skull fracture?

16 A. Well, I -- I think that, you know, and I don't
17 know that -- that we know this conclusively, but there
18 is some feeling that -- that if you get a skull
19 fracture, you may have -- you may have less injury to
20 the brain underneath it.

21 You know, I -- you know, every situation is
22 different and is very hard to gather enough, you know,
23 -- if you have two (2) -- two (2) individuals who each
24 sustain the same force, if that's ever possible, and
25 one of them were to get a skull fracture and the other

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1 one didn't, you know, the feeling is that the skull
2 fracture may have absorbed enough of the energy that
3 there would be less injury to the underlying brain.

4 You know, I don't know what the significance
5 necessarily is in this case, but the -- the fact that
6 he did or didn't get a skull fracture doesn't
7 necessarily speak to the amount of force that -- that
8 must have been applied to -- to the impact.

9 Q. We've got this brain injury and these bruises on
10 the body.

11 A. Right.

12 Q. Can you put a -- a time line on the -- when these
13 injuries could have occurred?

14 A. Well, I -- I think that I could probably take them
15 separately because I know, you know, together that
16 they, you know, that makes any difference one way or
17 the other. I -- I think that given the severity of
18 this head injury, that it is, I think, impossible that
19 this child did not have a significant change in his
20 level of neurological function, consciousness, or
21 whatever.

22 To what degree, you know, I -- I couldn't -- I
23 don't even speculate. But I think that there was a
24 significant change in this child immediately after
25 this injury occurred.

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1 Q. As a part of the head injury?

2 A. As far as the head injury. So the time -- And I
3 also would say -- can say that because of the degree
4 of swelling that was already present in the right side
5 of the brain, that this probably would have or was at
6 least a couple hours old. It literally occurred a
7 couple of hours before at least we saw him in the
8 emergency room.

9 Q. Okay. Could it have occurred a day before?

10 A. No. No. No. Not based on -- back off that a
11 little bit. It -- It, you know, it's possible that
12 somebody could sustain an injury like this and maybe
13 not be dead in a couple hours, but they would have to
14 have been in the same kind of state from the time they
15 had the injury to the present time.

16 Q. So if a child gets hit in the head and he's acting
17 fine for the next day or so,---

18 A. Yeah. I mean, I mean, a child could get hit in
19 the head and act fine, but the next day he's not going
20 to end up like this. So -- And that -- So the thing
21 is that somebody could have an injury, be unconscious
22 or moaning or, you know, not able to stand or do
23 anything else, and be in that state for a day or so
24 without change one way or the other. That's certainly
25 possible.

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1 But they didn't sustain this injury, be normal,
2 and then all of a sudden drop out.

3 Q. Okay. All the bruises. Can you put a time line
4 on when the bruising may have occurred?

5 A. Well, I -- I think that they were -- they were
6 recent. I'd say anywhere from just happening to maybe
7 ten (10), twelve (12) hours old. You know, I think
8 that that's a little more difficult to time. They
9 certainly weren't a couple days old for sure. And
10 they look -- they look relatively fresh, relatively
11 recent. They still were red.

12 Q. Is that how you can tell, by coloration?

13 A. Right. Because that -- that's why I use when I
14 mention these as being, quote, "bruises," you know, I
15 think in the field that's what people would describe
16 any kind of skin lesions that appear to be caused by
17 trauma. But, basically, these are indurations, you
18 know, the redness and then -- and maybe a little
19 inflammation is -- is from the impact, injures the
20 tissues, there's some -- the body begins to do some
21 repairing or reaction to a little swelling, and
22 redness and the like.

23 And that is -- it then what -- what we think of a
24 bruise is a black and blue and green marks that we see
25 on our kids bodies and our bodies from time to time.

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1 And what that is is that -- that wherever injury, you
2 know, was underneath that area caused blood vessels to
3 break, blood to leak out into the tissues; and then as
4 that blood begins to break down and be absorbed in the
5 body, it turns different colors.

6 It turns green. It turns yellow, a little
7 brownish color, and until it disappears. And those
8 are -- and then -- and then also those pigments of
9 those colors are broken down begin to come up from the
10 deep parts of the tissue underneath the skin and the
11 surface, and that's why we see them.

12 So a bruise that happened two (2) days ago or
13 three (3) days ago may not show up until today. And
14 when it does, it's kind of brownish or greenish in
15 color.

16 Q. But with these, you say they were red?

17 A. These were red. So these were relatively acute.

18 Q. Okay. You mentioned that this was a severe
19 injury.

20 A. Yes.

21 Q. Can you -- Can you put in perspective, perhaps
22 with an -- an analogy or something, what type of
23 impact could have caused this? For example, could a
24 fall off of a tall bunk bed or -- or play with a child
25 have caused this?

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1 A. Let's see, there's a lot of questions in there.
2 This -- This -- It takes a -- It takes a lot of force
3 to injure anybody's brain, and -- including a child's.
4 I think a child, you know, some -- some factors makes
5 them a little bit more vulnerable to a deeper injury
6 to the brain. But some factors are also a little bit
7 more protective. But it takes -- it still takes a lot
8 of force.

9 Normal horse play, normal fooling around,
10 fighting, you know, kids get hit with baseball bats,
11 golf clubs, rocks, whatever every day. Kids fall from
12 jungle gyms, and they fall out the window. They fall
13 out of moving cars. They, you know, -- There --
14 There's a lot of trauma that occurs to kids and adults
15 every day. And for the most part, they're not fatal.
16 And if you look at the fatal head injuries, they are
17 of the most severe, major.

18 You know, this isn't some kid who is in a five-
19 mile-an-hour, you know, head-on collision that bumps
20 the windshield that ends up with a, you know, fatal
21 head injury. It's a higher speed impact, thrown from
22 the vehicle through the windshield onto the ground.
23 Now this injury is more of an impact type injury than,
24 say, shaken baby or, you know, even car accidents
25 where you have acceleration -- acceleration type

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1 forces. This is an impact injury.

2 And I guess the analogy that, to me, would come
3 closest to it is a child riding his bike that gets hit
4 by an automobile that's out in front of the street and
5 a car hits him. The car might not be going seventy
6 (70) miles an hour, but that's a pretty -- pretty big
7 mass going at some velocity against a relatively
8 stationary individual. And if that blow is directly
9 to the head, or if the head -- if he gets propelled
10 and hits an object or the cement, that can deliver
11 this kind of forces to the brain.

12 Q. So, I guess you're kind of saying that a normal
13 gravitational response like a fall, would do that it.
14 It would have to take some sort of propelling force
15 behind it?

16 A. Yeah. But it's -- it's what, you know, however
17 the force gets delivered, that there has to be a
18 certain amount of -- of -- the force is mass or use
19 weight if you want times the velocity of which is--.

20 So if -- if you're moving something very fast, it
21 doesn't have to have a big weight to create the same
22 amount of injury. And, conversely, if you have a
23 bigger weight, it doesn't have to go, with a
24 gravitational velocity, very far to create a distance.
25 But it's -- To get this kind of injury requires a lot

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1 of force.

2 Q. Okay. And is this -- The injury that this child
3 had, what, I guess, cause of death or manner of death
4 would your findings be consistent with?

5 A. Well, in -- in reviewing what we saw clinically, -
6 - And I did have the opportunity to look at the --
7 glance at the autopsy report. There was -- There was a
8 combination of factors, I believe, that ended up
9 causing this child to -- to die. And I think that in
10 retrospect, he was already brain dead by the time
11 that, you know, I don't know about EMS, but by the
12 time he got to the emergency room at McLeod, he was --
13 he was brain dead.

14 Nothing changed in his exam from that moment until
15 we reached the point where we could say for sure that
16 he was brain dead. So he clinically met the criteria
17 then, and nothing changed. So I sus- -- you can -- I
18 think you can go back and say that -- that he was
19 brain dead even at that time.

20 I think that he sustained a rather severe injury
21 to the right side of his -- his head, somewhere in
22 probably the mid portion of -- of his head, from where
23 the blood clot was and where the major swelling of his
24 brain was on that side. There was enough swelling of
25 that brain, that it was pressing across the midline

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1 and -- and pressing down on relatively, you know,
2 normal brain tissue that was, say, was not initially
3 impacted.

4 There also appeared to be a -- another area of
5 contusion, not directly in relationship to this one on
6 the mid portion, back of the posterior part -- or the
7 back part of the head in the area where the cerebellum
8 is back here. And that also had some swelling. And
9 on the CAT scan, there was considerable pressure and
10 swelling on the very narrow portion of the brain as it
11 kind of goes back through the -- the bottom part of
12 the skull.

13 That also is the area that vital structures that
14 control blood pressure, heart rate, respirations and
15 the like. And I don't know if there's any details on
16 the -- on the autopsy looking at those tissues as to
17 whether they sustained hemorrhagic injury. I'm sure
18 they had swelling. You know, the whole brain was --
19 was brain dead and hypoxic, anoxic by the time the
20 child died.

21 But whether both areas may have been impacted to
22 where the child wasn't breathing normally, you know,
23 after the event. And -- And then the rest of the
24 brain suffered from lack of oxygen for over a period
25 of time. So it was prob- -- it was a cascade of

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1 events that one led to the other that ultimately
2 caused this child to be brain dead.

3 Q. So in your opinion, did he have any chance of
4 survival whatsoever when he reached the hospital?

5 A. No. None at all.

6 Q. Okay. Could you tell when you examined him,
7 looking at his head, whether all the trauma came from
8 one (1) blow or perhaps multiple blows?

9 A. Well, I think, as I just mentioned, I -- I think
10 the only evidence that I would have that there may
11 have been more than one (1) blow, -- and I -- I feel
12 that there probably was -- was that we have -- we have
13 two (2) areas of contusion or bruising or whatever you
14 want to call it on that -- on that -- the right side.
15 And one of them -- And they're not in an area --
16 they're not in areas where they could occur by one (1)
17 blow.

18 There's one (1) area over here, and one (1) area -
19 - on the right side. One (1) over here, and one (1)
20 back here. And that would lead me to believe that
21 there was at least two (2) blows.

22 MR. RICHARDSON: Beg the Court's indulgence.

23 (Pause.)

24 MR. RICHARDSON: Please answer any questions that

25 Ms. Wingard or the Court may have for you.

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1 THE COURT: Ms. Wingard?

2 MS. WINGARD: Thank you.

3 CROSS EXAMINATION BY MS. WINGARD:

4 Q. Dr. Atwood, can I see your file please?

5 A. Sure.

6 Q. Thanks.

7 MS. WINGARD: Judge, if you'd indulge me for a
8 moment. I have lots of medicals, and I just want to
9 make sure I have these.

10 THE COURT: Okay.

11 (Pause.)

12 MS. WINGARD: Judge, I have -- I see some records
13 in here -- I know I have a lot of these, but I see
14 some that I don't have. For purposes of this hearing,
15 I think I'm fine. But I would ask if Dr. Atwood, at
16 the conclusion of his testimony, would mind going with
17 the investigator and let us copy them.

18 WITNESS ATWOOD: I don't know what the legal
19 procedure as far as dealing with McLeod and---

20 THE COURT: I -- I'm not sure either. I'm sitting
21 here wondering if there are any HIPAA issues---

22 WITNESS ATWOOD: Right.

23 THE COURT: ---or any matters that would cause
24 them to have difficulty in releasing that information.
25 Although, it may be his file was under subpoena here

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1 today.

2 MS. WINGARD: I don't -- I think he's voluntarily
3 here. But I think I would have a right to any
4 information, as he is testifying in this matter. And
5 I think you can require the release.

6 THE COURT: I can certainly require the release.
7 And -- And does the State have an objection to those
8 records being released because they -- they are, of
9 course, relevant to the inquiry that's occurring here
10 today. He has appeared, as I understand, voluntarily?

11 MR. JEPERTINGER: Yes, sir.

12 THE COURT: And brought his file voluntarily?

13 MR. RICHARDSON: Well, actually, Your Honor, he is
14 under subpoena. We -- We did have a subpoena served
15 in his name at the Durant Center. And I believe
16 that's how he was notified. So we do have an
17 affidavit of service. They accepted the service for
18 him.

19 WITNESS ATWOOD: I don't think anybody'd have any
20 problem releasing it. I just wonder about just
21 dotting the I's and crossing the T's, whether you are
22 requesting from McLeod Medical Records. Because it
23 actually belongs to them. They're not my records.
24 They're McLeod's records.

25 THE COURT: Well, McLeod entrusted you with the

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1 records today---

2 WITNESS ATWOOD: Okay.

3 THE COURT: ---to utilize for testifying here
4 today, which, I mean, within the ordinary course of
5 what I would expect to occur. And I am going to issue
6 an order here today that will allow the records to be
7 copied, and a copy provided of those records to both
8 the State and Defense.

9 MS. WINGARD: Let me return this.

10 MR. JEPERTINGER: May I suggest that maybe after
11 the hearing, that she do the written form, just to---

12 MS. WINGARD: Well I think it's on the record.
13 And I don't want to hold up Dr. Atwood.

14 MR. JEPERTINGER: I'm just saying that Dr. -- for
15 later, for -- so he can show -- that they have some
16 documentation for McLeod.

17 THE COURT: Well, I mean, I'll ask that the --
18 that after the -- the hearing has been concluded, that
19 the State will prepare an order that -- just a brief
20 order that will say that the records were ordered to
21 be released as -- during the testimony of Dr. Atwood.
22 That might suffice for their file, and we'll have a
23 copy for your file to protect you---

24 WITNESS ATWOOD: Okay.

25 THE COURT: ---in that regard.

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1 MR. JEPERTINGER: Yes, sir.

2 THE COURT: All right.

3 BY MS. WINGARD:

4 Q. Dr. Atwood, I need to ask you, Dr. Rhea was the
5 first specialist, if you will, to deal with this child
6 and I'm sure---

7 A. Well, I think Dr. Lee during surgery saw the child
8 first because of the -- it was a trauma or whatever,
9 and then he consulted Dr. Rhea.

10 Q. And I know that you are familiar with Dr. Rhea's
11 consultation report. And it says in there, by way of
12 history, that the patient apparently has suffered a
13 head injury yesterday while wrestling and was found
14 today with decreased respiration and unresponsiveness.
15 And I'll hand this up to you.

16 Just -- Does that not suggest that Dr. Rhea's
17 examination of Child that what he saw could have
18 been consistent with an injury that happened the day
19 before?

20 A. Well, number one, I -- I couldn't -- I couldn't
21 testify as to what Dr. Rhea was thinking or -- or even
22 interpret from his -- his report what he was thinking.
23 But I will say this, if you look at my, you know, take
24 you time reading his report, then mine. But if you
25 look at my history and physical, mine says essentially

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1 the same thing, because that's the history that we
2 got.

3 And I think that at that point in time, we were
4 more involved with trying to see if we couldn't save
5 this child than we were worried about how it all
6 happened and sorting it out. In fact, that's not our
7 job to do that anyway.

8 Q. Absolutely.

9 A. And so, you know, as to what, you know, you know,
10 how to interpret what Dr. Rhea said or meant to say or
11 what he thought would up to Dr. Rhea to have to -- to
12 testify to that.

13 Q. Let me ask you about a crucial part of this. And
14 that is the time line, the time line on the head
15 injury, and the time line on the bruising. The
16 bruises you think could have been there twelve (12)
17 hours before?

18 A. Yeah. You know, I would say that, you know, when
19 you only see them for one, you know, one snapshot, you
20 know, if -- if an, you know, -- And I can't even tell
21 you that I can recall what these bruises did look like
22 the next day when we were involved because obviously
23 that wasn't the -- a critical, you know, interest in -
24 - in our involvement.

25 But, you know, if they were -- if they were gone

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1 in an hour or two, then that would speak to the fact
2 that maybe that they were, you know, they were there
3 within an hour or so before that. If they had lasted
4 a day or so, then maybe they could've been there like
5 that. So it's -- it's hard to say either way.

6 Q. So if they were still present at autopsy, which
7 was some day or two after the child came to the ER,
8 that means that they are more likely to have been
9 older bruises?

10 A. No. Not necessarily. Not necessarily. I think
11 that -- that the redness aspect of the bruises would
12 be a more transient type of a, you know, finding. You
13 know, that's not going to last as long. They're going
14 to change from being red to start to look more to
15 nothing, and then start to see, you know, the -- the
16 black and blue type of things.

17 Q. So from -- from your testimony, I've gleaned that
18 you think these bruises could have been much earlier
19 than---

20 A. Well---

21 Q. ---his head injury?

22 A. ---you know, I'm -- I'm hedging that. I, you
23 know, personally, I think they were fairly recent. I
24 think they were probably inflicted around the time
25 that the head injury occurred. And I -- And I think

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1 both of them were recent.

2 Q. Can you tell me the basis of that, about why you
3 think that?

4 A. Just because the -- the way these bruises, the
5 redness of them and the like, says this is -- this is
6 more recent versus older. I mean, these are the type
7 of -- of appearance that when you spank a child too
8 hard and you leave your hand print on his -- on his
9 bottom. Most of the time, you go back an hour later
10 and it's not there. You don't see anything.

11 You know, it's a -- it's a fresh thing, there's no
12 -- there's no significant damage done underneath the
13 skin. It's all a reaction of the skin to the -- you
14 know, it's like slapping your face and your face
15 turning red. So it's usually a shorter-lived
16 reaction. But I hedged it by saying, you know, it
17 could be, you know, hours rather than minutes or --
18 and that type of thing.

19 But do I think that these were -- the way these
20 looked that this is commonly what you see, something
21 that was done twenty-four (24) hours earlier? That's
22 not usually the case. No.

23 Q. So you thought that these appeared to be
24 superficial?

25 A. Well, that's all I can tell by looking at them.

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1 Q. Now let's talk about the head. And tell me what
2 you think the outset, as far as a time line, for the
3 head.

4 A. I -- I couldn't -- I couldn't tell you the exact
5 minute or the exact hour.

6 Q. I understand.

7 A. If I knew, if I had a diary of what was going on
8 in this child's life for that day, I could tell you
9 exactly when this injury occurred because he was
10 extremely different child the moment after this injury
11 than he was the moment before.

12 Q. Okay. Let me ask you, what could he have expected
13 to be able to do after this injury?

14 A. I would say he could probably lay someplace, and
15 he could maybe moan. And that would be about it. And
16 maybe breathe.

17 Q. Could he eat?

18 A. No.

19 Q. Could he move in any way other than reflex,
20 moaning kind of movement?

21 A. He -- He could -- He probably would be moving, but
22 not purposeful -- purposefully.

23 Q. Would he be expected to vomit?

24 A. Could, especially as that began to increase
25 pressure. Yeah.

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1 Q. And how long after the injury would he expect --
2 would you expect to see him vomit?

3 A. It could be any time. It could have been
4 immediately afterwards. It could have been an hour or
5 so afterwards.

6 Q. Let's talk about how this injury occurred.

7 A. Okay.

8 Q. Now, it's your -- you think that this really
9 couldn't have happened by some sort of fall off of a
10 bunk bed?

11 A. No. Absolutely not.

12 Q. Well why is not?

13 A. Because the amount of -- the amount of injury to
14 this brain is over a large area, and it is very deep,
15 and it takes a lot of force to do that. A fall,
16 hitting even a concrete floor off the bunk bed
17 wouldn't do that.

18 Q. How about if children were playing and tussling
19 and roughhousing, and there was force behind the fall?

20 A. You -- I think that was the point that I made
21 earlier. I think that -- I don't think we understand
22 the amount of forces that it takes to create this type
23 of injury. You know, it's a lot harder to kill people
24 than -- than a lot of people think. And I think you
25 have to be in a -- in a somewhat supernormal state to

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1 be, in most situations, be able to deliver the kind of
2 forces that it takes to -- to create a -- a fatal
3 brain injury.

4 Q. All right. Then my question becomes, if the
5 State's theory is that this fifteen-year-old did this,
6 I mean, how could you -- how could a fifteen-year-old
7 exert that much force throwing a child? I mean,
8 because we're not talking about a baby. We're talking
9 about a five-year-old who weighed fifty-some pounds.
10 I mean, how -- how could that mechanically happen?

11 A. Well we don't know that -- I mean, I assume we
12 don't know that he was thrown.

13 Q. Then what could -- Well then that becomes my
14 question. What could have happened? What kind of
15 action could a fifteen-year-old have taken to a five-
16 year-old?

17 A. I think -- I think his head could have been struck
18 with an -- with an object. I think his head could
19 have been slammed against a wall. I think his head
20 could have been slammed against the floor.

21 Q. But again you've got the force of the fifteen-
22 year-old doing that.

23 A. I would -- I would say that -- that I think
24 there's been lots of fifteen-year-olds who have
25 exerted that kind of force. Personally, I have cases

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1 of my own where that kind of force has been delivered
2 in -- in a very violent fight.

3 Q. Do you -- And you said that there were -- you
4 think there were two (2) head injuries.

5 A. I -- I -- Yes. I personally believe there was two
6 (2) head injuries.

7 Q. Would -- Could they have been inflicted at the
8 same time?

9 A. Well that's -- It's hard for me to -- to, you
10 know, without knowing, you know, what -- what the
11 supposition is, just because of the -- the two (2)
12 areas of injury that we see, particularly at post, are
13 separated from each other, that one (1) blow to one
14 (1) area would be very unlikely to be able to hit the
15 other area.

16 Q. Could they have separated in time? Could one (1)
17 injury have happened, say, the night before; and then
18 a second injury happen shortly before he started
19 showing---

20 A. What my understanding is, you know, is the smoke
21 cleared. In the beginning, we had this history that
22 he fell against a bunk bed while they were tussling
23 the night before. We didn't know what side it was or
24 anything else. It's my understanding this was on the
25 left side of his eye that he struck.

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1 And this injury we're talking about is all on the
2 right side. There's no evidence of any injury to the
3 brain on the left side.

4 Q. So you are saying that from the history that you
5 have, the incident that happened the night before, you
6 have -- you have taken that into consideration---

7 A. Yes.

8 Q. ---when answering your questions?

9 A. Yes. I did, and excluded it as having anything do
10 with it at all.

11 Q. Excluded -- In your opinion, you have excluded
12 that injury from the cause of this child's death?

13 A. Yes.

14 Q. Could it have -- Could it have exacerbated it?

15 That is, could -- could the brain have somehow been in
16 a more vulnerable position because of the injury the
17 night before?

18 A. You know, that -- I would have a hard time
19 refuting that. I mean, there's, you know, there's
20 still-- there's some evidence of, you know,
21 subsequent concussions causing more brain injury than
22 the previous ones and the like.

23 I think, I mean, and I -- in this case, I couldn't
24 apply that. You know, I couldn't -- I couldn't just,
25 you know, just say no; it couldn't happen, but I -- I

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1 don't think that this -- you know, we don't have any
2 evidence that this was -- it wasn't -- most of the
3 time when we talk about that, we have evidence that
4 there was a significant head injury that occurred with
5 the first event when we know about it. Okay.

6 I -- I don't think we have anything associated
7 with this episode the night before that sounded like a
8 -- a significant head injury.

9 Q. But you would agree with me that frequently you
10 can have head injuries that ultimately are fatal, as
11 we know by the recent publicity with the actress, that
12 appear not to be of a serious nature, but ultimately--
13 -

14 A. Well, I'm glad you brought that up because that's
15 the -- that's the -- the one exception, is, you know,
16 because people will always say, "I heard about a case
17 or I read about a case where somebody was playing
18 football, got hit, got their bell rung, went home, had
19 supper; and the next morning, they found him dead in
20 bed." And he died of a brain injury.

21 People who get in a car accident, they go to the
22 emergency room. They get sent home. And they get
23 brought back because they're nearly dead or they're
24 dead. And that, you know, that would have been a
25 possibility in this case, that this child could have

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1 had some minor injury the night before; it caused
2 something to happen in his brain. And then that
3 caused swelling and pressure to increase and to the
4 point where die as what happened.

5 Of course, we don't know all of the facts, but
6 that's a different circumstance. That's a known
7 circumstance. What happens in those cases is a very
8 minor trauma to the head does not cause any brain
9 injury by itself. But it does cause a vein or a small
10 blood vessel to -- to tear between either the skull
11 and the dura, which is kind of like a hard casing
12 around the brain, or -- or between the brain and that
13 -- that casing. Okay?

14 And there's a slow -- You know, and slow is
15 relative. -- bleed into a theoretical space that
16 doesn't normally exist. And since there's not much --
17 not much area to displace that, it begins to as it --
18 as it increases, to push down on the brain that's
19 softer and malleable. There's some space inside the
20 brain can absorb that, but eventually it pushes down,
21 pushes the brain stem down, and causes the person to
22 shut off their blood supply and whatever to the rest
23 of their brain. And it becomes edematous, and they
24 become brain dead.

25 That's not what happened in this case. There was

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1 no epidural. The subdural was felt to be
2 insignificant. And in fact, when the subdural was
3 removed, -- Which, thank God, we did. -- what happened
4 then was the brain just swelled up to fill up all that
5 space and out through the opening where they drilled
6 the burr hole.

7 And so the -- the thing that was causing the
8 pressure and the -- the compression of the brain stem
9 and everything else, was the swelling of the brain
10 itself, not any extra collection of fluid. And so,
11 this isn't that kind of -- That situation is not
12 uncommon, but this is not that kind of situation. And
13 that's the one case where you could be relatively
14 normal after the trauma because it didn't affect the
15 brain to start with.

16 This one -- This impact affected the brain from
17 the get-go. This is where the injury was.

18 Q. All right. So how -- how do you know this?

19 A. We know that primarily from all our experiences
20 and data with -- with car accidents and trauma. We
21 know what that course or event is because it's -- it's
22 witnessed and documented. And we know what it is.
23 And, thank God, there's far more of those kind of
24 cases than there are these kind of cases.

25 Q. See and that's what I have a disconnect with. How

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1 can one little fifteen-year-old exert the same amount
2 of force -- Now I understand if it's a tiny little
3 baby. -- but on, you know, a substantial five-year-
4 old. How -- How is that possible to exert that much
5 force?

6 A. You -- You could do it.

7 Q. You mean, me personally?

8 A. You -- No. I would -- I hope you wouldn't, but
9 physically you could. And you're not much bigger or
10 smaller he is. I'm not going to get into that, but --
11 .

12 Q. You're not going to indulge in that. Answer any
13 questions the Court might have of you.

14 THE COURT: Any re-direct?

15 MR. RICHARDSON: No, sir.

16 THE COURT: All right.

17 EXAMINATION BY THE COURT:

18 Q. Just a couple of questions. I want to make sure I
19 understand a couple of things, Dr. Atwood. I think
20 you answered my question. I was wondering; you said
21 that it would be impossible for a child to not have a
22 significant evidence of change immediately after the
23 injury occurred. And when you were talking about
24 that, I think you went back later and said that after
25 the type of injury that this child had, what he would

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1 have been able to do at that point in time would have
2 been extremely limited.

3 I think you said he would've probably been laying
4 down; he would've been non-communicative; he would've
5 been perhaps breathing a little bit irregularly; he
6 would have been moaning; but he would not have been
7 able to eat or run or play or talk to anyone at that
8 point.

9 A. Yeah. And -- And even stating that, I'm -- I'm
10 giving some leeway with that. I think more than
11 likely he was pretty lifeless and not doing anything.

12 Q. Would he have remained conscious?

13 A. No.

14 Q. Now, I want to talk for a second about the
15 swelling aspect of the injury. Obviously, we had
16 discussion just a few moments ago about an impact
17 injury that would cause a bleed in the brain---

18 A. Right.

19 Q. ---and that would have eventually shut down the
20 brain. And that would have taken some period of time.

21 A. It's variable. You know, you know it all depends
22 upon how fast it bleeds. You know, if you have a
23 very, very small blood vessel that tears, and it's a
24 very slow thing, it may be twenty-four (24) hours or
25 so before the person exhibits enough symptoms that

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1 somebody thinks something's wrong.

2 Q. If I recall your testimony and that of the
3 forensic pathologist as well, there was no evidence of
4 bleeding inside of the brain. This was a swelling
5 event.

6 A. Right. And I think if I remember, you know, I'll
7 say the same, is I remember from that report -- there
8 was evidence, I think the term she used was contusion,
9 which is bruising or, you know, that old blood being
10 present. So there was some evidence, but not major
11 bleeding. There were just, you know, traumatic type
12 of things.

13 Q. Now wasn't that -- when the brain swells in this
14 type of injury that we're talking about with this
15 child, would one (1) area of the brain swell and
16 another area not swell? Would one (1) hemisphere
17 swell as opposed to the entire brain?

18 A. Right. But it -- it just from the pure physiology
19 to speak of, I think, is that the brain -- the area of
20 the brain that absorbed the trauma will be -- will be
21 the one that -- be the part that's injured in that
22 whole area and maybe, if blood vessels are involved
23 and go into spasma, like there may be some contiguous
24 areas around it that may be relatively affected.

25 But that area probably had significant brain cell

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1 death that occurred. And there's all kinds of very,
2 very complicated, involved dynamics that go on when
3 the body tries to get rid of bad, dying stuff and
4 tries to protect itself and the like so. And that can
5 affect surrounding tissue.

6 But so, if -- if that would have been the limit of
7 that, we would have just seen one (1) severely damaged
8 area of the brain. And a child that might have
9 survived, but not necessarily be able to use that side
10 of the brain to function, may or may not regain
11 consciousness or whatever. But probably wouldn't have
12 ended up going into brain death.

13 That's why that -- that either that swelling as it
14 began to expand compressed down on the area coming
15 through the neck where the major blood vessels, the
16 major nerve to the body and everything else comes up
17 through, it may have choked that area off as it
18 swelled. And as it did that, then it cut off blood
19 supply to the remaining area of the brain.

20 Now that would have probably taken, you know, -- I
21 shouldn't say. -- usually, it takes a little bit
22 longer than one season, this time line that we have.
23 I think more than likely what happened, this contusion
24 area that we saw back here in the brain probably had
25 enough force that it injured the deeper tissues in the

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1 brain stem, which is the part of the brain that
2 controls respiration and everything else.

3 I think this child wasn't breathing normally. I
4 think he was hypoxic. It may have dropped his blood
5 pressure. It may not have profused (phonetic) the
6 brain well enough to the point that the -- the side of
7 the brain that wasn't initially injured suffered
8 consequences because of that effect. So it was
9 injury, swelling, compression of blood supply to the
10 other side of the brain, and then total brain death.

11 Q. If the force -- the impact force was significant,
12 would that have caused the brain to move inside of the
13 skull and caused impact to both---

14 A. Yes.

15 Q. ---sides of the brain?

16 A. In fact, the first CAT scan showed that there was
17 swelling of the right side of the brain over into the
18 left side of the brain.

19 Q. And I'm not sure if I recall you testifying at
20 what time did you first see the child in the pediatric
21 intensive care unit?

22 A. I saw him later -- later that evening, that night
23 when he came back from the operating room.

24 Q. All right. And is that when you first observed
25 bruising on the other parts of his body?

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1 A. Yes. Yes. It is. And I might add that the --
2 that, you know, this wasn't just a bruise. This was
3 lots of bruises. And they -- And they appear to be
4 inflicted by a linear object.

5 Q. There was some discussion of a history that
6 appeared in Dr. Rhea's report. You said you think
7 that -- that you went back and looked at your report,
8 you may have---

9 A. No. I -- I know I said the same thing.

10 Q. So you have the same history.

11 A. I mean, that's all we had to go on when he first
12 hit the door.

13 Q. Did you utilize that history in making -- in
14 reaching any conclusions here today?

15 A. I think we excluded that history as being, you
16 know, a player in this event.

17 Q. All right.

18 THE COURT: That's all I have. Do -- Counsel, do
19 either of you have any additional questions based upon
20 my questions?

21 MR. RICHARDSON: No, sir.

22 MS. WINGARD: I have none.

23 THE COURT: All right. May Dr. Atwood be excused
24 at this time?

25 WITNESS ATWOOD: What about the chart?

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1 THE COURT: Oh. I'm sorry. I forgot.

2 MR. RICHARDSON: I think there's no objection to
3 excusing him or the chart.

4 THE COURT: Okay. Well let's let---

5 MS. WINGARD: I'll walk out with him.

6 THE COURT: We'll take just a -- a quick break
7 here to make arrangements to do that. Thank you being
8 here, Dr. Atwood.

9 MR. RICHARDSON: Judge, do you want me to go and do
10 that order now or wait until after the hearing?

11 THE COURT: We can wait until after the hearing.
12 Stop one second. I have one more question for Dr.
13 Atwood. Can I take -- ask you to take the---

14 Atwood: sure.

15 THE COURT: ---witness stand again. I apologize. I
16 don't think you'll need your file for this question. I
17 want to show you what's been previously marked as
18 Defendant's Exhibit 3, which is a photograph of the bunk
19 bed that was in the home where the child resided. And
20 you testified a good bit about the -- the bunk bed and
21 the possibility of a fall from a bunk bed being a
22 possible cause of this injury.

23 Does anything about that photograph of the actual
24 bunk bed change your opinion, and, obviously, the bunk
25 bed and surrounding furniture?

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1 Atwood: No. Not at all.

2 THE COURT: All right. Thank you, sir. Thank you.

3 That is all I have.

4 All right. We'll take about five (5) minutes here
5 to arrange for all that. So we'll be at ease for five
6 (5) minutes.

7 (Court recessed.)

8 (Court reconvened.)

9 Deputy: Order in the court. All rise.

10 THE COURT: Thank you. Please be seated.

11 Are you getting ready to call your next witness?

12 MR. RICHARDSON: I am. Do you want me to go ahead
13 and call her---

14 MS. WINGARD: Wallace?

15 (Deputy went to get witness.)

16 MR. RICHARDSON: Your Honor, the State would call
17 Ms. Andrea Foster.

18 THE COURT: Ms. Foster, if you'd place your left
19 hand on the Bible and raise your right.

20 MS. ANDREA FOSTER, being
21 first duly sworn, testified as follows:

22 THE COURT: Thank you, ma'am. Please have a seat.
23 And state your full name and occupation.

24 Foster: My name is Andrea Foster. I am the intake
25 supervisor for the Department of Juvenile Justice.

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1 THE COURT: Thank you, ma'am.

2 Yes, sir?

3 MR. RICHARDSON: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. RICHARDSON:

5 Q. Ms. Foster, as the intake supervisor, have you
6 supervised this case since its inception?

7 A. Yes. I have.

8 Q. Okay. And as part of this case, have you received
9 all the information including school records, probation
10 records from Virginia, everywhere he's been. Have you
11 received all these records as part of this case?

12 A. Yes.

13 Q. Okay. Have you also determined recommendations as
14 far as his detention as part of this case?

15 A. Myself along with the -- the whole Florence County
16 DJJ staff has. Yes.

17 Q. So y'all make decisions as a group, the staff
18 process?

19 A. Recommendations; yes, sir.

20 Q. Recommendations. Okay. When Mr. Mayweathers was
21 first released from detention, he was placed in
22 Charleston. Is that correct?

23 A. That's correct.

24 Q. Okay. And then -- With whom was he placed?

25 A. He was placed with his maternal aunt, Camika

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1 (phonetic) Mayweathers.

2 Q. Okay. During that placement, was he required to
3 communicate with your DJJ office here on a regular
4 basis?

5 A. Yes. He was placed on a---

6 MS. WINGARD: Your Honor, I'm going to object to
7 this testimony and any continuing testimony of hers.
8 The purpose of a DJJ evaluation is so the Court will
9 have all of this information within that evaluation.
10 That has been testified to. And I would object to any
11 further testimony from DJJ in this regard as
12 inappropriate manner of it coming through this
13 evaluation. That has been done and testified to.

14 MR. RICHARDSON: Your Honor, the testimony that Ms.
15 Foster will provide will go towards Kent factors as far
16 as rehabilitative efforts, child maturity. These
17 incidents while he was in placement go directly, I
18 believe, towards Kent factors as well as other testimony
19 she will provide about the length of time that a
20 juvenile would actually spend at DJJ, which is testimony
21 I can elicit here in a few minutes if allowed.

22 I think it goes directly to the Kent factors that
23 need to be considered by the Court in making its
24 decision to transfer jurisdiction in this case.

25 MS. WINGARD: Judge, that is the purpose of the

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1 evaluation. And that is why it's done by a doctoral
2 level staffer. And that has been done and testified to.
3 And, in fact, Dr. Heffler specifically said that he took
4 into account all of those prior records. That was asked
5 of him.

6 MR. RICHARDSON: Your Honor, none of this testimony
7 will be opinion testimony. It will be strictly fact-
8 based on -- on evidence that Ms. Foster has observed
9 through communications with various people during the
10 duration of this case, and also her knowledge -- direct
11 knowledge with the processes at the Department of
12 Juvenile Justice as far as guidelines and treatment
13 programs.

14 MS. WINGARD: And -- And that would be hearsay.

15 THE COURT: Well how am I supposed to process the
16 information that she provides? How -- How do I utilize
17 that information? I mean, I understand that she's going
18 to testify about what has happened to him in -- I assume
19 that she's going to testify about any problems that he
20 may have had in school; any problems that he's had with
21 DJJ or any other law enforcement agencies; his prior
22 periods of probation and/or commitment.

23 And -- And so she's going to provide me with this
24 information. And then I'll have that information. But
25 how do I process that information? What do you expect

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1 me to do with that information?

2 MR. RICHARDSON: Your Honor, I think it could be
3 applied to the, if I'm not mistaken, eighth Kent factor.

4 THE COURT: Well, I -- I'm looking at the Kent
5 factors. And the seventh factor is the one I was just
6 reading from. And -- And so I -- I certainly understand
7 what the purpose is. But I guess I would also want to
8 know, because that goes to the rehabilitation, that's
9 the whole -- the purpose for this -- for this
10 information is to deal with the rehabilitation of the
11 juvenile as reflected in the eighth factor, which is
12 what Dr. Heffler testified concerning.

13 And I don't know if Dr. Heffler had this information
14 or not. It's part of his -- his history or basis for
15 reaching his conclusions. And so I don't exactly what
16 to do with this information.

17 MR. RICHARDSON: Your Honor, Ms. Foster's -- Ms.
18 Foster created the summary, which has been incorporated
19 in Dr. Heffler's report. So, essentially, she produced
20 what's currently in evidence to a degree.

21 MS. WINGARD: And so it is part of Dr. Heffler's
22 report; and the -- just because he didn't get the answer
23 he wanted from Dr. Heffler, doesn't mean he can redo it
24 through Ms. Foster. Her information is already taken
25 into consideration through DJJ report by Dr. Heffler.

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1 **THE COURT:** The only thing that I don't think that
2 is a part of this report is the social history, that I -
3 - I think that she's getting ready to testify about is
4 the amount of time that he would spend in the Juvenile
5 Justice system based upon -- I assume she's going to
6 testify based upon the grids how much time DJJ would
7 anticipate that he would spend in the Juvenile Justice
8 system. Is that part of the testimony you intend to
9 elicit?

10 **MR. RICHARDSON:** Absolutely.

11 **THE COURT:** All right. The remainder of the
12 testimony would be what is already included in her
13 social history report?

14 **MR. RICHARDSON:** Your Honor, I don't have that.

15 **THE COURT:** It attachment number 4 to the
16 evaluation.

17 **MR. RICHARDSON:** Yes, Your Honor. Part of the
18 testimony that I intend to elicit from this witness
19 would be communications made to her from the school in
20 Charleston and the aunt he was staying with in
21 Charleston regarding issues that he had down there. I -
22 - I'm not certain that that's part of this report, but I
23 think it is valid when considering the eighth Kent
24 factor.

25 And that's the sole reason for the State trying to

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1 elicit that testimony, as well as issues with the
2 probation in Virginia. The State would contend that
3 this testimony regarding that as well.

4 MS. WINGARD: Well, as far as Virginia's concerned,
5 she is not the custodian of those records. And so she
6 would not -- That is clearly hearsay.

7 THE COURT: Well, I mean, if that -- a lot of that's
8 already in the -- in the record through the social
9 history, which is parts -- a part of the evaluation that
10 I took judicial notice of and will consider in making my
11 decision here today.

12 If this testimony had been presented prior to Dr.
13 Heffler testifying, so that you were going to talk to
14 Dr. Heffler to determine if anything about her testimony
15 would in any way vary his opinion as presented in the
16 pre-waiver evaluation, I might feel differently about it
17 because then I would have the benefit of any impact that
18 this information would have on his opinion.

19 Because that's the entire purpose of having Dr.
20 Heffler testify is to provide the Court with information
21 concerning the rehabilitative aspect and -- And this
22 juvenile's anticipated response to that rehabilitation.

23 As it sits out here by itself though, it -- I don't
24 know how to utilize that, then I'm being asked to
25 utilize that to potentially reach an opinion contrary to

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1 what Dr. Heffler has testified to without having the
2 benefit of his having the same information to respond
3 to.

4 In other words, if she says something here today
5 that Dr. Heffler didn't know about, that may or may not
6 change his opinion, then I've lost that -- the ability
7 to have the benefit of his opinion concerning that
8 information.

9 The only thing that is beyond what Dr. Heffler has
10 seen at this point in time, -- And I've already asked
11 him about that because I didn't know specifically where
12 this -- this would come in on the grids. But I've
13 already asked Dr. Heffler that question. -- is where
14 this child would fit in on the grids. And I have no
15 problem with that information coming in at this point in
16 time.

17 All the other information that I think she's getting
18 ready to testify about is already a part of the social
19 history that I'm taking judicial notice of in making my
20 decision. So, in essence, her testimony would be
21 redundant to that report -- that social history report
22 with the exception of DJJ's determination of where they
23 believe this child would fit in on the grids and the
24 amount of time the child would spend in the system.

25 And I don't have a problem at all with that coming

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1 in because that's a different issue. I've already asked
2 Dr. Heffler about that in general, and I would like to
3 hear specifically where this child comes in on the grids
4 and the amount of time that DJJ would anticipate that he
5 would spend within its system as opposed to going into
6 the adult system.

7 MS. WINGARD: I -- I would also respectfully object
8 to any consideration other than what the sentencing
9 would be. And that would be commitment until he's
10 twenty-one (21). And I'm not sure you can look beyond
11 that or if it's appropriate to look beyond that.

12 THE COURT: I understand that -- that at this
13 juncture if he were to be in this Juvenile Justice
14 system, that the commitment -- commitment would be for a
15 period of time not to exceed his twenty-first (21st)
16 birthday. But in terms of determining approximately how
17 long he would remain in the Juvenile Justice system, I
18 do need to have some idea about the amount of time
19 because that was what Dr. Heffler testified about.

20 I understand that we're talking about until his
21 twenty-first (21st) birthday. And if that's what you're
22 intending to say, I -- I agree with you; he won't be in
23 the Juvenile Justice system or the YOP system beyond his
24 twenty-first (21st) birthday if he remains in this Court
25 as opposed to the General Sessions Court.

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1 But what I do need to know, based on what Dr.
2 Heffler said, was how much time he would be in the
3 Juvenile Justice system and the YOP system as
4 recommended by the Department of Juvenile Justice,
5 understanding, as Dr. Heffler said yesterday, that it
6 wouldn't be his decision or this Court's decision, but
7 the decision of the -- the probation and parole board
8 for Juvenile Justice to make a decision about when this
9 juvenile would have been rehabilitated to the extent
10 that he could be released from the system.

11 MS. WINGARD: Yes, sir. I -- I understand that. I
12 just note my objection to consideration of anything
13 other than if he stays in this Court, that it would be a
14 commitment until twenty-first (21st) birthday.

15 THE COURT: I understand. All right. I think -- I
16 think we're in accord, and I think I understand what
17 you're saying. All right. Now, with those parameters,
18 you may continue.

19 MR. RICHARDSON: Thank you, Your Honor.

20 CONTINUED BY MR. RICHARDSON:

21 Q. Ms. Foster, DJJ has a parole guideline system; is
22 that correct?

23 A. That is correct.

24 Q. And different offenses are assigned different
25 categorical units. Is that correct?

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1 A. That is correct.

2 Q. Okay. This particular defendant is charged with
3 homicide by child abuse. What category in DJJ's system
4 does that offense fall in?

5 A. That is a double-X category offense.

6 Q. And could you give us some -- an idea of where --
7 what double-X means in comparison with all the rest of
8 the -- the numbers?

9 A. Sure. Double-X category offenses also include
10 lynching where that person is murdered. It also
11 includes use of a bomb, which results in death. It also
12 includes killing by poison, killing by stabbing, killing
13 by duel. Those type of offenses are all double-X
14 offenses.

15 Q. Is there any offense category more severe than
16 double-X?

17 A. No.

18 Q. Okay. Mr. Mayweathers is fifteen (15) years old,
19 that's been established to your understanding; correct?

20 A. That is correct.

21 Q. Okay. Ms. Foster, do you have -- if you have that
22 information in front of you, when will Mr. Mayweathers
23 turn sixteen (16)?

24 A. April 28th, '93.

25 Q. That's his date of birth?

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1 A. It is his date of birth.

2 Q. So, today being March 19th, he'll turn sixteen (16)
3 in a little over a month?

4 A. Correct.

5 Q. Okay. If he remains in Juvenile Court and is tried
6 on this offense at a later date, hypothetically let's
7 say a month from now, and convicted, what is (sic) the
8 guidelines for DJJ, parole guidelines for a category
9 two-X offense?

10 A. Okay. The parole guidelines through -- for DJJ for
11 a category double-X offense is a minimum of thirty-six
12 (36) months through a maximum of fifty-four (54) months.

13 Q. So fifty-four (54) months would be four and a half
14 (4-1/2) years? Is that right?

15 A. Yes.

16 Q. Okay. But is there not also a rule or provision at
17 DJJ that at a certain age, certain offenders are
18 transferred from the juvenile setting to the adult
19 prison population?

20 A. Yes. There is.

21 Q. Okay. And they're -- Am I accurate in saying that
22 there are two (2) ages where a child may be transferred?

23 A. I'm more positive about one, I'm not too sure of the
24 second one that you're referring to.

25 Q. Well, for someone convicted of a category two-X

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1 offense, at what age would that person be transferred to
2 an adult prison setting?

3 A. Yes. At seventeen (17).

4 Q. At seventeen (17)?

5 A. Yes, sir.

6 Q. Given that information, how long, if convicted say
7 within a month, would Mr. MayWeathers be at the
8 Department of Juvenile Justice in a juvenile setting
9 with all the treatments available?

10 A. Okay. With your hypothesis, and he is adjudicated
11 by the time he's sixteen (16), he will serve about
12 twelve (12) months.

13 Q. Okay. So that twelve (12) month period will be the
14 amount of time that he will have available to him for
15 services given by the Department of Juvenile Justice?

16 A. That's correct.

17 Q. Okay. Is there a category -- I know not double-X. -
18 - but is there another category within the parole
19 guideline system that corresponds to a twelve (12) month
20 range?

21 A. Yes, sir. We have a category three (3) that has a
22 minimum of six (6) -- well, with the parole guidelines
23 that has a minimum of six (6) months with a maximum of
24 eighteen (18) months.

25 Q. Okay. But, of course, that parole guideline

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1 wouldn't apply here because he'd be convicted of a
2 double-X?

3 A. Right. But you're asking about the category three
4 (3) offenses, and that's what that falls into.

5 MS. WINGARD: Judge, I would object to the relevance
6 of this.

7 THE COURT: I'm having some difficulty following. I
8 mean, as I understand, the only thing that we should be
9 discussing is the double-X category at this point in
10 time, based upon the charge that has been brought
11 against this defendant. So, I mean, unless you can help
12 me understand how it becomes relevant, I'm having some
13 difficulty with that.

14 MR. RICHARDSON: Well, Your Honor, simply what I was
15 going to do next was equivocate -- not equivocate, but
16 show the -- the category within the Juvenile Justice
17 system that would keep a child there and give him
18 services for about twelve (12) months, and the level of
19 offense that would go along with that. Then when a
20 child spends twelve (12) months at DJJ, this child may
21 have committed this type of offense. Excuse me.

22 I think I may be able to solve the problem.

23 THE COURT: All right.

24 CONTINUED BY MR. RICHARDSON:

25 Q. As a two-X offender, would he have more services

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1 available to him in a twelve (12) month period than any
2 other offender within the system?

3 A. Can you restate the question?

4 Q. Well, you have varying categories.

5 A. Um-hm.

6 Q. He's in the most serious category. Does the
7 category level determine the amount or types of services
8 the child will receive? For example, would a -- would a
9 child whose committed a X---

10 THE COURT: Available. Because of the offense, it
11 may change what services would be -- the child would
12 receive. But would there be a difference based on
13 category of available services for the child, not what
14 he actually would receive, but what is available? In
15 other words, at every level, are all services available
16 regardless of what category you're in?

17 Foster: All services are available. It doesn't
18 matter what category that you're in. It goes a little
19 deeper with the type you have. Once you get -- He has
20 to get an evaluation, and then that's when it's
21 determined, specifically, what---

22 THE COURT: Services.

23 Foster: ---what services are rendered to him. He
24 would get the same -- He would serve -- He would have
25 the same amount of time in these services that he would

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1 as -- as a child who is adjudicated of a category three
2 (3) offense.

3 CONTINUED BY MR. RICHARDSON:

4 Q. Okay.

5 A. Did I make myself clear enough?

6 Q. I think so.

7 A. For the Court?

8 THE COURT: I -- I think what we're ultimately
9 trying to -- to -- what's ultimately trying to be said
10 is there's no special service provided to him -- or
11 special services provided to him because of his
12 category. Everyone has the availability of the same
13 services. What services he receives are based upon the
14 evaluation that's performed as he enters into the
15 system. Is that correct?

16 Foster: That is correct, sir.

17 THE COURT: All right.

18 CONTINUED BY MR. RICHARDSON:

19 Q. Ms. Foster, is it not with the parole guidelines are
20 thirty-six (36) to fifty-four (54) months. Are those
21 set up that way with the-- with the mind-frame of
22 having services available over that whole period of
23 time?

24 A. I -- I can't speak on -- on that aspect. I -- What
25 I do know is that he would serve his minimum of the

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1 time, which is thirty-six (36) months, I think, that the
2 maximum amount of time would be fifty-four (54) months.
3 And they would give him the services that would fit into
4 those months.

5 Q. But if a juvenile stays in the facility for thirty-
6 six (36) to fifty-four (54) months, that juvenile is
7 going to have services available that entire thirty-six
8 (36) to fifty-four (54) months; correct?

9 A. That is correct.

10 Q. And if Mr. Mayweathers gets transferred to the adult
11 system within a year, he will not have those same
12 services; correct?

13 A. That is correct. His services do not go with him.

14 Q. Okay. Thank you very much. Please answer any
15 questions the defender or the Court may have.

16 CROSS EXAMINATION BY MS. WINGARD:

17 Q. For the amount of time that he would be at the
18 Department of Juvenile Justice, he would receive
19 services appropriate for the reason he is there. Is
20 that correct?

21 A. For -- Yes, ma'am.

22 Q. And you did not mean to say, I don't think, that
23 somebody who is at DJJ for a homicide would receive the
24 same sort of services that somebody who's there for
25 stealing a car?

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1 A. No. I do not mean to imply that.

2 Q. I didn't think you did. So, there would be
3 specialized services within the DJJ system for his
4 offense, or -- or anybody's offense? You -- You try to
5 tailor the services provided for the juveniles on why
6 they're there?

7 A. The -- The evaluation that he will receive would --
8 would determine what services that he would get. And
9 that's for any juvenile entering into the Department of
10 Juvenile system.

11 Q. And then, when he left the Department of Juvenile
12 Justice as Dr. Heffler has testified to, he would go to
13 the Youthful Offender Division. And those services are
14 better than the general adult population services. Is
15 that correct?

16 A. Better is a random term. I know that he would get
17 services for juveniles and not for adults in the
18 Department of Corrections.

19 Q. Yes. Thank you.

20 THE COURT: But if I understood Dr. Heffler's
21 testimony yesterday when he was asked about the Youthful
22 Offenders Program, there is no guarantee that a child
23 transferred at age seventeen (17) from DJJ to the adult
24 correction system would be placed in a YOP facility.
25 It's possible that if there is not room, that he would

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1 have to go to an ordinary adult correctional facility.

2 Is that correct?

3 Foster: That is correct.

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

5 I'm sorry. Go ahead.

6 RE CROSS EXAMINATION BY MS. WINGARD:

7 Q. I -- I think I understood differently. I believe I
8 understood him to say -- And maybe I'm wrong, but I
9 thought I understood Dr. Heffler to say that children
10 coming from DJJ went to the YOP facility automatically,
11 that children who plead in or are convicted through the
12 adult system could go there, but it was only subject to
13 availability. Did -- Did I misunderstand his testimony
14 yesterday?

15 THE COURT: Yes, ma'am.

16 Foster: From what I understood of Dr. Heffler's
17 testimony is that it -- it all depends on availability
18 of space. Yes; kids that come from the Department of
19 Juvenile Justice have first grab at those -- at those
20 spaces. However, it is still -- all depends on the
21 availability of space.

22 CONTINUED BY MS. WINGARD:

23 Q. But coming from DJJ, you have a better chance of
24 getting in that program than coming from an adult
25 setting?

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1 A. Yes.

2 THE COURT: That counts, as my understanding, that -
3 - that priority was given to children coming from DJJ
4 into the YOP program, but it all depended upon the
5 availability of space. Is that your understanding of
6 the program?

7 Foster: Yes.

8 THE COURT: Okay. Thank you, ma'am. Any further
9 questions?

10 MR. RICHARDSON: No, sir.

11 THE COURT: Thank you, ma'am.

12 Is that the State's case?

13 MR. RICHARDSON: That is the state's case.

14 THE COURT: All right. We're going to take a break
15 now until 2:30. I have a 2:15 hearing that I need to
16 conduct, and so we'll start back at 2:30.

17 (Court recessed.)

18 (Court reconvened.)

19 THE COURT: All right. We're now back on the record
20 in a juvenile proceeding. For those of you who did not
21 hear the discussion up here at the bench, the press has
22 joined us. And no party has raised an objection to
23 their presence in the courtroom. I have restricted the
24 access of the press to the extent that they may not show
25 the faces of the juvenile or his family, or the victim's

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1 family. And so, you don't have to worry about seeing
2 yourselves on television or anything like that.

3 Unfortunately, they'll probably get picture of me on
4 television, which I -- I'm sorry for y'all.

5 The -- When we broke, the State had finished its
6 case. And at this time it would be appropriate for the
7 defendant to present its case.

8 Before I say that, let me put one more thing on the
9 record. Of course, I instructed that there would be no
10 photographs of the victim's family, the juvenile or his
11 family. And, of course, there is no sound from the
12 camera. The usual restrictions concerning disclosure of
13 identity will continue to apply.

14 And with that, you may call your witness.

15 MS. WINGARD: Ms. Ingram, come around please.

16 THE COURT: Ma'am, if you'd place your left hand on
17 the Bible and raise your right.

18 MS. NANCY LEE INGRAM, being
19 first duly sworn, testified as follows:

20 THE COURT: Thank you, ma'am. Please have a seat
21 there in the witness stand. And if you would state your
22 full name.

23 Ingram: Nancy Lee Ingram.

24 THE COURT: Thank you, ma'am.

25 Yes, ma'am?

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1 DIRECT EXAMINATION BY MS. WINGARD:

2 Q. Ms. Ingram, where do you live?

3 A. In east Florence.

4 Q. That is in the city of Florence?

5 A. Florence County.

6 Q. Florence County. And where do you work?

7 A. Florence School District One.

8 Q. And what do you do for Florence School District One?

9 A. I'm a professional school bus driver.

10 Q. And how long have you been employed as a bus driver?

11 A. Twenty-one (21) years.

12 Q. Has that always been in Florence School District

13 one?

14 A. Yes.

15 Q. Do you have a family?

16 A. Yes. I do.

17 Q. And tell me about your family.

18 A. I have three (3) daughters, five (5) grandkids.

19 Q. And who -- who -- Of your daughters, do you have any
20 with you anymore?

21 A. Okay. My baby daughter, her name is Blake; she's
22 eighteen (18) years old.

23 Q. And she lives with you?

24 A. Yes.

25 Q. And is she a student, or does she work, or does she

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1 have a family? What is her---

2 A. She is a student. She goes to Wilson High School.

3 Q. And what year is she?

4 A. Eleventh (11th).

5 Q. Did you have occasion to allow Jermaine Mayweathers
6 to come live with you?

7 A. Yes.

8 Q. How do you know Jermaine, and how are you kin to
9 him?

10 A. He's my great nephew. His grandmother is my sister.

11 Q. And because his -- his mother lived out of state, he
12 had to find a relative to live with in South Carolina
13 while these charges were pending. Is that correct?

14 A. Yes.

15 Q. And so he came to live with you in the middle of
16 December; is that right?

17 A. Yes.

18 Q. So he has been living with you now approximately
19 three (3) months?

20 A. Yes.

21 Q. And it's you and your eighteen (18) year old
22 daughter; is that correct?

23 A. Yes.

24 Q. Did Jermaine get enrolled in school?

25 A. Yes. He did.

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1 Q. And where did he get enrolled in school?

2 A. He goes to the R. M. Beck Learning Center, where
3 they have an alternative school.

4 Q. And was he required to go to the alternative school
5 because these charges are pending against him?

6 A. Yes, ma'am. They said he had to go there because of
7 the charges.

8 Q. Okay. It wasn't as though he were in another school
9 in School District One and did something and then had to
10 go?

11 A. Right.

12 Q. It was because the---

13 A. The charge.

14 Q. ---situation that we're here---

15 A. Yes, ma'am.

16 Q. ---dealing with today? How has he been in your home
17 in these three (3) months?

18 A. I've had -- I haven't had any problems with him.

19 Q. Does he do what you ask him to do?

20 A. Yes. He does.

21 Q. Do you ask him to help around the house and do
22 chores?

23 A. Yes.

24 Q. Does he do what you ask him to do?

25 A. Yes. He does.

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1 Q. Have you had any trouble with him at all during
2 these three (3) months?

3 A. No. I haven't.

4 Q. All right. What hours do you work?

5 A. My hours vary. I work in the morning from 5:30
6 until about eight (8) o'clock. And then I go back in
7 the afternoon at 1:30 and finish around 4:30.

8 Q. So you are home all during the evenings?

9 A. Yes.

10 Q. And does he come in as he is required to do pursuant
11 to his detention release?

12 A. Yes, ma'am.

13 Q. And you don't have any problem in that regard at
14 all?

15 A. None. None whatsoever.

16 Q. All right. Can you tell us unequivocally (sic) that
17 he is a good young man and minds you and does -- always
18 does what you ask him to do?

19 A. Yes.

20 Q. You received a letter from the school principal
21 where he is and brought that to me. Is that the letter?

22 A. Yes. It is.

23 Q. And does this say what his situation is as far as
24 the school is concerned?

25 A. Yes.

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1 MS. WINGARD: I believe I showed that to you.

2 MR. RICHARDSON: Yeah. We've got a copy.

3 MS. WINGARD: Judge, we -- we'd move to introduce
4 this.

5 THE COURT: Any objection?

6 MR. RICHARDSON: None, Your Honor.

7 THE COURT: Without objection, it'll be marked as
8 Defense 4.

9 ***DEFENDANT'S EXHIBIT 4 ENTERED***

10 Yes, ma'am?

11 MS. WINGARD: That's all Defense has.

12 MR. RICHARDSON: No questions, Your Honor.

13 THE COURT: I have no additional question for you,
14 ma'am. You can return to your seat.

15 Ingram: Thank you.

16 THE COURT: Thank you.

17 You may call your next witness.

18 MS. WINGARD: We have no further witnesses at this
19 time.

20 THE COURT: All right. Any reply testimony?

21 MR. RICHARDSON: No, sir, Your Honor.

22 THE COURT: All right. I advised Counsel at the
23 beginning of the hearing that I would have both opening
24 statements and closing arguments in this case. It's a
25 little unusual, but I am going to allow for that in this

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1 particular case. And so I recognize the State at this
2 time for closing.

3 MR. RICHARDSON: Thank you, Your Honor. We've heard
4 a lot of testimony over the last couple of days
5 regarding this case, with a lot of information to take
6 in. I believe the main things that we need to look at
7 are those pieces of testimony that apply to the factors
8 of The United States v. Kent, the Supreme Court case
9 which tells us how these hearings should -- should go.

10 In this closing remark, I'll take these factors and
11 try my best to go by one-by-one to address the issues
12 that apply.

13 The first one is the seriousness of the alleged
14 offense to the community and whether the protection of
15 the community requires waiting. The State's position in
16 this regard is that it's hard to imagine an offense that
17 is more serious than what we are dealing with here
18 today, that being the death -- a brutal death of a five
19 (5) year old child.

20 The adequate protection of the community is a hard
21 concept to wrap your head around. What is adequate
22 protection? You know, does this require this defendant
23 to be sent away for life? Does it require a certain
24 number of years. It's hard to -- to answer that
25 question as far as adequate protection of the community.

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1 But we can infer that for a crime this serious, a
2 substantial amount of incarceration may be necessary to
3 adequately protect the public.

4 Second factor under Kent is whether the alleged
5 offense was committed in an aggressive, violent,
6 premeditated or willful manner. I think the testimony
7 from Dr. Erin Presnell and Dr. Gerald Atwood made it
8 clear that the injuries suffered by Minor Child came
9 from a very violent and aggressive situation.

10 And he testified that it was not something accident,
11 a fall or a little bump on the head during play that
12 could have caused the -- the injury suffered by this
13 child. And although we -- we can't go back in time to
14 get inside that -- that room and see what actually
15 happened, you can infer that a very violent act took
16 place in that home on Gilbert Drive that day.

17 Third factor: whether the alleged offense was
18 against persons or against property, with greater weight
19 to be given to offenses against persons. No doubt in
20 this case the offense was against a person, a five (5)
21 year old boy, with a blunt force trauma to the head and
22 multiple bruises about his body.

23 From the forth, a merit of prosecuting the
24 complaint. That -- That may be one of the -- the
25 shining, important factors for the Court to consider in

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1 this hearing. You have to determine whether there is
2 evidence from which a grand jury may be expected to
3 return an indictment. That, of course, is a probable
4 cause thing, a preponderance of the evidence, if you
5 will.

6 I believe that the State's case provides
7 overwhelming evidence of what took place that day,
8 specifically, every adult that lived in the household
9 was excluded from being present at the time this crime
10 could be committed.

11 The only other person in the house, other than the
12 defendant, was a seven (7) year old boy who testified,
13 where he could barely see over the witness stand. That
14 means that Jermaine Mayweathers, the defendant, with the
15 opportunity to have committed this crime.

16 We also have his statement that says the victim was
17 acting fine the entire day up until around four (4)
18 o'clock. He also excluded any other person from being
19 in the residence himself, stating that only he and the
20 two (2) little boys were in the home. I believe this
21 factual evidence corrected with --along with the medical
22 evidence is overwhelming, and -- and surely enough to
23 reach the probably cause standard.

24 Number five (5) doesn't really apply to us. There's
25 only one (1) defendant. We don't have multiple

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1 Number seven (7), the child's prior record and
2 involvement with the Juvenile Justice system. Mr.
3 Mayweathers has had prior involvement with the juvenile
4 system in Virginia. Although none of his offenses were
5 violent in nature, he has had several referrals in that
6 jurisdiction. And while he was staying with the family
7 on Gilbert Drive, he was awaiting a court date in
8 Virginia for a property offense.

9 He's been on probation in the past in the state of
10 Virginia, and according to the records had not done
11 well. He failed to show for some meetings and provided
12 some problems in the home. I think that is very
13 important to look at in terms of the rehabilitation
14 factor, which would be number eight (8). He's already
15 been given an opportunity and did not comply well with
16 it.

17 Number eight (8) involves the prospects for adequate
18 protection of the public and the likelihood of
19 reasonable rehabilitation by use of procedures,
20 services, and facilities available to the Family Court.
21 Again, I go back to Dr. Heffler and the statements I
22 made previously about the likelihood of rehabilitation.

23 I think one of the most important things that came
24 to the witness stand in this regard is the fact that if
25 adjudicated delinquent in Family Court, the defendant

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1 will only be in the Juvenile Justice system for about a
2 year. Now, granted he will have services available to
3 him for that year. But after that, he's transferred to
4 the adult system, whether it be Youthful Offender
5 Program, which he may or may not get into, or through
6 the general population.

7 The guidelines for his current offense are thirty-
8 six (36) to fifty-four (54) months. And it's obvious
9 that DJJ placed that parole guideline on the level
10 offense for a reason. But in this case, he only gets a
11 small part of that time in the juvenile system, one (1)
12 year at best.

13 There's also language in Kent that cited a brief and
14 filed with the Court, the speech to the heinous nature
15 or aggravated character of the crime in question. In
16 this case, it would be the homicide by child abuse. And,
17 of course, I'll leave it to the Court to interpret the
18 statutes I'm speaking about.

19 But it mentions, right before the factors of
20 delineating the case that, the case shall be -- excuse
21 me, will be waived if it has prosecuted merit and if it
22 is of a heinous or aggravated character. And my
23 argument would be that there -- you know, there can
24 hardly be a more heinous or aggravated case than the
25 brutal death of this -- this child.

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1 (1) disciplinary write-up since he has been with her.
2 Given the right environment, I think this young man,
3 even if he is guilty, -- And for argument's sake, we'll
4 -- we'll say that.

5 But even if he is guilty of this, he can be
6 rehabilitated. If he is adjudicated delinquent, he will
7 be under a sentence within the Department of Juvenile
8 Justice until he is twenty-one (21) years old. That is
9 five (5) years. There are many programs available to
10 him, first in the Department of Juvenile Justice; and
11 then, if he is sent to the Department of Corrections,
12 that would not be available is he goes to the Department
13 of Corrections as an adult.

14 Clearly, he will be eligible for the Youthful
15 Offender treatment. And that would be more widely
16 available to him if he comes through the Juvenile
17 Justice system as opposed to the adult system.

18 Dr. Heffler was very clear, very clear in his
19 testimony, unequivocally (sic) that this young man could
20 be rehabilitated in the Juvenile Justice system. And I
21 think that it is very significant that he did a battery
22 of tests on him. And he said, "You know, this young man
23 comes up with a profile of the least likely to be a
24 juvenile offender."

25 I don't know what happened to young Child . But,

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1 clearly, it was not anything, if this young man did it,
2 that he went looking for. It was something that
3 presented itself in the home.

4 I have reviewed many of our waiver decisions. And
5 the thing that strikes me in Pittman and Miller, those
6 decisions, there is an extra inch of brutality. Most of
7 the time, it is a gun used, going outside the home, or
8 an effort to significantly cover up the crime.

9 As soon as this young man realized that this child
10 was in distress, he called 9-1-1. And he had to -- he
11 had to go searching for a way to get help for this
12 child. The child's mother had left this young man in
13 the care of these two (2) little boys, with no means of
14 communication, no way to really get in touch with her in
15 an emergency, no phone, in a neighborhood that they had
16 not lived in very long where they didn't know people.

17 He didn't try to cover up this child's situation.
18 He sought help for him when he realized that he was in
19 distress. So there is -- There are many things that we
20 can say, you know, he was -- he had just been with these
21 little boys for a few days. I -- I don't want to
22 belabor the situation and go over all the testimony.
23 You know it. But, you know, it -- this is just not a
24 situation that he went out and tried to get in trouble.

25 If -- If Dr. Atwood's testimony is to be believed,

1 it was something that was just kind of a -- a throwing
2 against a flat surface or some kind of impulsive sort of
3 action. I don't think it was anything planned or
4 anything of that nature, at least as Dr. Atwood
5 interprets the injuries.

6 Also I'll note that you had head injuries and then
7 you had the -- the marks. Dr. Presnell said, clearly,
8 those could have been done at different times and not
9 necessarily at the same time. And so, you could argue
10 not necessarily by the same person.

11 We know from the investigators talking to neighbors
12 that there was some loud commotion in the home in the
13 early morning hours. So -- So there are many things
14 that we can argue going on in that home. And, you know,
15 to me there is a huge distinction between getting with a
16 bunch of guys and going out in the street or -- or
17 taking action to trouble up misdeeds.

18 I would ask you to not give up on Jermaine. I would
19 ask you to give him an opportunity, if he committed this
20 offense, to be rehabilitated in the Juvenile Justice
21 system. Dr. Heffler, again, was so clear that this is a
22 smart young man, a young man who could have a future.
23 And I would respectfully ask you to retain jurisdiction
24 in this Court and allow him to remain in the Juvenile
25 Justice system.

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1 THE COURT: Thank you, ma'am. Well, of course, we
2 file -- I know y'all have noticed that I've been sitting
3 here writing because I've been taking notes of all the
4 testimony and matters which were presented to the Court.
5 I have also been making a separate set of notes related
6 to the factors I have to consider in Kent v. United
7 States, which we've been talking about repeated during
8 this trial.

9 So I know y'all are familiar with the things that I
10 have to consider. I need about fifteen (15) or twenty
11 (20) minutes to review my notes and some other
12 documents. And so, we're going to stand at ease for
13 about fifteen (15) or twenty (20) minutes while I review
14 these notes and other documents and pull my thoughts
15 together to issue my ruling in this case.

16 And so, we'll stand at ease for about twenty (20)
17 minutes.

18 (Court recessed.)

19 (Court reconvened.)

20 Deputy: Order in the Court. All rise.

21 THE COURT: Thank you. Please be seated.

22 Within the Juvenile Justice system, a waiver hearing
23 is the most serious of hearings. It is, of course, as
24 we all know from this process, the metric by which this
25 Court makes a determination about whether it is

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1 appropriate to relinquish jurisdiction over the juvenile
2 so that he may be prosecuted within the General Sessions
3 Court. I'm required, as I consider whether or not to
4 waive jurisdiction, to consider those factors in Kent v.
5 The United States, those factors that we have discussed
6 a number of times during this case on the record.

7 All of the evidence that has been presented in this
8 hearing is related directly to a demonstration of the
9 State's position with regard to those Kent factors, and
10 the defense's position with regard to the evidence
11 presented by the State related to those factors. I've
12 listened carefully to the evidence that has been
13 presented. I told you that I had been making copious
14 notes during the presentation of the evidence.

15 I reviewed that information last evening and this
16 morning. I reviewed some additional information that
17 was retained in the file. Of course, I had taken
18 judicial notice of the pre-waiver evaluation that was
19 performed, and had reviewed that prior to the
20 commencement of this hearing, and reviewed portions of
21 it yesterday, and then reviewed it again today.

22 Of particular concern and interest to this Court was
23 the testimony of the experts who have presented evidence
24 in this matter, not only the medical experts, but, of
25 course, Dr. Heffler, who presented evidence related

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1 directly to the issue of rehabilitation of this
2 juvenile.

3 I considered the -- obviously, the exhibits which
4 were presented, including the statement of the juvenile
5 and the interviews of K.P. at the Children's
6 Center. I, obviously, have reviewed the photographs
7 which were placed into evidence; and, of course, the R.
8 N. Beck Learning Center letter from the juvenile's
9 principal.

10 In considering the Kent factors, I will discuss each
11 of the factors and my findings concerning each of those
12 factors.

13 Of course, the first factor is the seriousness of
14 the alleged offense to the community and whether the
15 protection of the community requires a waiver.

16 Obviously, there is no more serious offense than a death
17 caused by another, and particularly the death of a
18 child. And this is, of course, a very serious offense.

19 And the question of whether the protection of the
20 community -- community requires waiver is one that is
21 the ultimate question in this case. I, of course, have
22 concerns about the nature of this incident.

23 When I began to hear evidence in this case about the
24 incident, I was not certain of the exact nature of the
25 injuries that had occurred which led to the death of

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1 Minor Child . And while I had had some pre-trial
2 conferences with the attorneys, we had never talked
3 specifically about all of the injuries that were
4 involved.

5 And as I considered the nature of those injuries, I
6 considered them with regard to whether the alleged
7 offense was committed in an aggressive, violent,
8 premeditated, or willful manner. And clearly the
9 injuries suggest that very serious violence occurred.

10 Dr. Atwood testified today that the amount of force
11 necessary to cause this injury was indeed very, very
12 substantial. It could not have been caused, according
13 to Dr. Atwood, by a fall from a bunk bed. Dr. Presnell
14 was in accord with that. And so I do consider the
15 violence of the injuries as a part of the Kent factors.

16 I did not know until, obviously, the evidence was
17 presented about the additional injuries which occurred,
18 that being the bruising across the chest and abdomen,
19 the arms, the legs, and the back of the leg,
20 particularly the back of the right leg, as described by
21 Dr. Presnell, and consider those to be an indication of
22 a violent attack committed in a willful manner.

23 Obviously, as to the third factor, this is an
24 offense against a person and must be given greater
25 weight as it is an offense against a person that indeed

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1 caused a death.

2 The next factor is the prospective merit to the
3 complaint, that is whether there is evidence upon which
4 the Grand Jury may be expected to return an indictment.
5 The presentation of evidence in this case, if -- I guess
6 maybe I should say it this way: If I completely
7 discounted the evidence presented by K.P. , --
8 and, obviously, I heard that evidence.

9 A seven (7) year old has great difficulty in
10 presenting evidence the way that an adult would; and I
11 wouldn't expect him to be able to do so. There was much
12 that caused me to try to figure out exactly what
13 occurred based upon his testimony. Some of his
14 testimony was consistent with other information provided
15 to the Court. Some of his testimony was inconsistent
16 with the prior interviews, which were conducted closer
17 in time to the July 25, 2008, date.

18 And so if I -- if I discounted all of that, if I --
19 if I said I can't consider any of this testimony, I
20 still have a very strong circumstantial case based upon
21 the fact that the -- the evidence demonstrates that the
22 only parties who were present on the 25th from the time
23 that the mother left to go to work until the ambulance
24 came were the juvenile and K.P. .

25 The evidence indicates that K.P. was not

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1 capable of inflicting the type of traumatic injury, the
2 blunt trauma necessary to cause the injuries which were
3 described by the forensic pathologist and the treating
4 physician, Dr. Atwood.

5 And while I am extremely mindful of the evidence
6 that has been presented about the bump on -- on the
7 victim's head that occurred from a -- a fall or a bump
8 on the bunk bed the night before, based upon the medical
9 testimony on Thursday and today -- Excuse me. -- on
10 Wednesday and today, I -- I do not find that there is
11 anything that would indicate, from the evidence that I
12 heard, that this substantial, blunt trauma occurred at a
13 time outside of the parameters of Friday, understanding
14 that I'm making these decisions based upon a
15 preponderance of the evidence and not beyond a
16 reasonable doubt.

17 Dr. Atwood testified that one would expect immediate
18 onset symptoms post injury; and went as far as to say
19 that the victim would have been able to lay, moan,
20 breathe, and little else; and also indicated that he
21 believed the victim would have most likely have been
22 unconscious.

23 Dr. Presnell's testimony was that if the head injury
24 occurred at one time, the child would have had immediate
25 symptoms, and could not have been functional.

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1 Accordingly, I do find that there is a case or evidence
2 upon which the Grand Jury would be expected to return an
3 indictment against this juvenile.

4 The issue of desirability of trial disposition is
5 not applicable to this case, and so I do not need to
6 discuss that.

7 The sophistication and maturity of the juvenile are
8 determined by consideration of his home, environmental
9 situation, emotional attitude, and pattern of living.
10 Based upon the pre-waiver evaluation, everything that I
11 hear about this young man is that he is a very bright
12 and capable young man, who is appropriately mature; and
13 in some cases exceeds what would be expected of a person
14 of his age.

15 There is nothing about his home or environmental
16 situation which would contribute to my finding that
17 there should be any special circumstance recognized by
18 that. And there's nothing which would indicate that he
19 has any difficulty in understanding the nature of any
20 act and the consequences of any act. In other words, he
21 is a very ordinary, normal, and reasonably bright and
22 mature individual; and maybe more so than would be
23 expected of someone his age.

24 The record of previous history of this juvenile,
25 including his previous contacts with the Department of

1 Juvenile Justice or an equivalent agency, other law
2 enforcement agencies, or juvenile courts in other
3 jurisdictions, prior periods of probation in the Family
4 Court, or prior commitments in juvenile institutions; I
5 do note that this juvenile does have a prior involvement
6 with DJJ or equivalent agencies and law enforcement.

7 And I -- I note that those offenses were property
8 only offenses, which I would not consider to be
9 extraordinarily serious. The charge of fraud and grand
10 larceny was, as Ms. Wingard brought out during her case,
11 one related to a gift card. And so when I read a charge
12 of fraud and grand larceny, I wouldn't automatically
13 think of that as being the basis and would have thought
14 of something more serious.

15 But, of course, it did relate to a gift card. And
16 while I do not indicate that that is not a serious
17 matter, it is not a serious offense arising to the level
18 that would cause this Court to be concerned about this
19 juvenile on that charge alone. There were other pending
20 charges at the time that this incident occurred. Those
21 charges were pending in the state of Virginia.

22 I do not believe I heard any evidence during the
23 trial which indicated that those charges have been
24 disposed of. And so I do not know what the disposition
25 was and whether those charges were founded or unfounded

RULING OF THE COURT

1 in terms of that. So I have not considered those
2 additional charges at this time as it relates to this
3 juvenile.

4 The final factor, and one which I must consider most
5 seriously at this point in time, having made a decision
6 that a Grand Jury could return an indictment on the
7 evidence presented, are the prospects of adequate
8 protection of the public and the likelihood of
9 reasonably -- reasonable rehabilitation of the juvenile
10 by the use of procedures and services and facilities
11 currently available to the Court.

12 Dr. Heffler, as Ms. Wingard said, was unequivocal --
13 unequivocal in his opinion that this juvenile could be
14 real -- rehabilitated, excuse me. He considered him to
15 be very bright, very capable, mature, and motivated. He
16 felt that services were available at the Department of
17 Juvenile Justice which would assist in this juvenile's
18 rehabilitation until his seventeenth (17th) birthday,
19 which is approximately a year and a month away.

20 So we're talking about thirteen (13) months within
21 the juvenile system at the most. And then at that point
22 in time, the juvenile would be moved into the Youthful
23 Offenders Program within the Department of Corrections
24 if space were available, and if not would move into an
25 ordinary adult facility.

1 So, clearly, services are available for a period of
2 approximately a year. But the services available after
3 that time, directed towards rehabilitation, would be
4 limited and not at the same level.

5 In Dr. Heffler's report, he talked about negative
6 and positive factors to consider. Positive factors
7 included the demonstrated intellectual capacity of -- of
8 this juvenile, and his ability to benefit from
9 rehabilitation programs. This ability to sustain
10 attention and motivation during evaluation is indicative
11 of his ability to adapt to situations.

12 The amount of time that he would have within the
13 Juvenile Justice system and that he felt that the
14 Juvenile Justice system's rehabilitative processes would
15 assist this juvenile in making better decisions.

16 The negative factors he considered were that this
17 juvenile had been charged with a serious offense that
18 involved the death of an individual; and that if he was
19 guilty of that offense, a serious lack of concern for
20 the welfare of others would be present. And such
21 persons were frequently regarded as difficult to
22 rehabilitate.

23 The history of minor infractions, which would be of
24 concern if those -- if there were patterns of escalating
25 infractions; that there was -- that the juvenile

1 continuously maintained he was innocent of all charges;
2 and Dr. Heffler felt that those who maintained
3 innocence, when they are in fact guilty of charges, were
4 more difficult to rehabilitate. And the fact that the
5 juvenile was reported to be likely influenced by others
6 in a negative direction.

7 I do have substantial concerns about the ability to
8 actively rehabilitate this juvenile if he is convicted,
9 given the time factors for services before he would be
10 placed in the Department of Corrections, even as a
11 Youthful Offender.

12 I have concerns that, given the nature of the
13 offense, if he is convicted and given the position that
14 he takes in anticipation of any trial, may be an
15 impediment to his rehabilitation if convicted. And
16 given the violent nature of the injuries to the victim,
17 I have to express some concerns for the protection of
18 the public.

19 There are few decisions which are made in this Court
20 which have as serious an impact on a person's life as
21 the decision concerning a waiver of jurisdiction. And
22 the impact extends both to the family of the victim and
23 the family of the juvenile.

24 After carefully considering all of the factors in
25 Kent v. United States, after carefully considering the

RULING OF THE COURT

1 evidence presented which I've outlined here today, it is
2 this Court's decision that it is in -- that it is
3 appropriate that jurisdiction be waived in this matter;
4 and that the juvenile be presented to the Court of
5 General Sessions for prosecution.

6 Are there any matters which need to be brought to
7 the Court's attention at this time from the State?

8 MR. RICHARDSON: Your Honor, I believe at this point
9 the issue of bond arises. I believe under the statute
10 that the Family Court Judge has the option to set a
11 bond. The Family Court Judge also has the option to
12 bind the child over to purge with the Circuit Judge.
13 And I would respect -- respectfully ask that the Court
14 defer to the Circuit Court in this matter.

15 THE COURT: I decline to entertain bond at this
16 point in time and defer to the Circuit Court.

17 Yes, ma'am?

18 MS. WINGARD: Judge, I would respectfully ask you to
19 reconsider that. He has been out on -- just in the
20 custody of Ms. Ingram. He has appeared every time he's
21 supposed to appear. I would ask you to at least set a
22 bond, even if it's a strict bond to keep his family out
23 of -- to at least give them an option.

24 THE COURT: I will ask -- The Circuit Court is
25 sitting this week; is that correct?

1 MR. RICHARDSON: Yes, sir. Tomorrow's the final day
2 of court.

3 THE COURT: Can this matter be presented to the
4 Circuit Court tomorrow?

5 MR. RICHARDSON: We could---

6 THE COURT: If the matter is not presented to the
7 Circuit Court by noon tomorrow, then I will entertain a
8 reconsideration of the issue of setting a bond.

9 MR. JEPERTINGER: Okay. Well, we'll put him -- Your
10 Honor, what we can do is put him on the general list for
11 tomorrow to be brought over and take the matter before
12 Judge Anderson.

13 THE COURT: And I'll ask that y'all go ahead and
14 speak to Judge Anderson, if possible, this afternoon and
15 let him know.

16 MR. JEPERTINGER: I -- I will do that, Your Honor.

17 THE COURT: All right. Thank you.

18 MS. WINGARD: Thank you, Judge.

19 MR. RICHARDSON: Thank you, Your Honor.

20 *** END OF TRANSCRIPT OF RECORD; 4:18 p.m. ***

21

22

23

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE)

STATE OF SOUTH CAROLINA,

V.

JERMAINE MAYWEATHERS,
DEFENDANT.

ORDER

2009 MAR 20 AM 11:35
CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

FILED

Pursuant to an order dated October 1, 2008 and an order dated January 30, 2009 issued by Chief Justice Jean Hoefer Toal, the undersigned was named and designated as the Chief Judge for Administrative Purposes of the Twelfth Judicial Circuit (Criminal).

Exercising the judicial authority pursuant to the orders issued by the Chief Justice of the South Carolina Supreme Court, this Court now assumes absolute and exclusive jurisdiction of this case for all purposes including pre-trial motions and issues and conducting the jury trial.

AND IT IS SO ORDERED.


Ralph King Anderson, Jr.
Chief Administrative Judge
General Sessions Court
12th Judicial Circuit

March 20, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

v.

JERMAINE MAYWEATHERS)

DEFENDANT.)

TRANSCRIPT OF RECORD
09-GS-21-1048
September 21, 2009
Florence, South Carolina

BEFORE:

THE HONORABLE RALPH KING ANDERSON, JR., JUDGE;
AND JURY

APPEARANCES:

JOHN C. JEFFERTING, ESQ.
DAVID A. RICHARDSON, ESQ.
Assistant Solicitors

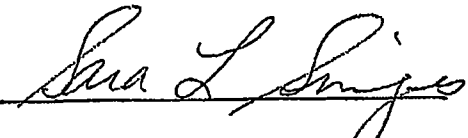
CARRINGTON S. BAKER WINGARD, ESQ.
MICHAELS. BELL, ESQ.
Assistant Public Defenders

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE) CERTIFICATE

I, the undersigned, Sara L. Snipes, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Family Court for Florence County, South Carolina, on the 18th and 19th days of March, 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.


Court Reporter

Florence, South Carolina

December 26, 2009

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1 State's requested voir dire 38

1 THE COURT: All right, Solicitor, call the case.

2 MR. JEPERTINGER: If it please the Court, Your
3 Honor, the State would call the State of South Carolina
4 versus Jermaine Mayweathers. That's on indictment
5 09-GS-21-1048. May I approach, Your Honor.

6 THE COURT: Yes. May I have the list, witnesses
7 for Defense.

8 (Ms. Wingard approaches the Bench.)

9 THE COURT: Mr. Solicitor.

10 (WHEREUPON, counsel approached the Bench for an
11 on-the-record discussion.)

12 THE COURT: All right, state that for the record
13 for me.

14 MS. WINGARD: We do not know if we are going to
15 call witnesses. We have some potential witnesses but we
16 wish to reserve our right as far as a witness list until
17 the conclusion of the State's case. And of course that's
18 why you have alternates, if something should happen.

19 MR. JEPERTINGER: The only problem I envision if
20 you have three or four people on that jury that know those
21 witnesses.

22 THE COURT: We have some kind of nexus that's, of
23 course, the State Supreme Court has ruled that I can make
24 the Defense give me the identification witnesses for
25 qualification purposes only, but I — doesn't make any

1 difference. If you lawyers agree on it I will do it that
2 way.

3 MR. JEPERTINGER: I prefer you call them now
4 because everyone on that list is a possible witness at
5 this stage of the game and without —

6 THE COURT: Any problem with that?

7 MR. JEPERTINGER: —and without any reference to
8 these are State's witnesses —

9 MS. WINGARD: I don't mind if you would do it that
10 way.

11 THE COURT: Okay.

12 MS. WINGARD: Judge, the other thing I need to put
13 on the record is, as you know, this is a juvenile waiver
14 and so we need to renew our objection to it being tried in
15 general sessions.

16 THE COURT: Okay.

17 MS. WINGARD: So I want to make sure that's on the
18 record.

19 THE COURT: Yeah, okay.

20 (End of Bench conference.)

21 THE COURT: Members of the jury venire, give me
22 your attention. We now begin the selection process of
23 jurors in regard to indictment 2009-GS-21-1048, the State
24 versus Jermaine Mayweathers. It is an indictment for
25 homicide by child abuse. The paper that I hold in my hand

1 is an indictment. It is not evidence. It does not prove
2 anything in the case. It is what we call in the law the
3 charging paper, and it is simply a paper that contains the
4 pending charges, nothing more. As we proceed to try this
5 case it is urgent that you respond to the query that I
6 present to you. First and foremost, this relates to a
7 pending charge of homicide by child abuse allegedly
8 occurring on July 25, 2008 in regard to the death of one
9 Minor Child a child under the age of 11. It is
10 alleged that there was conduct by the defendant in regard
11 to the death of the defendant. I emphasize again, this is
12 nothing more than the pending accusation, nothing more
13 than the pending charge. I will present to you detailed
14 query now in regard to your qualifications to serve. It
15 is absolutely urgent that you respond to the query.

16 There has been a general oath given in regard to
17 this case. Ms. Clerk, would you give this panel a
18 specific oath in regard to this case and my qualification
19 questions. Jurors please stand.

20 (Jurors sworn.)

21 THE COURT: Please say I do if you respond.

22 (Jurors respond.)

23 THE COURT: Thank you, Ms. Clerk.

24 Mr. Jermaine Mayweathers, please stand and face the
25 jury panel. Is there any member of the jury panel who is

1 related by blood or convicted by marriage to the defendant
2 Jermaine Mayweathers, if so, please stand?

3 (There was no response.)

4 THE COURT: Is there any member of the jury panel
5 who has any direct or indirect connection with the
6 defendant Jermaine Mayweathers, if so, please stand?

7 (There was no response.)

8 THE COURT: Thank you, sir, please be seated.

9 Jurors, I now give to you a general potential
10 witness list. Please listen carefully in regard to the
11 names on this list. Katrina Andrews with Florence County
12 Department of Social Services; Kathy Saunders, Care House
13 of the Pee Dee; Reagan Simmons, Holiday Inn Express; Tracy
14 McKinnon with SLED; Kevin Qwyer, Florence County EMS; Todd
15 Matthews, Florence County EMS; Debra Williams; K.P.
16 , Doctor Erin Presnell, Medical University of South
17 Carolina; Doctor Gerald Atwood, Durant Center; Billy
18 Sweatt, central communications 9-1-1; Corporal Paul Bird,
19 Florence County Sheriff's Office; Investigator Renea
20 Jenco, Florence County Sheriff's Office; Deputy Eric
21 Barnes, Florence County Sheriff's Office; Lieutenant Keith
22 Lutcken, Florence County Sheriff's Office; Doctor Betsy
23 Gibbs; Willie Gerido. And I may have mispronounced that,
24 G-E-R-I-D-O, Gerido. Dianne Gerido. Is there any member
25 of the jury panel who is related by blood or connected by

1 marriage to any of these witnesses, if so, please stand?

2 (There was no response.)

3 THE COURT: Is there any member of the jury panel
4 who has any direct or indirect connection with any of
5 these witnesses, if so, please stand?

6 Your name and number please.

7 THE POTENTIAL JUROR: Ken Carr, number 27.

8 THE COURT: Yes.

9 THE POTENTIAL JUROR: Todd Matthews with Florence
10 County EMS is a friend of mine. He's also a bagpiper for
11 our Honor Guard.

12 THE COURT: In regard to this bagpiper relationship
13 and the fact that you know him as a friend, I posit to you
14 this query. Take a deep breath. This is a query posed as
15 a matter of conscience. Are you able to give to the State
16 and to Defendant a fair and impartial trial with this
17 person testifying in the case, yes or no?

18 THE POTENTIAL JUROR: Yes, sir.

19 THE COURT: Without absolute certitude you say yes?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Thank you, please be seated.

22 Anyone else?

23 Yes, your name and number.

24 THE POTENTIAL JUROR: I can't remember my number
25 but my name is Tanieka Smith.

1 THE COURT: All right, hold it one second. What's
2 her number, Ms. Clerk?

3 THE DEPUTY CLERK OF COURT: 142, Judge.

4 THE COURT: 142 is the number. All right,
5 Ms. Smith.

6 THE POTENTIAL JUROR: I know Reagan Simmons with
7 Holiday Inn Express. We're under the same corporation,
8 Broad (ph) Day, Incorporation.

9 THE COURT: In regard to that relationship and that
10 nexus, are you able to say that you can and will give both
11 the State and the Defendant a fair and impartial trial?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Will do that?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: Thank you, please be seated.
16 Anyone else please? Anyone else?

17 (There was no response.)

18 THE COURT: Anyone else?

19 (There was no response.)

20 THE COURT: Mr. Solicitor, identify the prosecuting
21 staff, the persons connected with the staff.

22 MR. JEPERTINGER: Yes, sir. First of all, my name
23 is John Jepertinger. I'm deputy solicitor here in the
24 Twelfth Judicial Circuit. Mr. David Richardson is
25 assistant solicitor who will be trying the case along with

1 me. The elected solicitor is Ed Clements. Also in our
2 office are Fitzlee McEachin, Patricia Parr, Steven Hill,
3 Elaine Cooke, Barbara Tolson Heyward, Ryan Waller, Bob
4 Wells, and Steven Deberry, the fourth.

5 THE COURT: For Defense, please identify the Public
6 Defender's Office.

7 MS. WINGARD: I am Carrington Wingard. I am a
8 part-time public defender. I also have a law office here
9 in Florence. I will be representing Jermaine Mayweathers.
10 I will be assisted by Michael Bell. Mr. Bell is the
11 Florence County Public Defender. Jack Lawson is the
12 Circuit Public Defender such that he is the public
13 defender for both Florence and Marion Counties. We have a
14 number of lawyers in our office: Grayson Smith, Scott
15 Floyd, Vick Meetze, Scott Suggs, Karen Parrott. I will
16 also be assisted by Frank White who is an investigator
17 with the Public Defender's Office.

18 THE COURT: Thank you. Is there any member of the
19 jury panel who is now being represented by the Solicitor's
20 Office or the Public Defender's Office in any legal matter
21 or who has in the past been represented by the Solicitor's
22 Office or the Public Defender's Office, if so, please
23 stand?

24 Name and number please.

25 THE POTENTIAL JUROR: Number 8, Laura Blackmon.

1 THE COURT: Yes, Ms. Blackmon.

2 THE POTENTIAL JUROR: Ed Clements was my divorce
3 lawyer.

4 THE COURT: In regard to that former nexus with the
5 solicitor are you able as a matter of conscience to give
6 both the State and the Defendant a fair and impartial
7 trial?

8 THE POTENTIAL JUROR: Yes, sir, I am.

9 THE COURT: You will do that?

10 THE POTENTIAL JUROR: I will.

11 THE COURT: Thanks. Anyone else?

12 Yes, your name and number.

13 THE POTENTIAL JUROR: Beverly Matthews, number 98.

14 THE COURT: Hold it one second. All right,
15 Ms. Matthews.

16 THE POTENTIAL JUROR: Scott Suggs has represented
17 me in a child custody case.

18 THE COURT: In regard to that representation are
19 you able to say as a matter of conscience that you can and
20 will give both the State and the Defendant a fair and
21 impartial trial?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: You will do that?

24 THE POTENTIAL JUROR: Yes, sir.

25 THE COURT: Thank you. Anyone else?

1 (There was no response.)
2 THE COURT: Please, folk, respond now please.
3 Anyone else?
4 (There was no response.)
5 THE COURT: Anyone else?
6 (There was no response.)
7 THE COURT: Folk, now listen carefully, listen
8 closely. If you respond to this question, wait. Please
9 wait for me to ask you specific questions. There has been
10 some publicity about this case. I am told that there has
11 been some presentation on television even over the
12 weekend, but there has been presentation in regard to the
13 news media back when it occurred allegedly and you may or
14 may not have seen or read anything about the matter. It
15 involves allegations against Mr. Jermaine Mayweathers in
16 regard to the death of Minor Child occurring on or
17 about July 25, 2008. If you have seen anything on
18 television or read anything in the newspaper or if you've
19 heard this case personally discussed at home, at work, at
20 church, or general gossip, stand up. Please respond.
21 Okay, now slow and easy, your name and number.
22 THE POTENTIAL JUROR: Marcia Moody, 117.
23 THE COURT: 117. Your name and number.
24 THE POTENTIAL JUROR: Ken Carr, 27.
25 THE COURT: Your name and number.

1 THE POTENTIAL JUROR: Patricia Brown, number 16.

2 THE POTENTIAL JUROR: Ijala Wallace 162.

3 THE POTENTIAL JUROR: Mary McGill, 107.

4 THE COURT: All right, please continue to stand.

5 Did you receive some information either by television, by

6 newspaper, or general personal talk, yes or no?

7 POTENTIAL JUROR MOODY: Yes.

8 POTENTIAL JUROR CARR: Yes, sir.

9 POTENTIAL JUROR BROWN: Yes, sir.

10 POTENTIAL JUROR WALLACE: Yes, sir.

11 POTENTIAL JUROR MCGILL: Yes, sir.

12 THE COURT: What was the entity that you received

13 this from? Just give me the identification. Was it

14 newspaper, was it television, or was it general talk?

15 POTENTIAL JUROR MOODY: Newspaper, television.

16 POTENTIAL JUROR CARR: Newspaper, television, and

17 general talk.

18 POTENTIAL JUROR BROWN: Newspaper, television,

19 general talk.

20 POTENTIAL JUROR WALLACE: Newspaper, television,

21 general talk.

22 POTENTIAL JUROR MCGILL: Newspaper, television,

23 general talk.

24 THE COURT: All right, listen closely to me. As a

25 consequence of this information, did you in fact respond

1 to the information you received and did you form an
2 opinion or express an opinion about the case, yes or no?

3 POTENTIAL JUROR MOODY: Yes.

4 THE COURT: You did?

5 POTENTIAL JUROR MOODY: Uh-huh.

6 POTENTIAL JUROR CARR: Yes, sir, I did.

7 POTENTIAL JUROR BROWN: Yes, sir.

8 POTENTIAL JUROR WALLACE: Yes, sir.

9 POTENTIAL JUROR MCGILL: Yes, sir.

10 THE COURT: If you formed an opinion about the case
11 and you cannot set that opinion aside you need to be
12 excused and I must excuse you. So take a deep breath, all
13 of you. In regard to the opinion you formed, can you in
14 fact now try this case based on evidence under the law
15 presented in the courtroom and my charge on the law? Can
16 you set aside the opinion you formed and follow the
17 evidence here, my charge on the law, and decide the case
18 in that regard, yes or no?

19 POTENTIAL JUROR MOODY: No.

20 THE COURT: No. Thank you, please be seated.
21 She's excused but please be seated.

22 DEPUTY CLERK OF COURT: Judge, and that was 117?

23 THE COURT: 117 is her number.

24 All right. And let's go to the number -- make sure
25 I identify the number of the -- 27; isn't it? Yes, I got

1 it.

2 Mr. Carr.

3 THEPOTENTIALJUROR: Yes, sir.

4 THE COURT: Can you in fact set aside any opinion
5 you formed and try this case based on the evidence as
6 presented in this courtroom and my charge on the law and
7 decide the case based on that alone, yes or no?

8 POTENTIAL JUROR CARR: No, sir.

9 THE COURT: No?

10 POTENTIAL JUROR CARR: No.

11 THE COURT: Thank you, please be seated. He's
12 excused. Mark him excused, Ms. Clerk. 27 is excused.

13 All right, your name and number please.

14 THE POTENTIAL JUROR: Patricia Brown, number 16.

15 THE COURT: Hold it one second. 16, Ms. Brown.
16 Ms. Brown, in regard to the opinion you formed can you, in
17 fact, decide this case based on the evidence presented in
18 this courtroom and my charge on the law and that alone,
19 yesorno?

20 POTENTIAL JUROR BROWN: No, sir.

21 THE COURT: I'm sorry?

22 POTENTIAL JUROR BROWN: No, sir. No, sir.

23 THE COURT: All right, thank you. She's excused.

24 Mark her excused, Ms. Clerk.

25 Your name and number.

1 THE POTENTIAL JUROR: Ajala Wallace, number 162.

2 THE COURT: All right, 162, Ms. Wallace. Can you
3 try this case based on the evidence presented in this
4 courtroom and my charge on the law and that alone, yes or
5 no?

6 POTENTIAL JUROR WALLACE: No, sir.

7 THE COURT: No?

8 POTENTIAL JUROR WALLACE: No, sir.

9 THE COURT: Thank you. Have a seat. She's
10 excused. 162 is excused.

11 Your name and number.

12 POTENTIAL JUROR MCGILL: Mary McGill, 107.

13 THE COURT: 107, Ms. McGill, can you decide this
14 case based on the evidence presented in this courtroom and
15 my charge on the law and that alone, yes or no?

16 POTENTIAL JUROR MCGILL: No, sir.

17 THE COURT: No?

18 POTENTIAL JUROR MCGILL: No, sir.

19 THE COURT: She's excused. Thank you, sir. Please
20 be seated. She's excused under the law.

21 All right, folk, thank you for responding. Those
22 people who responded, thank you very much. Thank you for
23 listening and for responding. Is there anyone else?

24 THE POTENTIAL JUROR: I got a question, Judge.

25 THE COURT: Yes, please stand.

1 THE POTENTIAL JUROR: Your Honor, would it be
2 better if we take it up...

3 THE COURT: I don't want to ask a question that
4 would -- you better come forward.

5 (Juror approached the Bench for an on-the-record
6 discussion.)

7 THE COURT: Your name and number.

8 THE POTENTIAL JUROR: Deborah Lee, 93.

9 THE COURT: All right, Ms. Lee.

10 THE POTENTIAL JUROR: Yes, sir. I read the
11 newspaper and watch TV a lot, but I mainly watch cable
12 channels as I don't watch a lot of local news. And I read
13 of crime and things, but this particular case I don't
14 remember and it's not outstanding in my mind so I just
15 want to make that clear that...

16 THE COURT: You don't remember reading about it?

17 POTENTIAL JUROR: No, sir.

18 THE COURT: You don't remember watching TV about
19 it?

20 THE POTENTIAL JUROR: No, sir.

21 THE COURT: And you don't remember it ever being
22 discussed in your presence?

23 THE POTENTIAL JUROR: No, sir. I do remember one
24 of a different, but it was not this defendant.

25 THE COURT: What you mean one of a different?

1 POTENTIAL JUROR: It was a different child abuse
2 case, but it was not this defendant. But I don't remember
3 any particulars about that one either; it's just like I
4 read it and...

5 THE COURT: That was it, just general information?

6 THE POTENTIAL JUROR: Yes, sir.

7 THE COURT: Okay. In that status since you have
8 responded, take deep breath now. Can you, in fact, decide
9 the case based on the evidence presented in this courtroom
10 and my charge on the law and that alone?

11 THE POTENTIAL JUROR: Yes, sir.

12 THE COURT: You will do that?

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: No doubt about that?

15 THE POTENTIAL JUROR: Yes, sir.

16 THE COURT: Thank you. Please be seated.

17 MS. WINGARD: Judge, I am wondering if the whole
18 panel is now not being tainted by the fact that four
19 people, five people have said that they cannot —

20 THE COURT: I'll let you put that on the record.
21 I'll let you put all that on the record before I swear
22 them.

23 MS. WINGARD: Okay.

24 (End of Bench conference.)

25 THE COURT: Jurors, I — oh, yes, stand up please.

1 THE POTENTIAL JUROR: I have a question.
2 THE COURT: What is your name?
3 THE POTENTIAL JUROR: Clary McClam, number 102.
4 THE COURT: Come forward if you've got a question.
5 (Juror approached the Bench for an on-the-record
6 discussion.)
7 THE COURT: All right, what is your name?
8 THE POTENTIAL JUROR: Clary McClam.
9 THE COURT: Okay, 102. What's your question?
10 THE POTENTIAL JUROR: You called a name, Debra
11 Williams. Is that the — she the mother of the child?
12 THE COURT: I don't have any idea.
13 MS. WINGARD: Yes.
14 MR. JEPERTINGER: She's the mother of the victim.
15 She is present in the courtroom.
16 THE POTENTIAL JUROR: She actually rents a house
17 from me in Lake City.
18 THE COURT: She rents a house from you?
19 THE POTENTIAL JUROR: Uh-huh.
20 THE COURT: Okay, so you need to be excused?
21 THE POTENTIAL JUROR: I think I would 'cause I, you
22 know.
23 THE COURT: Go back and have a seat.
24 MR. JEPERTINGER: State has no objection.
25 THE COURT: Okay. Please stay with me because we

1 got another jury we might draw, okay.

2 (End of Bench conference.)

3 THE COURT: All right, 102 is excused in regard to
4 his general position.

5 DEPUTY CLERK OF COURT: For this trial?

6 THE COURT: For this trial only.

7 You jurors who have been excused, don't leave
8 because we have another trial before Judge Russo
9 downstairs that the jury will be drawn on possibly today
10 or in the morning. Now jurors, listen to me, is there any
11 member of the jury panel who has been a victim of a crime
12 in the past or any member of your family who has been a
13 victim of a crime in the past, if so, please stand?

14 Name and number please.

15 THE POTENTIAL JUROR: Stella McGee, 106.

16 THE COURT: 106. Yes, Ms. McGee.

17 THE POTENTIAL JUROR: I had a break-in at my house
18 last March. The solicitor's office defended.

19 MR. JEPERTINGER: Prosecuted, Your Honor.

20 THE COURT: Regard to that particular matter, is it
21 over now or is it pending?

22 THE POTENTIAL JUROR: It's over.

23 THE COURT: It's over?

24 THE POTENTIAL JUROR: Yes, sir.

25 THE COURT: Can you give both the State and the

1 Defendant a fair and impartial trial in this case?

2 THE POTENTIAL JUROR: Yes, sir.

3 THE COURT: Yes or no?

4 THEPOTENTIALJUROR: Yes.

5 THE COURT: You will do that as a matter of
6 conscience?

7 THE POTENTIAL JUROR: Yes, sir.

8 THE COURT: Thank you, please be seated.

9 Name and number please.

10 POTENTIAL JUROR: My name is Harry Scott.

11 THE COURT: Hold it one second. Number 136. Yes,
12 Mr. Scott.

13 THE POTENTIAL JUROR: My nephew was involved in a
14 similar case.

15 THE COURT: In regard to that matter is it pending
16 now or is it over?

17 THE POTENTIAL JUROR: It's over.

18 THE COURT: It's over?

19 THE POTENTIAL JUROR: Yes, sir.

20 THE COURT: Can you as a matter of conscience give
21 both the State and the Defendant a fair and impartial
22 trial?

23 THE POTENTIAL JUROR: No.

24 THE COURT: No?

25 THE POTENTIAL JUROR: No.

1 THE COURT: The answer is no?
2 THE POTENTIAL JUROR: No.
3 THE COURT: Please be seated. He will be excused
4 in this case only, Ms. Clerk, this case only.
5 The name and number.
6 THE POTENTIAL JUROR: 96, James Mack.
7 THE COURT: Yes, sir, Mr. Mack.
8 THE POTENTIAL JUROR: My son, breach of peace.
9 THE COURT: I'm sorry, didn't hear.
10 THE POTENTIAL JUROR: My son, breach of peace. My
11 son.
12 THE COURT: In regard to that matter can you in
13 this case give both the State and the Defendant a fair and
14 impartial trial?
15 THE POTENTIAL JUROR: Yes, sir.
16 THE COURT: You will do that?
17 THE POTENTIAL JUROR: Yes, sir.
18 THE COURT: Thank you, please be seated.
19 Anyone else, please?
20 (There was no response.)
21 THE COURT: Anyone else?
22 (There was no response.)
23 THE COURT: There are a number of organizations in
24 the State that deal with a response to the general
25 sessions court; that is, general sessions offenses, and

1 matters for trial. Some of these are known by acronyms
2 like MADD, SADD, CADRE, and the like, Mothers Against
3 Drunk Driving, Students Against Drunk Driving, Citizens
4 Against Violence, those kinds of organizations. Is there
5 any member of the jury panel or any member of your
6 immediate family who is a member of any of these
7 organizations or who has in the past been a member of any
8 of these organizations, and that includes members of your
9 family. If so, please stand.

10 Name and number please.

11 POTENTIAL JUROR: 88, Jaime Killin.

12 THE COURT: Yes, Ms. Killin.

13 THE POTENTIAL JUROR: My daughter was with SAVE,
14 Students Against Violence Everywhere.

15 THE COURT: Yes. In regard to that nexus, as a
16 matter of conscience can you give both the State and
17 Defendant a fair and impartial trial in this case?

18 THEPOTENTIALJUROR: Yes.

19 THE COURT: You will do that?

20 THE POTENTIAL JUROR: Yes.

21 THE COURT: Thanks. Thank you for responding.
22 Thank you very much.

23 Anyone else? Please respond now, folk. Anyone
24 else?

25 Your name and number.

1 THEPOTENTIALJUROR: CaseyWelch, 166. My mom
2 used to be a member of --

3 THE COURT: Hold it. Hold it. Let me get to the
4 number myself. 166, Mr. Casey Welch, yes, sir.

5 THE POTENTIAL JUROR: My momma used to be a member
6 of Mother's Against Drunk Drivers.

7 THE COURT: Can you as a matter of conscience give
8 both the State and the Defendant a fair and impartial
9 trial in this case?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: You will do that?

12 THEPOTENTIALJUROR: Yes, sir.

13 THE COURT: Thank you, please be seated.

14 That's the information I need now, folk. Anyone
15 else?

16 (There was no response.)

17 THE COURT: Anyone else?

18 (There was no response.)

19 THE COURT: Please, please respond. Anyone else?

20 (There was no response.)

21 THE COURT: Anyone else?

22 (There was no response.)

23 THE COURT: All right, jurors, collectively take a
24 deep breath. As a matter of conscience can you, in fact,
25 try this case based on the evidence presented in the

1 courtroom and my charge on the law and nothing else, so
2 help you God? If you cannot do that, if you cannot do
3 that please stand.

4 Your name and number.

5 THE POTENTIAL JUROR: My name is Robin Tange,
6 number is 148.

7 THE COURT: Hold it one second. Yes.

8 THE POTENTIAL JUROR: I'm strongly opposed to
9 violence and I beg of you that I not be required to listen
10 to evidence presented in this case.

11 THE COURT: All right. In terms of -- it's your
12 call really, but let me make sure that you fall within the
13 ambit of the law. As a matter of a conscience you simply
14 cannot try this case?

15 THE POTENTIAL JUROR: That's correct.

16 THE COURT: That's your position?

17 THE POTENTIAL JUROR: Yes, sir.

18 THE COURT: All right. You will be excused.

19 DEPUTY CLERK OF COURT: What's the number, Judge?

20 THE COURT: Her number is 148. 148. Now once
21 again, excused in this case only. Don't leave me. Don't
22 leave me; I got another case to try please. Judge Russo's
23 got a case to try.

24 Any further query requested by the State?

25 MR. JEPERTINGER: Yes, sir. We have some more that

1 you've already asked I believe, Your Honor, but also could
2 we approach one second?

3 (WHEREUPON, counsel approached the Bench for an
4 on-the-record discussion.)

5 MR. JEPERTINGER: I think I need to disclose this
6 just to be safe. I think 106 may be related to Michelle
7 Tindal who works in our office and I just need to disclose
8 that. She already stood up. She was the one that had the
9 home burglary last year that we prosecuted. But I think
10 she might be an aunt or something, and I, you know, she
11 didn't mention -- 'cause I didn't mention any of the names
12 during the --

13 THE COURT: Okay, I will follow that.

14 MR. JEPERTINGER: And here's some of the other
15 requested voir dire.

16 MS. WINGARD: Judge --

17 THE COURT: Well, I mean, I've already asked these
18 questions.

19 MR. JEPERTINGER: I know. There's some of them
20 you asked.

21 THE COURT: Yes.

22 MS. WINGARD: Judge, I would ask that you ask
23 specifically if any member of the jury has been involved
24 with any victim witness assistance program or member of
25 the Pee Dee Coalition Care House and also any relatives in

1 law enforcement.

2 THE COURT: Okay.

3 (End of Bench conference.)

4 THE COURT: Jurors, give me your attention. Is
5 there any member of the jury panel who is related by blood
6 or connected by marriage to any of the offices of lawyers
7 that occupy this case, Solicitor's Office or Public
8 Defender's Office? If you are related to anybody in those
9 offices please stand.

10 Name and number please.

11 THE POTENTIAL JUROR: Stella McGee, 106.

12 THE COURT: Who are you kin to?

13 THE POTENTIAL JUROR: Michelle Tindal in the
14 Solicitor's Office is my niece.

15 THE COURT: That's your niece?

16 THE POTENTIAL JUROR: Yes, sir.

17 THE COURT: As a matter of conscience can you, in
18 fact, give both the State and the Defendant a fair and
19 impartial trial in regard to that relationship?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: You will do that?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: Thank you. Is there any member of the
24 jury panel or any member of your immediate family who is
25 now or who has in the past had any connection with the Pee

1 Dee Coalition against violence or who has, in fact, been
2 involved in any victim witness program of any nature
3 whatsoever, if so, please stand?

4 Yes, name and number, please stand

5 THE POTENTIAL JUROR: 139. I have a question.

6 THE COURT: Whoa, whoa, please come forward.
7 (Juror approached the Bench for an on-the-record
8 discussion.)

9 THE POTENTIAL JUROR: I just want to make
10 absolutely sure I'm not out loud. You said -- my daughter
11 did, she was going through a custody. And she went to one
12 of those for -- it was a coalition and they actually came
13 up here and had a --

14 THE COURT: A hearing?

15 THE POTENTIAL JUROR: Yes, sir, and that--I
16 wasn't in on that. That was something that --

17 THE COURT: She told you about?

18 THE POTENTIAL JUROR: Yes.

19 THE COURT: Okay, you were not present?

20 THE POTENTIAL JUROR: No, sir.

21 THE COURT: All right. Take a deep breath now.

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: In regard to that kind of occurrence,
24 if there's some information presented in this case in
25 regard to those entities being involved, can you as a

1 matter of conscience give both the State and the Defendant
2 a fair and impartial trial?

3 THE POTENTIAL JUROR: Yes, sir, I can.

4 THE COURT: You will do that?

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: Thank you. Go back and have a seat.

7 THE COURT REPORTER: Can I get her name, Judge.

8 THE COURT: She is Jimmie Small, 139.

9 Yes, your name and number.

10 THE POTENTIAL JUROR: 54. Kimberly Gardner.

11 THE COURT: Hold it one second. Yes, Ms. Gardner.

12 THE POTENTIAL JUROR: A question.

13 THE COURT: Folk, please understand, please

14 understand jurors, this is a very, very serious activity

15 we're engaging in because the jury must be in a pristine

16 condition. And I define pristine as almost a perfect

17 position to try the case so please understand this is what

18 we're doing to accomplish that. It's serious business.

19 I'm not allowed to participate as the trial judge without

20 following the rules. Please understand that.

21 (Potential juror approached the Bench for an on-the-record

22 discussion.)

23 Your name and number.

24 THE POTENTIAL JUROR: 54, Kimberly Gardner.

25 THE COURT: Yes.

1 THE POTENTIAL JUROR: My mother, she's been 21 years
2 ago went to Pee Dee Coalition for assistant but I was a
3 small child.

4 THE COURT: You were a small child at that time?

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: Okay. Can you try this case and give
7 both the State and Defendant a fair and impartial trial?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: You will do that?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: No doubt about it?

12 THE POTENTIAL JUROR: No doubt about it.

13 THE COURT: All right, thank you. Thank you very
14 much.

15 THE STATE: There's another one, Judge.

16 THE COURT: Yes, sir, your name and number.

17 THE POTENTIAL JUROR: Casey Welch, 166. I have a
18 question.

19 (Potential juror approached the Bench for an on-the-record
20 discussion.)

21 THE COURT: All right, this is 166, Casey Welch.

22 THE POTENTIAL JUROR: I was accused of child
23 molestation two months ago, but I got it all cleared up.
24 I just wanted to make sure I wouldn't mess up the case or
25 anything.

1 THE COURT: Yeah, I'm glad you came up here to say
2 that.

3 Did y'all understand? Come around here.
4 Say that again for her to hear.

5 THE POTENTIAL JUROR: I was charged two months ago
6 or accused of child molestation.

7 THE COURT: All right, hold it one second.

8 THE POTENTIAL JUROR: Casey Welch. I took — I
9 took a polygraph and completed it.

10 THE COURT: Whoa, whoa. Please, folk. Please come
11 to order. This is serious business. I mean, I —

12 MS. WINGARD: What's your number?

13 THE POTENTIAL JUROR: 166.

14 THE COURT: Did you hear what he said?

15 MS. WINGARD: Yes, sir.

16 THE COURT: You understand? All right. Now,
17 Mr. Welch, listen to me.

18 THE POTENTIAL JUROR: Yes, sir.

19 THE COURT: In regard to that charge that was
20 pending against you, can you give the State and the
21 Defendant a fair and impartial trial in this case?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: No doubt about that?

24 THE POTENTIAL JUROR: Yes, sir.

25 THE COURT: You will do that in this case?

1 THE POTENTIAL JUROR: Yes, sir.
2 THE COURT: All right. Anyone else? Please,
3 anyone else? Please.
4 MR. JEPERTINGER: Another individual.
5 THE COURT: Yes, ma'am, your name and number.
6 THE POTENTIAL JUROR: Kathryn Branham, juror
7 number 10. I have a question.
8 THE COURT: Please.
9 (Potential juror approached the Bench for an
10 on-the-record discussion.)
11 THE COURT: Number 10, Ms. Branham.
12 THE POTENTIAL JUROR: As an x-ray tech I have had
13 x-rayed children and victims of child abuse before. I
14 didn't know whether I could be a good judge of —
15 THE COURT: Just take a deep breath. Let me put it
16 on the record. You can in fact give both the State and
17 the defendant a fair and impartial trial in this case?
18 THE POTENTIAL JUROR: I do not believe I could,
19 sir.
20 THE COURT: You do not believe you could.
21 THE POTENTIAL JUROR: I do not believe I could.
22 THE COURT: All right, you will be excused in this
23 case but don't leave, okay. Thank you.
24 THE POTENTIAL JUROR: Thank you.
25 THE COURT: All right. She is excused. Number 10

1 is excused. And while you lawyers are here, is there any
2 member of the jury panel or any member of your immediate
3 family who has been accused of a crime so that broadens
4 the query from a person who have been the victim of a
5 crime, is there any member of the jury panel who has been
6 accused of a crime in the past if so please stand.

7 (There was no response.)

8 THE COURT: All right.

9 MR. JEPERTINGER: Thank you, Your Honor.

10 THE COURT: I will ask two more questions and
11 that's it. Is there any member of the jury panel who has
12 any connection or relationship with law enforcement that
13 has not been identified on the record, if so, please
14 stand. Any connection with law enforcement.

15 Your name and number please, sir.

16 THE POTENTIAL JUROR: 103, James McClam, yes. I
17 have several friends on the Sheriff's Department.

18 THE COURT: In regard to that friendship as a
19 matter of conscience can you give both the State and the
20 Defendant a fair and impartial trial?

21 THE POTENTIAL JUROR: Yeah.

22 THE COURT: You will do that.

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Thank you, Mr. Mack, let me get your
25 Number. 96, yes, Mr. Mack.

1 POTENTIAL JUROR: Probation office.
2 THE COURT: Can you give both the State and the
3 Defendant a fair and impartial trial in this case?
4 THE POTENTIAL JUROR: Yes, sir.
5 THE COURT: You will do that?
6 THE POTENTIAL JUROR: Yes, sir.
7 THE COURT: Thank you. Lady in green, yes.
8 THE POTENTIAL JUROR: I have a cousin.
9 THE COURT: Name and number only.
10 THE POTENTIAL JUROR: Ajala Wallace, number 162.
11 THE COURT: Hold it
12 MR. JEPERTINGER: She was already excused.
13 THE COURT: Yeah, she's been excused.
14 You got that Ms. Clerk? 162, she's already been
15 excused.
16 Yes, sir your name.
17 THE POTENTIAL JUROR: James Schwab, 135.
18 THE COURT: Yes.
19 THE POTENTIAL JUROR: I have a nephew, city
20 policeman in North Canton, Ohio.
21 THE COURT: Can you give both the State and the
22 Defendant a fair and impartial trial?
23 THE POTENTIAL JUROR: Yes, sir.
24 THE COURT: Thank you, please be seated.
25 Name and number please.

1 THE POTENTIAL JUROR: Beverly Matthews, Number 98.

2 My son is a police officer. My son is a police officer.

3 THE COURT: Where?

4 THE POTENTIAL JUROR: He's interviewing today in
5 Darlington.

6 THE COURT: In Darlington. Can you give both the
7 State and the Defendant a fair and impartial trial in this
8 case?

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: You will do that?

11 THE POTENTIAL JUROR: Yes, sir.

12 THE COURT: Thank you. All right, I'll start with
13 the ladies over here.

14 THE POTENTIAL JUROR: Stella McGee, 106.

15 THE COURT: Yes, Ms. McGee.

16 THE POTENTIAL JUROR: I have a neighbor and my
17 preacher's son that are in law enforcement

18 THE COURT: Can you give both the State and the
19 Defendant a fair and impartial trial?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Will you do that?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: Thank you.

24 THE POTENTIAL JUROR: Vicky Ford, Kimberly
25 Gardener, 54.

1 THE COURT: Yes, Ms. Gardner.

2 THE POTENTIAL JUROR: I'm over young adult group

3 church. Highway patrol is in my group.

4 THE COURT: Can you give both the State and the

5 Defendant a fair and impartial trial in this case?

6 THE POTENTIAL JUROR: Yes, sir.

7 THE COURT: You will do that?

8 THEPOTENTIALJUROR: Yes, sir.

9 THE COURT: Thank you. Yes, sir, your name and

10 number.

11 THE POTENTIAL JUROR: Antonio Montgomery, 116. My

12 son's mother, she's with the Sheriff's Department.

13 THE COURT: Can you give both the State and the

14 Defendant a fair and impartial trial?

15 THE POTENTIAL JUROR: Yes, I can.

16 THE COURT: You will do that?

17 THEPOTENTIALJUROR: Yes, sir.

18 THE COURT: Name and number please.

19 THE POTENTIAL JUROR: Bonnie Roof, 171 I think.

20 THE COURT: Yes, ma'am.

21 THE POTENTIAL JUROR: A nephew who is on the

22 Florence police department.

23 THE COURT: Can you give both the State and the

24 Defendant a fair and impartial trial?

25 THE POTENTIAL JUROR: Certainly.

1 **THE COURT:** Thank you, please be seated.

2 Lawyers, I will put the requested voir dire on the
3 record but I decline to go any further. My declination is
4 bottomed and premised upon my view that I have completed
5 the qualification procedure, thank you so much. All
6 rights are reserved and all rights are protected.

7 All right, jurors, give me your attention. If
8 you've served in the civil court, common pleas court it's
9 called, we do a list of 20 names.

10 (Court's Exhibit Number 1 was marked
11 and made a part of the record.)

12 **THE COURT:** And we give that list to the lawyers
13 and they review it privately and then they strike from
14 list numbers. You would not know you've been excused.
15 Here it's different. Here, the constitution mandates an
16 individual public selection process; meaning, we will call
17 your name and you will come forward one by one, stand in
18 front of this mic.

19 Deputy, turn this mic around please. Turn it
20 around.

21 You will come forward one by one and the lawyers
22 have what is called peremptory challenges under the state
23 statute, and they may excuse you. For example, we ask the
24 State their desire. If they excuse you please return to
25 your seat. If the State accepts you they will say

1 something like this, present the juror. And if that
2 occurs then we go to Defense. Defense has a right to
3 excuse you or to accept you. If the Defense excuses you
4 you return to your seat. If the Defense accepts you
5 you've been accepted by both parties, and you will have a
6 seat in the jury box. Now jurors, once I get this trial
7 under way we'll run from nine to five, nine to five.
8 Sometimes I'll go beyond five if I have a out-of-state
9 witness on the stand itself or we're in the middle of the
10 examination of the witness by virtue of direct examination
11 or cross-examination so we'll need a little leeway in that
12 regard. If you've got a personal situation that will keep
13 you from being able to abide by these court hours I need
14 to take it up on the record now. If you've got a problem
15 with that please stand up. Anyone?

16 Your name and number.

17 THE POTENTIAL JUROR: Willie Hickson, 67.

18 THE COURT: 67? Yes, Mr. Hickson.

19 THE POTENTIAL JUROR: I have got a job offer. I'm
20 supposed to start work this morning but I had to come in.

21 THE COURT: Well, ordinarily employment is not an
22 excuse. All these other people are employed too.

23 THE POTENTIAL JUROR: I've been unemployed about
24 the last eight months and I need to work.

25 THE COURT: Mr. Hickson, I wish I could help you

1 but I just simply can't excuse you because other people
2 are involved with employment activities and I know we're
3 living in an unusual time in terms of the economy. And
4 the employment opportunities are very limited; I
5 understand that. But I must follow the rules. Please if
6 you will stay with me. Thank you very much.

7 Anyone else?

8 (There was no verbal response.)

9 THE COURT: Finally jurors, if you come forward and
10 get excused don't go home and be upset, don't be
11 embarrassed, do not have any idea, notion that you're not
12 important in terms of the process. They have reasons
13 about you in terms of whether they want you or not. You
14 might not have enough hair to suit them. It's just --
15 relax and let the system work.

16 All right, lawyers, under the new CMS system we're
17 going to turn the computer on and draw 40 names at random.
18 That's what the Chief Justice wants. I want to keep her
19 happy. Turn it on. All right, lawyers, give me your
20 attention. Sometimes I spend time in my little small
21 bungalow outside of Florence at night time and even during
22 the weekend thinking about legal issues that might come
23 up. And after so many years after I'm just past fifty,
24 then I even more have come to the point of considering
25 matters and so this probably will surprise you but under

1 14-7-1110 --you listening? Under 14-7-1110 I know how
2 the statute reads -- I've got it in front of me -- and I
3 know what the state Supreme Court has said and I know what
4 the Court of Appeals has said. As you're aware I stayed
5 on the Court of Appeals 13 years for what it's worth. And
6 so now I rule that the peremptory challenges are five and
7 ten. And I'm aware the State would think --

8 MR. JEPERTINGER: Of course, Your Honor, just for
9 the record we object.

10 THE COURT: The State does not acquiesce and so we
11 proceed in that regard. Five and ten. And I have for the
12 record actually in large the statutory verbiage and
13 language etymologists everywhere know about words.
14 Etymologists understand I've taken the word that deals
15 with homicide and I've given equanimity to the verbiage in
16 the statute, which is murder, so I have equated the two in
17 terms of my decision. I did make it off the wall so we'll
18 find that later if it is off the wall.

19 Do we have the list? All right, lawyers. Finally,
20 before we call the first name, Batson versus Kentucky is
21 efficacious and applicable as you all know and we will
22 just reach issues as we come to them, and all rights are
23 protected in that regard.

24 Proceed, Ms. Clerk.

25 THE DEPUTY CLERK OF COURT: 17, Lisa Brown (black

1 female). What say the State?
2 MR. JEPERTINGER: Please present Ms. Brown.
3 THE DEPUTY CLERK OF COURT: What say Defendant?
4 MS. WINGARD: Please seat Ms. Brown.
5 THE DEPUTY CLERK OF COURT: Please have a seat in
6 the the jury box.
7 63, Steven Hebler (white male). What say the State?
8 MR. RICHARDSON: Please present Mr. Hebler.
9 THE DEPUTY CLERK OF COURT: What say Defendant?
10 MS. WINGARD: Please seat the juror.
11 THE DEPUTY CLERK OF COURT: Please have a seat in
12 the jury box.
13 59, Karen Jordan.
14 (There was no response.)
15 THE DEPUTY CLERK OF COURT: I'm sorry, Gordon
16 (white female). What say the State?
17 MR. RICHARDSON: Please present Ms. Gordon.
18 THE DEPUTY CLERK OF COURT: What say Defendant?
19 MS. WINGARD: Pleaseseatthejuror.
20 THE DEPUTY CLERK OF COURT: Please have a seat in
21 the jury box.
22 86, Willie James Kelley (white male). What say the
23 State?
24 MR. RICHARDSON: Please present Mr. Kelley.
25 THE DEPUTY CLERK OF COURT: What say Defendant?

1 MS. WINGARD: Please excuse the juror.
2 THE DEPUTY CLERK OF COURT: You are excused for
3 this trial only, sir. You may return to your seat.
4 96, James Mack (black male). What say the State?
5 MR. RICHARDSON: Please excuse Mr. Mack for purpose
6 of this case only.
7 THE DEPUTY CLERK OF COURT: You've been excused
8 from this trial only. You may return to your seat.
9 106, Stella McGee (white female). What say the
10 State?
11 MR. JEPERTINGER: Please present Ms. McGee.
12 MS. WINGARD: Please excuse Ms. McGee.
13 THE DEPUTY CLERK OF COURT: You've been excused
14 from this trial only.
15 108, Pamela McIntosh (black female). What say the
16 State?
17 MR. RICHARDSON: Please excuse Ms. McIntosh for
18 purposes of this trial only.
19 THE DEPUTY CLERK OF COURT: You've been excused
20 from this trial only.
21 90, James Lamb (white male). What say the State?
22 MR. RICHARDSON: Please present Mr. Lamb.
23 THE DEPUTY CLERK OF COURT: What say Defendant?
24 MS. WINGARD: Please excuse the juror.
25 THE DEPUTY CLERK OF COURT: You've been excused for

1 this trial only.

2 116, Antonio Montgomery (black male). What say the
3 State?

4 MR. RICHARDSON: Please present Mr. Montgomery.

5 THE DEPUTY CLERK OF COURT: What say Defendant?

6 MS. WINGARD: Please excuse the juror.

7 THE DEPUTY CLERK OF COURT: You're excused for this
8 trial only.

9 121, Robert Nesselrode (white male). What say the
10 State?

11 MR. RICHARDSON: Please excuse Mr. Nesselrode for
12 purposes of this trial.

13 THE DEPUTY CLERK OF COURT: You've been excused for
14 this trial only.

15 11, Gail Briggs (black female). What say the State?

16 MR. RICHARDSON: Please present Ms. Briggs.

17 THE DEPUTY CLERK OF COURT: What say Defendant?

18 MS. WINGARD: May we approach, Your Honor.

19 THE COURT: Absolutely.

20 (WHEREUPON, counsel approached the Bench for an
21 on-the-record discussion.)

22 MS. WINGARD: Judge, this lady works for McLeod. I
23 think she should be struck for cause. She is a
24 respiratory therapist for McLeod, and she -- this child I
25 know was put on a vent. She's likely to have heard a lot

1 about this case.

2 THE COURT: Well, I've asked all those questions
3 about who heard about it, who had discussed it and so
4 forth, and they responded. I swore them in, gave them the
5 oath. I respectfully decline to excuse the juror.

6 (End of on-the-record Bench conference.)

7 MS. WINGARD: Please excuse the juror.

8 THE DEPUTY CLERK OF COURT: You've been excused for
9 this trial only.

10 36, David Curry (black male). What say the State?

11 MR. RICHARDSON: Please present Mr. Curry.

12 THE DEPUTY CLERK OF COURT: What say Defendant?

13 MS. WINGARD: Please seat Mr. Curry.

14 THE DEPUTY CLERK OF COURT: Please have a seat in
15 the jury box.

16 20, Walter Lee Brown (black male). What say the
17 State?

18 MR. RICHARDSON: Please present Mr. Brown.

19 THE DEPUTY CLERK OF COURT: What say Defendant?

20 MS. WINGARD: Please seat Mr. Brown.

21 THE DEPUTY CLERK OF COURT: Please have a seat in
22 the jury.

23 83, Sandra Jones (black female). What say the
24 State?

25 MR. RICHARDSON: Please present Ms. Jones.

1 THE DEPUTY CLERK OF COURT: What say Defendant?
2 MS. WINGARD: Please seat Ms. Jones.
3 THE DEPUTY CLERK OF COURT: Please have a seat in
4 the jury box.
5 8, Laura Blackmon (white female). What say the
6 State?
7 MR. RICHARDSON: Please present Ms. Blackmon.
8 THE DEPUTY CLERK OF COURT: What say Defendant?
9 MS. WINGARD: Please excuse the juror.
10 THE DEPUTY CLERK OF COURT: You've been excused for
11 this trial only.
12 147, Hannah Gurley (black female). What say the
13 State?
14 MR. RICHARDSON: Please present Ms. Gurley.
15 THE DEPUTY CLERK OF COURT: What say Defendant?
16 MS. WINGARD: Judge.
17 THE COURT: Rights are reserved; rights are
18 protected.
19 MS. WINGARD: Thank you. Please seat Ms. Gurley.
20 THE DEPUTY CLERK OF COURT: Please have a seat in
21 the jury box.
22 67, Willie Hickson (black male). What say the
23 State?
24 MR. RICHARDSON: Please excuse Mr. Hickson for
25 purposes of this trial.

1 THE DEPUTY CLERK OF COURT: You've been excused for
2 this trial only.
3 93, Deborah Lee (white female). What say the State?
4 MR. RICHARDSON: Please present Ms. Lee.
5 THE DEPUTY CLERK OF COURT: What say Defendant?
6 MS. WINGARD: Continuing objection, Your Honor.
7 THE COURT: Absolutely, all rights reserved.
8 MS. WINGARD: Please excuse the juror.
9 THE DEPUTY CLERK OF COURT: You are excused for
10 this trial only.
11 149, Carlisle Taylor (black male). What say the
12 State?
13 MR. RICHARDSON: Please present Mr. Taylor.
14 THE DEPUTY CLERK OF COURT: What say Defendant?
15 MS. WINGARD: Please seat Mr. Taylor.
16 THE DEPUTY CLERK OF COURT: Please have a seat in
17 the jury box.
18 171, Bonnie Roof (white female). What say the
19 State?
20 MR. RICHARDSON: Please present Ms. Roof.
21 THE DEPUTY CLERK OF COURT: What say Defendant?
22 MS. WINGARD: Continuing objection.
23 THE COURT: Yes, ma'am.
24 MS. WINGARD: Please excuse.
25 THE DEPUTY CLERK OF COURT: You've been excused for

1 this trial only.

2 126, Wanda Poston Creel (white female). What say
3 theState?

4 MR. RICHARDSON: Please present Ms. Creel.

5 THE DEPUTY CLERK OF COURT: What say Defendant?

6 MS. WINGARD: Please seat Ms. Creel clerk please
7 have a seat in the jury box.

8 114, Teresa Mitchell (black female). What say the
9 State?

10 MR. RICHARDSON: Please present Ms. Mitchell.

11 THE DEPUTY CLERK OF COURT: What say Defendant?

12 MS. WINGARD: Can you give me the count?

13 THE DEPUTY CLERK OF COURT: Eight.

14 MS. WINGARD: Please seat the juror.

15 THE DEPUTY CLERK OF COURT: Please have a seat in
16 the jury box.

17 145, Kenneth Stone (white male). What say the
18 State?

19 MR. RICHARDSON: Please present Mr. Stone.

20 THE DEPUTY CLERK OF COURT: What say Defendant?

21 MS. WINGARD: Please strike Mr. Stone.

22 THE DEPUTY CLERK OF COURT: You've been excused for
23 this trial only.

24 156, Eugene Truluck (white male). What say the
25 State?

1 MR. RICHARDSON: Please present Mr. Truluck.
2 THE DEPUTY CLERK OF COURT: What say Defendant?
3 MS. WINGARD: Please seat Mr. Truluck.
4 THE DEPUTY CLERK OF COURT: Please have a seat in
5 the jury box.
6 14, Amanda Brotherton (white female). What say the
7 State?
8 MR. RICHARDSON: Please present Ms. Brotherton.
9 DEPUTY CLERK OF COURT: What say defendant?
10 MS. WINGARD: Please swear Ms. Brotherton.
11 THE DEPUTY CLERK OF COURT: Please have a seat in
12 the jury box.
13 THE COURT: Mr. Truluck, come forward and take seat
14 number one, be the foreperson on this jury.
15 All right, counsel, we go under 14-7-1120 and we
16 proceed seriatim down the list. The peremptory challenges
17 are one and two for each alternate selected. I intend to
18 pick two alternates so one and two, and then we'll proceed
19 down to alternate two.
20 THE DEPUTY CLERK OF COURT: 166, Casey Welch (white
21 male). What say the State?
22 MR. RICHARDSON: Please excuse Mr. Welch.
23 THE DEPUTY CLERK OF COURT: You've been excused for
24 this trial only, sir.
25 31, Angela Clark (white female). What say the

1 State?

2 MR. RICHARDSON: Please present Ms. Clark.

3 THE DEPUTY CLERK OF COURT: What say Defendant?

4 MS. WINGARD: Please seat Ms. Clark.

5 THE DEPUTY CLERK OF COURT: Please have a seat in
6 the jury box.

7 THE COURT: Ms. Clark, sit there at all times.

8 That's your chair. That's designated for you as alternate
9 one. We now go to alternate two, one and two, one and two
10 on the strikes, one and two. Proceed.

11 THE DEPUTY CLERK OF COURT: 46, Sherrelle Evans
12 (white male). What say the State?

13 MR. RICHARDSON: Please present Mr. Evans.

14 THE DEPUTY CLERK OF COURT: What say Defendant?

15 MS. WINGARD: Please excuse Mr. Evans.

16 THE DEPUTY CLERK OF COURT: You've been excused for
17 this trial only.

18 61, Renada Harrell (black female). What say the
19 State?

20 MR. RICHARDSON: Please present Ms. Harrell.

21 THE DEPUTY CLERK OF COURT: What say Defendant?

22 MS. WINGARD: Please seat Ms. Harrell.

23 THE DEPUTY CLERK OF COURT: Please have a seat in
24 the jury box.

25 THE COURT: Ms. Harrell, please use that seat at

1 all times as we try the case. Mr. Truluck, please use
2 that chair at all times. The rest of you may sit in any
3 location other than those three designated spots. Now
4 jurors, give me your attention. I have not given you the
5 oath of office. I have not given you the oath of a juror,
6 and I need to take up some matters of law here now. I'm
7 going to turn you loose for lunch.

8 Ms. Bailiff, give them the juror slip.

9 Wear your juror slip as you go to lunch. Wear your
10 juror slip as you go to lunch because, one, we do not want
11 you talking about the case; and two, we do not want anyone
12 attempting to talk to you about the case. If any person
13 attempts to talk to you about the case you must report
14 that matter directly to the Court. If an incident like
15 that occurs where someone talks to you about the case then
16 you do not report it, that's a violation of the criminal
17 law on your part. Please, please understand, we must try
18 the case under the court rules and the rules simply
19 mandate that you try the case here in the courtroom and in
20 the courtroom alone. Have a nice lunch. I want you back
21 at 2:30.

22 MR. JEPERTINGER: Your Honor, can we approach one
23 second.

24 (WHEREUPON, counsel approached the Bench for an
25 off-the-record discussion.)

1 **THE COURT:** Okay, very good. All right, jurors,
2 rather than sending you to lunch I'm going to send you
3 home and start the case at 9:30 in the morning. Now give
4 me your attention. Give me your attention. One, you
5 cannot discuss the case with other jurors. Two, you
6 cannot discuss the case with any outsider. That includes
7 your husband, your wife, your child, your friend, or as
8 one case we had a person go to the minister. I'm not
9 interested in the minister talking. The state Supreme
10 Court did not like that at all so please remember you must
11 try the case here yourself. And finally, this, do not
12 watch any news media on a local basis. Do not read the
13 Morning News under any circumstances before you come
14 tomorrow. Do not watch any television local news under
15 any circumstances. Please, folk, please remember that.
16 Please remember. That's a specific instruction to you
17 because we are talking about putting you in a pristine
18 position to try the case and not to receive information
19 from other sources.

20 When you come back tomorrow we come back at 9:30,
21 come to this door here. We'll bring you into the jury
22 room. We'll have coffee ready and waiting for you so
23 we'll see you at 9:30 in the morning. Catch them the
24 elevator and take them downstairs to the parking lot,
25 deputies.

1 (WHEREUPON, the jury was removed from
2 the courtroom at 12:48 p.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: Yes, Mr. Solicitor.

5 MR. JEPERTINGER: The State does not have any
6 challenge under Batson or Georgia versus McCullum and its
7 progeny.

8 THE COURT: Batson versus Kentucky, from the
9 standpoint of the jury selection the State does not pose a
10 Batson challenge. Does the Defense pose a Batson
11 challenge?

12 MS. WINGARD: No, sir.

13 THE COURT: Let the record show no Batson
14 challenge. Now counsel for Defense, you had posed a
15 number of matters for the Court to consider in regard to
16 general qualification of the jury panel and the list that
17 was prepared. Do you continue to object to the
18 qualification procedure for the panel?

19 MS. WINGARD: Judge, I object to it in that I feel
20 that all of those folks who have connections with McLeod
21 Regional Medical Center should have been struck for cause
22 because of the fact that the victim was treated at McLeod,
23 actually lived there for a day, and was operated on by a
24 McLeod doctor and then attended by a second McLeod doctor
25 who is going be a State's witness.

1 **THE COURT:** State want to be heard?

2 **MR. JEPERTINGER:** Just for the fact that McLeod is
3 one of our largest employer's the Court voir dire'd the
4 venire about any connections with any of the witnesses in
5 this case. None stood to say that they knew any,
6 specifically any of the doctors that will be testifying,
7 Your Honor.

8 **THE COURT:** Order: The decision whether to excuse
9 a juror for cause is committed to the sound discretion of
10 the trial Court, State versus Drayton 293 S.C. 417, 361
11 S.C.2d 329.

12 The entire colloquy in voir dire, not isolated
13 portions, determine a juror's qualification to serve.
14 State versus Truesdale, 285 S.C. 13, 328 S.C.2d 53. In
15 regard to a general objection posited by the defendant in
16 a for-cause challenge a plethora of South Carolina cases
17 are extant.

18 Under State versus Powers, 331 S.C. 37, 501 S.C.2d
19 116, the trial court has the duty to insure that every
20 juror is unbiased, fair, and impartial. The case of State
21 versus Hardee is edifying and elucidating in that it
22 provides, quote, when a juror states unequivocally that he
23 or she is not conscious of any bias or prejudice and that
24 he or she can and will give both the State and the
25 Defendant a fair and impartial trial and render a verdict

1 according to the law and evidence, there is no abuse of
2 the discretion in the decision to qualify the juror.

3 The leading case in this country in regard to prior
4 knowledge of a prospective juror in regard to information
5 received either from a news media or from personal
6 discussions is Ervin versus Dowd, 366 U.S. 717, 81 Supreme
7 Court 1639 6 Lawyers Edition 2d 751. Ervin inculcates the
8 Bench and Bar. Even though a prospective juror may have
9 heard details about the case, it is sufficient that he or
10 she can put aside an impression or opinion and render a
11 verdict based on the evidence presented in court.

12 The South Carolina Supreme Court has followed Ervin
13 versus Dowd in a multiplicity of opinions including in the
14 death penalty scenario and others. In State versus
15 Manning, a death penalty case of some note where the rule
16 was articulated in regard to a definition of reasonable
17 doubt, the State Supreme Court in a writing by Chief
18 Justice Toal said, quote, mere exposure to pretrial
19 publicity does not automatically disqualify a prospective
20 juror. A defendant's mere assertion that the jurors could
21 have been subconsciously effected by media exposure or
22 general discussions is insufficient to show prejudice.
23 Manning is followed by State versus Owens, cite is
24 omitted, and numerous additional precedent.

25 This Court today has engaged in one of the most

1 extensive qualification activities in regard to the
2 identification of the trial jury.

3 I now, I now address seriatim various categories.

4 One, relationship in regard to victims or witnesses, State
5 versus Jones, 298 S.C. 118, 378 S.C.2d 594. The mere fact
6 that a person was a friend or acquaintance of the victim
7 in a murder case does not render the jury incompetent.
8 There is no rule of law disqualifying a juror because of
9 his or her relationship to a witness, State versus Owens,
10 277 S.C. 189, 284 S.C.2d 584. Number two, relationship to
11 police officers or law enforcement in general. State
12 versus Dingle, 279 S.C. 278, 306 S.C. 2d 223, a juror is
13 not automatically disqualified because of his or her
14 relationship to law enforcement or to police officers
15 specifically. Number three, relationship to counsel or to
16 individuals in general who are testifying, State versus
17 Franklin, 267 S.C. 240, 226 S.C.2d 896, and State versus
18 Nicholson, 221 S.C. 399, 70 S.E.2d 632.

19 The trial judge's obligation to query when there is
20 no automatic disqualification. When there is no absolute
21 legal disqualification from jury service the Court is
22 under a duty whether voir dire is requested or not, to
23 exercise the Court's discretion to excuse jurors whose
24 relationship may be grounds for disqualification. The
25 determination of a juror's impartiality, and thus his or

1 her disqualification, is in the sound discretion of the
2 trial judge. It is reversible error to excuse prospective
3 jurors who are not automatically disqualified without
4 conducting a discretionary inquiry. When the trial judge
5 disqualifies a prospective juror because the judge
6 concludes he is required to do so when in fact the
7 situation is one in which the Court is vested with
8 discretion, reversal is required. Stated differently the
9 Court must exercise discretion in regard to a ruling in
10 reference to disqualification of jurors.

11 A litany of cases are instructive in regard to juror
12 qualification or disqualification. A friend or
13 acquaintance of the homicide victim, State versus Jones,
14 and I decline now to give cites any further, related by
15 blood or marriage to law enforcement, Dingle I've cited in
16 State versus Gullledge, related by way of sister-in-law,
17 solicitor's secretary, State versus Nealy, employed in an
18 entity which may have witnesses testifying in the case and
19 I conclude this one is very efficacious and should be
20 cited in regard to a corporate entity where the persons
21 are testifying in the case possibly with some nexus to
22 that entity. And I give several cites in this regard
23 including: State versus Wells, State versus Hilton, State
24 versus Franklin, State versus Caldwell, State versus
25 Ayers, State versus Cant, and State versus Bell. Suffice

1 it to say, I respectfully invite the appellate entity to
2 review my voir dire in regard to the specific query that
3 was engaged in. It was my attempt to qualify this panel
4 with absolute certitude; I conclude I did so. If I have
5 not done so based on the review of the appellate entity in
6 regard to the query I must live with the results. Suffice
7 it to say I am satisfied as a matter of conscience that
8 I've qualified this jury based on the law, the
9 constitution, and instructions heretofore given by
10 appellate entities in the State. All rights are reserved;
11 all rights are protected for purposes of appellate review.
12 And it is so ordered.

13 What's the next matter we need to take up before the
14 lunch hiatus?

15 MR. JEPERTINGER: I don't think there will be
16 anything before the lunch hiatus, but to give you a
17 preview of what's coming after lunch hiatus I think there
18 will be a Jackson versus Denno. There's some photographs
19 that we need to get into, Your Honor. The Jackson v.
20 Denno, we have a copy of a disk and we moved it from
21 cassette tape to disk so it's easier to play in the
22 courtroom, Your Honor. And we also have a transcribed
23 copy for the Court to look at and follow along with as
24 well.

25 MS. WINGARD: Judge, we would need to have much of

1 that statement redacted if you allow parts of it in. I
2 think clearly there's a lot that will have to be redacted
3 out so we'll have to take care of that. Also Judge, I
4 have never seen the items that were seized. I think all
5 of the physical evidence that's going to be —

6 MR. JEPERTINGER: We've asked them to bring —
7 we've asked them to bring it up.

8 THE COURT: All right. What do you desire to do in
9 regard to the matter? Do you desire to proceed with
10 Jackson versus Denno at 2:30?

11 MR. JEPERTINGER: Yes, sir.

12 THE COURT: Or do you desire to look at the
13 evidence before then or what do you want to do?

14 MS. WINGARD: I would rather look at — is the
15 evidence going to be here?

16 MR. JEPERTINGER: Which evidence...

17 MS. WINGARD: Why don't we have him come up at 2:30
18 and then when we finish that, Judge, we can do Jackson
19 versus Denno.

20 MR. JEPERTINGER: That suits the State.

21 THE COURT: Do I need to be on the record when
22 you're doing that general —

23 MS. WINGARD: Not at first, no, sir. If there's
24 any issues we'll bring those up after our — one thing
25 I've seen lots of autopsy photos and such and so I'm not

1 sure what the State wants to use and we'll have to do that
2 as well.

3 MR. JEPERTINGER: We prepared a disk for that as
4 well as long as with the -- as well with hard copies
5 depending on what the Court rules one way or the other,
6 Your Honor. Those can be redacted out, Your Honor.

7 THE COURT: What about the idea, notion to give you
8 until 3:00. At 3:00 I'll take the Bench and do the
9 Jackson versus Denno hearing then.

10 MS. WINGARD: Very good.

11 THE COURT: Is that good? Jackson versus Denno,
12 378 U.S. 368, 84 Supreme Court 17-74-12 Lawyers Edition 2d
13 908. That's at 3:00.

14 MR. JEPERTINGER: Yes, sir, thank you.

15 MS. WINGARD: Thank you.

16 THE COURT: Thank you very much.

17 (WHEREUPON, a lunch break was taken.)

18 (WHEREUPON, State Exhibits Nos. 1 and 2 were marked
19 for identification only.)

20 THE COURT: All right, Mr. Solicitor.

21 MR. JEPERTINGER: Your Honor, the first thing under
22 agreement with the Defense State's Exhibit 1 in evidence
23 shall be an aerial view of Smith and Smith Mobile Home
24 Park.

25 THE COURT: All right, that's State's Exhibit

1 Number 1 in evidence without objection. Is that correct,
2 counsel?

3 MS. WINGARD: Yes, sir.

4 THE COURT: Thank you.

5 MR. JEPERTINGER: Number 2 is a schematic prepared
6 by Corporal Paul Bird of the Sheriff's Office of 1421
7 Jefford Drive, Lot 43.

8 THE COURT: Number 2 in evidence without objection.

9 MS. WINGARD: Yes, sir.

10 (WHEREUPON, State Exhibits Nos. 1 and 2 were
11 admitted into evidence.)

12 MR. JEPERTINGER: All right. Defense has had
13 opportunity to look at the physical evidence in the case,
14 Your Honor and we're ready to proceed with whatever
15 motions they may have.

16 THE COURT: Okay. All right, Counsel.

17 MS. WINGARD: Judge, there was a statement given by
18 the defendant and I would ask that it be excluded.

19 THE COURT: All right. We'll hold a Jackson versus
20 Denno hearing and the State is required to proceed in that
21 regard. Mr. Solicitor, are you ready?

22 MR. RICHARDSON: Yes, sir, Your Honor.

23 THE COURT: All right. Call your first witness
24 please.

25 MR. RICHARDSON: Thank you, Your Honor, the State

1 would call Investigator Renea Jenco with the Florence
2 County Sheriff's Office.

3 THE COURT: All right.

4 THE DEPUTY CLERK OF COURT: If you will, ma'am,
5 place your left hand on the Bible, raise your right hand.

6 WHEREUPON,

7 RENAE JENCO,
8 having been duly sworn by the Deputy Clerk of Court,
9 testified as follows:

10 THE DEPUTY CLERK OF COURT: Please be seated.
11 State your name for the record.

12 THE WITNESS: Investigator Renae Jenco.

13 THE COURT: J-E-N-C-O?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay. Proceed, Counsel.

16 MR. RICHARDSON: Thank you, Judge.

17 **DIRECT EXAMINATION**

18 BY MR. RICHARDSON:

19 Q Investigator Jenco, you previously went by the last
20 name Lowder; is that correct?

21 A That's correct.

22 Q So if anything shows up in this case with the last name
23 Lowder, L-O-W-D-E-R, that's you?

24 A That's right. That's correct.

25 Q So you've been recently married and changed your name?

- 1 A Yes, sir.
- 2 Q Okay, all right. Investigator Lowder, you're with the
- 3 Sheriff's Office now, correct?
- 4 A That's correct.
- 5 Q And what do you do for the Sheriff's Office?
- 6 A My job at the Sheriff's Office is child abuse
- 7 investigator.
- 8 Q All right. How long have you been working in that
- 9 capacity?
- 10 A For the past three years.
- 11 Q Okay. And how long have you been in law enforcement
- 12 all together?
- 13 A Fifteen years.
- 14 Q Okay. Were you working at your current capacity July
- 15 of last year when this case arose?
- 16 A Yes.
- 17 Q All right. And were you subsequently assigned to this
- 18 particular case involving the defendant Mr. Mayweathers?
- 19 A Yes, sir.
- 20 Q At any point in time in your investigation did you take
- 21 a taped statement from the defendant Mr. Mayweathers?
- 22 A I did.
- 23 Q All right. When he came in or when you interviewed him
- 24 was he under arrest at that time?
- 25 A No, sir, he was not.

1 Q All right. Did he come voluntarily or was he forced to
2 come there?

3 A He came voluntarily.

4 Q All right. And who was with him?

5 A His father.

6 Q Okay. And where was this interview conducted?

7 A At the Sheriff's Department.

8 Q Okay. Down in Effingham?

9 A That's correct.

10 Q All right. When he came in did you go over his Miranda
11 warnings with him?

12 A I did.

13 Q Okay. And how did you go about doing that?

14 A We have a form that has the Miranda warning on it, and
15 I read that form to him and his father.

16 Q Okay, if I can have this marked for identification.

17 THE COURT: I.D., all right. That will be 3.

18 (WHEREUPON, State Exhibit No. 3 was marked for
19 identification only.)

20 BY MR. RICHARDSON:

21 Q Investigator Jenco, I'm gonna show you what's been
22 marked for identification only as State's Exhibit 3. Do
23 you recognize that document?

24 A Yes, sir. This is the Miranda warning that was
25 completed on 7/28.

1 Q And you read him his Mirandas off of this sheet?

2 A I did.

3 Q Could you tell the Court exactly what you said to him
4 off of this sheet.

5 A I gave him his Miranda warning and I read to him: "You
6 have the right to remain silent; anything you say can and
7 will be used against you in a court of law. You have the
8 right to talk to a lawyer and have him present with you
9 while you're being questioned. If you cannot afford to
10 hire a lawyer one will be appointed to represent you
11 before you any questioning if you wish. You can decide at
12 any time to exercise these rights, not answer any
13 questions or make any statements." I asked him, "Do you
14 understand each of these rights as I have explained them
15 to you, yes or no." And he answered, yes, and wrote yes
16 in the box. "And having these rights in mind do you wish
17 to talk to us now, and he wrote yes in the box. Jermaine
18 also initialed the boxes and also his father.

19 Q Okay. So beside ev-- each right that you read there's
20 a line for an initial?

21 A Right.

22 Q Okay. And both he and his father initialed?

23 A That's correct.

24 Q All right. When you read him his rights did he appear
25 to understand them?

1 A Yes, sir.

2 Q Did he have any questions about it?

3 A He did not.

4 Q Okay. Did he sign off on his rights as far as having
5 legal counsel present?

6 A Yes.

7 Q So he never asked for a lawyer while he was there?

8 A No, he did not.

9 Q Okay. His father was present when you read him these
10 rights?

11 A Hewas.

12 Q Okay. Was there anything that gave you any indication
13 that he didn't understand what he was doing?

14 A No, not at all. He seemed very knowledgeable --

15 Q Was---

16 A ---for his age.

17 Q Okay. Was he aware of what the current investigation
18 was about?

19 A Yes, sir.

20 Q Okay. So he knew what you were going to be talking
21 about?

22 A Yes, sir.

23 Q All right.

24 MR. RICHARDSON: Your Honor, at this time I have
25 this -- like to have this moved into as court exhibit for

1 this hearing only.

2 THE COURT: Well, we had marked it as State's I.D.
3 Number 3. Let's leave it in that status until I rule on
4 it.

5 MR. JEPERTINGER: Yes, sir. Yes, sir.

6 BY MR. JEPERTINGER:

7 Q Was he aware, was the defendant aware that his
8 statement was going to be taped?

9 A Yes, he was.

10 Q Okay. Were he and his father both aware of that?

11 A Yes.

12 Q And did you indeed tape it?

13 A Yes, I did.

14 Q All right. I'll have this premarked as well.

15 THE COURT: That will be I.D. 4 for the State, I.D.
16 only.

17 (WHEREUPON, State Exhibit No. 4 was marked for
18 identification only.)

19 BY MR. RICHARDSON:

20 Q Investigator, I want to show you what's been marked
21 State's Exhibit 4 for I.D. only. Can you recognize this?

22 A The tape of the statement of Jermaine Mayweathers.

23 Q Okay. Was this the tape that your office generated?

24 A Yes.

25 Q And you subsequently delivered it to the Solicitor's

1 office?

2 A That's correct.

3 Q All right. Have you heard the contents of this tape?

4 A I have.

5 Q Is it your complete interview with the defendant?

6 A It is.

7 Q Okay.

8 MR. RICHARDSON: Your Honor, we'd like to have this
9 item premarked as well.

10 THE COURT: Number 5. State's 5.

11 (WHEREUPON, State Exhibit No. 5 was marked for
12 identification only.)

13 BY MR. RICHARDSON:

14 Q Investigator, I show you State's Exhibit 5 for
15 identification. Do you recognize what this is?

16 A Yes, sir.

17 Q What is it?

18 A This is a copy of the tape on CD.

19 Q Okay. And have you heard what's on this disk?

20 A I have.

21 Q Is it the exact same as what's on that tape?

22 A It is.

23 Q All right.

24 MR. RICHARDSON: Beg the Court's indulgence once
25 moment.

1 THE COURT: Yes, sir.

2 BY MR. RICHARDSON:

3 Q Who all was present with you in the interview room when

4 this statement was given?

5 A During the time of his statement was myself, Lieutenant

6 Iutcken, and Ms. Katrina Andrews with DSS, and of course

7 the defendant.

8 Q And what room was this interview conducted in?

9 A It's a interview room right on the hallway, right

10 outside of investigation so it's located on the main

11 hallway at the Sheriff's Office.

12 Q Was his father in the room?

13 A His father was in the room during the Miranda, but he

14 was not in the room during the statement.

15 Q Okay. At any time during the statement did the

16 defendant ask to stop or ask for a lawyer or anything of

17 that nature?

18 A No, he did not.

19 Q All right. And do you remember approximately how long

20 the statement is?

21 A Close to 30 minutes.

22 Q Okay.

23 MR. RICHARDSON: Your Honor, if we could publish

24 the statement at this time.

25 THE COURT: Yes.

1 MR. RICHARDSON: Okay.

2 MR. JEPERTINGER: Your Honor, we also have a copy
3 of the transcript we'd like to hand up --

4 THE COURT: Okay.

5 MR. RICHARDSON: --if you'd like to go along.

6 THE COURT: All right.

7 (State's Exhibit Number 5 was played for the Court.)

8 BY MR. RICHARDSON:

9 Q Investigator Lowder, was that the entire interview?

10 A It was.

11 Q And that pause that was on the CD, was there a pause in
12 the room when y'all did that? Is that just a glitch on
13 the CD?

14 A No, my -- the tape that we did did not have any kind of
15 pause on it. Must have done that in recording,
16 transferring it over.

17 Q And was any questions or anything left out during that
18 pause before it picked back up?

19 A No, no.

20 Q Okay. Please answer any questions that Ms. Wingard may
21 have for you.

22 CROSS - EXAMINATION

23 BY MS. WINGARD:

24 Q Investigator Jenco, Jermaine at that time was 15 years
25 old; is it not?

1 A That's correct.

2 Q And so you felt it important to have his father sign
3 off on this interview with him?

4 A I did.

5 Q And you did not think it inappropriate that his father
6 was also a suspect at the time?

7 A I didn't.

8 Q And as you indicated in your statements there were
9 three suspects: Jermaine, his dad Mr. Gerido, and the
10 mom; is that correct?

11 A That's correct.

12 Q And you did not think it was important to find a
13 neutral person, a person who could better advise him and
14 protect his rights inasmuch as a person that you got to
15 sign off on his Miranda warnings and his giving up an
16 attorney, waiving his right to an attorney was also a
17 suspect?

18 A No, ma'am, that was his father and that's who he was
19 living here with. And while his father was in the room
20 with him, his father also made phone calls to grandma and
21 mom and so I'm assuming the whole family knew he was
22 giving a statement at that time.

23 Q And you -- but you didn't think it important to wait
24 for one of those other persons to come down and talk to
25 this 15 year old?

1 A No, ma'am. We were doing an investigation, and at that
2 time I was trying to speak to everyone involved. He
3 wasn't the only person I was speaking to.

4 Q Who did you speak with besides him?

5 A Numerous people. And it's in my notes but -- do you
6 want from the first night at the hospital? I'm not sure
7 exactly who are you referring to 'cause I've spoken to a
8 lot of people.

9 Q That evening when you had, or afternoon, when you had
10 individuals come in, who on that afternoon did you have
11 come in?

12 A The af-- the same day that the defendant was giving a
13 statement or at the hospital? I'm not sure which one
14 you're referring to.

15 Q The day that this statement was given that we've just
16 heard, who came in on that afternoon?

17 A His father, Mr. Gerido, was there also, and I did take
18 a statement from him after I took a statement from the
19 defendant Jermaine.

20 Q So were there any other statements taken around that
21 time?

22 A I -- right off the top of my head I don't have my notes
23 in front of me. I'm not sure if I did interview anybody
24 else that same exact day, but I took a lot of different
25 interviews and met with a lot of people from the 25th

1 through the 29th.

2 Q Did you take any other statements from Jermaine? Do
3 you have any, other than this recorded statement, do you
4 have any other statements from him?

5 A The night at the hospital I did a preliminary interview
6 with him and several other family members.

7 Q And do you intend to use any of those statements?

8 A It's not a recorded statement. It was just a
9 preliminary interview.

10 Q Again, I'm asking you if you intend to use any of those
11 statements.

12 A My notes are in the file that the Solicitor's Office
13 has.

14 Q Okay. What did you ask him at the hospital?

15 A Basically at the hospital my interviews there was just
16 preliminary just trying to find out did anybody know what
17 happened.

18 Q Did you advise him of his rights at the hospital?

19 A No.

20 Q Do you recall anything that he said at the hospital and
21 do you intend to use them at trial?

22 A I do recall some of what he said that's in my notes.
23 I'm not sure if the Solicitor's Office plans to use them
24 at trial or not.

25 Q Do you want to get your notes?

1 A I'm not -- I'm not sure. I'm not sure if they plan to
2 use that or not, but I did submit my notes.

3 Q Do you want to get your notes so you can tell us what
4 he may have said at the hospital?

5 A I don't think I need them. He didn't offer a whole lot
6 more at the hospital that night than he did during his
7 taped interview.

8 Q Was there anything inconsistent with what he gave in
9 this statement that we've just heard with what he said at
10 the hospital?

11 A Basically it was the same. He did mention about him
12 bumping his head and that was about it.

13 Q Tell me about this interview room that this took place
14 in. What size room are we talking about?

15 A I'm not real good with measurements, but it's a fairly
16 nice sized interview room. It's a very comfortable
17 setting, has a couch, chairs in it, and it's on the main
18 hallway of the Sheriff's Office. In that tape you can
19 hear a lot of traffic so it's not anywhere that's secluded
20 or out of the way of people.

21 Q Was the door open?

22 A I do not believe the door was open. We have a lot of
23 traffic like you heard in the background. If the door was
24 open it would have been even louder, the traffic would
25 have.

1 Q How big is it -- do you interview around a conference
2 table?

3 A We have a small table.

4 Q And how were y'all seated at that table?

5 A I was sitting on one side and the defendant was sitting
6 on the other side and around me on the wall and couch area
7 was Ms. Andrews and Lieutenant Lutcken and of course his
8 father was in the room. He was seated right beside him.

9 Q And why did you exclude his father from the room?

10 A Because at that point everybody I was talking to was a
11 suspect; and I didn't want to taint his interview, either
12 interview, by having them in the room together.

13 Q So you didn't want his interview tainted, but you felt
14 comfortable having him advise a 15-year old about his
15 options in terms of giving a statement or not; is that
16 correct?

17 A Yes, since that's his father and that's who he was here
18 in custody with.

19 Q And you ascribe absolutely no importance the fact that
20 his father was a suspect as well?

21 A No, because everyone was a suspect at that point.

22 Q Well, you have said though repeatedly in your interview
23 that there were only three suspects: Mr. Gerido,
24 Ms. Williams, and Jermaine.

25 A That's correct.

1 Q How did they happen to come in that afternoon? How did
2 they get down to Effingham?

3 A I'm not sure. I know that they came on their own free
4 will. I don't know how they arrived. I didn't go out and
5 check to see.

6 Q But who contacted them to come in? Did you call them
7 and say, you need to come down and give a statement, or
8 how did that come about?

9 A Yes. I wanted statements. I had talked to all of them
10 and asked if they would be willing to come there and give
11 a statement and try to help me figure out what was going
12 on.

13 Q Did you tell them that it was optional or did you tell
14 them that they --

15 A Oh, yeah, of course they knew it was optional. I mean,
16 no one was under arrest.

17 Q I understand that they weren't under arrest, but did
18 you say, if you don't come down I'll get an arrest warrant
19 or---

20 A No.

21 Q --please come down? Or how did you phrase it?

22 A I informed them that I'm investigating the case trying
23 to figure out what was going on and if they would come
24 and, being willing to come and give a statement, and they
25 were willing to come and give a statement.

1 Q Did you attempt to contact Jermaine's mother who had
2 legal custody of him prior to his giving this statements?

3 A I did.

4 Q Did you speak with her?

5 A I spoke to her very briefly on the phone.

6 Q And did you advise her that you wanted to get a
7 statement from Jermaine?

8 A There wasn't a whole lot said to her because she was
9 very short with me on the phone.

10 Q And tell me, did you call her?

11 A I did.

12 Q Did she call you?

13 A I did. I got her number from Jermaine that night at
14 the hospital. I had asked who, you know, who he was here
15 with and who his parents were.

16 Q And tell me what that conversation was.

17 A Like I said, it was very short. I called to tell her I
18 was investigating a case and explained to her a little bit
19 about what was going on, and she was very short with me.
20 She did not even want to talk to me about any of it.

21 Q And did you -- but you did not tell her you wanted to
22 get a statement from him or ask her to come to South
23 Carolina or anything?

24 A At that time I may not have because I didn't interview
25 him until the -- he didn't give a statement until the

1 28th, and this started on the 25th.

2 Q You knew though that she was the custodial parent; that
3 he was just down visiting with his dad.

4 A No, I didn't know what was gonna happen with his
5 visitation here. I don't even know if they did. I think
6 that he was here seeing if things worked out better for
7 him here than they had been in Virginia.

8 Q But she had legal custody?

9 A Okay.

10 Q Thankyou.

11 THE COURT: Redirect.

12 MR. RICHARDSON: Nothing further, Your Honor.

13 THE COURT: All right, you may step down.

14 Next witness please.

15 MR. JEPERTINGER: We'll call Keith Lutcken to the
16 stand.

17 WHEREUPON,

18 KEITH LUTCKEN,

19 having been duly sworn by the Clerk of Court, testified as
20 follows:

21 THE DEPUTY CLERK OF COURT: Please be seated.

22 State your full name for the record.

23 THE WITNESS: My name is Keith Lutcken,

24 L-U-T-C-K-E-N.

25 DIRECT EXAMINATION

1 BY MR. JEPERTINGER:

2 Q What is your rank at the Sheriff's Department?

3 A Lieutenant.

4 Q Lieutenant Lutcken, can you tell the Court how you got
5 involved with the statement given in this case?

6 A Just with this statement or the —

7 Q Just the statement?

8 A Just the statement. I was requested by Investigator
9 Jenco to assist with her.

10 Q Okay. And was Ms. Sanders of the Department of Social
11 Services in the room there?

12 A Yes, sir, she was.

13 Q Okay. And this room that the interview was conducted
14 in, how large is it? Approximately.

15 A Ten by eight.

16 Q All right. And it was just you, the defendant, and
17 the — Ms. Andrews and Officer Jenco, correct?

18 A That is correct.

19 Q At any time prior to him making his statement to y'all
20 did he say that he wanted to speak to his natural mother
21 or grandmother?

22 A I don't recall that, no, I don't.

23 Q Did you threaten him, withhold, say we're not gonna to
24 feed you or give you anything to drink, prior to him
25 giving that recorded statement?

1 A No, sir, we did not.

2 Q Okay. Did you tell him you are going to treat him any
3 differently or ask the State to show him leniency if he
4 spoke to y'all?

5 A No, sir.

6 Q Was everything that we just listened to your
7 recollection of what was said in that room?

8 A Yes, sir, it was.

9 Q Okay. Prior to that statement being given were you
10 present when the waiver of rights form was signed? And I
11 refer to State's Exhibit 3.

12 A Yes, I was.

13 Q Okay. Did anyone tell either Mr. Gerido, the father,
14 or the defendant Jermaine Mayweathers that they had to
15 sign that form?

16 A No, sir.

17 Q That's all I have. Thank you.

18 THE COURT: Cross-exam.

19 **CROSS-EXAMINATION**

20 BY MS. WINGARD:

21 Q Were you present when Mr. Gerido was talking with
22 Jermaine before the tape or the interview and the taping?

23 A Yes, ma'am, I was.

24 Q And what, if anything, did you observe about their
25 interaction?

- 1 A Can you be more clear?
- 2 Q I mean, did they -- did they go out and have any
- 3 conference together or was everything done ---
- 4 A No, they -- they conversed in front of us.
- 5 Q They at no time did he say, son, let me come talk to
- 6 you about what's going on or anything? Everything was
- 7 done in y'all's presence?
- 8 A Yes, sir --yes, ma'am, excuse me.
- 9 Q Can you recall anything that was said between them?
- 10 A Not right off. I would be speculating if I did. I
- 11 don't remember exactly.
- 12 Q You don't remember any conversation at all?
- 13 A No, ma'am.
- 14 Q Did you ever have any conversation with Jermaine about
- 15 his mother or wanting another family member or anything to
- 16 be there?
- 17 A Not with Jermaine, no.
- 18 Q Did you have a conversation with anybody about Jermaine
- 19 and having another family member there?
- 20 A No, ma'am. Mr. Gerido requested that he would call his
- 21 mother. I believe it was his mother to talk with her.
- 22 Q And was that done in your presence?
- 23 A Yes, ma'am.
- 24 Q So you didn't afford him any privacy to do that?
- 25 A No, he did it right there in our presence. He didn't

1 say he needed to be in privacy. He just needed to talk
2 with her; he wasn't sure what to do.

3 Q And can you recall what that conversation was?

4 A Basically he explained to her what was going on, and he
5 didn't know whether to let Jermaine talk with us or not.
6 And she advised him that if he had nothing to worry about
7 then let him go ahead.

8 Q Thank you.

9 THE COURT: Redirect.

10 MR. JEPERTINGER: Nothing further, Your Honor.

11 THE COURT: Thank you. You may step down.

12 Next witness please.

13 MR. JEPERTINGER: We call Katrina Andrews.

14 THE DEPUTY CLERK OF COURT: If you would, ma'am,
15 place your left hand on the Bible, raise your right.
16 WHEREUPON,

17 KATRINA ANDREWS,
18 having been duly sworn by the Deputy Clerk of Court,
19 testified as follows:

20 THE DEPUTY CLERK OF COURT: Please be seated.
21 State your full name for the record.

22 THE WITNESS: My name is Katrina Andrews.

23 **CROSS-EXAMINATION**

24 BY MR. JEPERTINGER:

25 Q Ms. Andrews, and do you work for the Department of

1 Social Services?

2 A Yes, I do.

3 Q And how long have you been employed for them?

4 A Twenty-three years.

5 Q Okay. And you were so employed last July, 2008?

6 A Yes.

7 Q Okay. Did you have an occasion to be present when a
8 tape recorded statement was given by Jermaine Mayweathers
9 to both Investigator Jenco and Lieutenant Lutcken?

10 A Yes, I was.

11 Q Okay. What was your purpose for being there, ma'am?

12 A Whenever a situation like this happen a report was
13 filed and DSS is automatically called out to make sure
14 that the other children in the home are taken care of or
15 provided for, there's no abuse or neglect in any of the
16 other kids. So the Department of Social Services was also
17 doing an investigation.

18 Q Okay. And were you present when the State's Exhibit 3,
19 waiver of rights form, was signed, ma'am?

20 A Yes, I was.

21 Q Okay. And did you as an investigator with the
22 Department of Social Services or the other law enforcement
23 with the Sheriff's Department tell either Willie or
24 Jermaine that they needed to sign that waiver of rights
25 form?

1 A No, sir, I didn't.

2 Q Okay. Afterwards you were present in that room when
3 the tape statement was given?

4 A Yes, I was.

5 Q Prior to that taped statement being given was there any
6 --you're not gonna get any food, Jermaine, if you don't
7 talk to us, you're not gonna have -- be able to go to the
8 bathroom or get something to drink? Any statement like
9 that made to the police prior to that taped statement
10 being given?

11 A No.

12 Q At any time did Jermaine tell you, I need to talk to my
13 mother in Virginia or my grandmother or anyone else?

14 A No, he didn't.

15 Q All right. Is the sum and substance of what occurred
16 completely contained on that CD off the tape I believe?

17 A Yes.

18 Q All right. Thank you very much. Please answer any
19 questions Ms. Wingard may have for you.

20 **CROSS-EXAMINATION**

21 BY MS. WINGARD:

22 Q Ms. Andrews, as a prospective service worker for
23 children do you not find it troublesome that a 15-year old
24 would have his rights explained to him and signed off on
25 by a father who is a -- also a suspect? Does that not

1 give you some concern?

2 A Well, I at that time did not know that the father was a
3 suspect. I mean, we -- DSS and law enforcement usually
4 get together and we do our interviews. We try to do them
5 together to have -- and to do so many interviews over and
6 over. So at that time he was there that was my first time
7 meeting him so I did not know he was a suspect.

8 Q So the first time that you heard he was a suspect you
9 sat in for the whole interview?

10 A Exactly.

11 Q But you heard that he was a suspect as was his father
12 and Ms. Williams, and that was the first time that you
13 knew that the Sheriff's Department had focused on those
14 three and had narrowed it down to that?

15 A Yes.

16 Q In hindsight does it give you some concern that a dad
17 would have been the one to sign off on a 15-year old's
18 waivers when he was also a suspect?

19 A No, not really.

20 Q That doesn't bother you?

21 A No.

22 Q Are you aware of any other statements that Jermaine
23 made? Did he make any to you or anybody --

24 A Not---

25 Q --in DSS?

1 A Nottome.

2 Q Okay. Are you aware of any other statements?

3 A Now when the incident first happened the on-call worker
4 was the worker that responded to the hospital. I was not
5 the worker that responded to the hospital. The case was
6 assigned to me after the fact so there was a worker that
7 went to the hospital and I have her notes. And I think
8 she went to the hospital and she might have spoken to some
9 of the family members, but I never had a conversation with
10 him other than that day.

11 Q Do her notes reflect that he made any statements that
12 you can recall?

13 A I can look and see. I don't know right off the top of
14 myhead.

15 Q I would like to know that, but you can do that when you
16 get down off the stand.

17 A Okay.

18 Q But I would like to know because we don't have any DSS
19 records that I can recall. We've got Care House records.
20 I have no further questions.

21 THE COURT: All right, redirect.

22 MR. JEPERTINGER: No, sir.

23 THE COURT: You may step down.

24 Next witness please.

25 MR. RICHARDSON: That's all, Your Honor.

1 THE COURT: All right. Any witnesses for Defense?

2 MS. WINGARD: Indulge me a moment please.

3 DEPUTY CLERK OF COURT: If you will, sir, place
4 your left hand on the Bible. Raise your right hand.

5 MS. WINGARD: Go forward.

6 WHEREUPON,

7 WILLIE GENE GERIDO, JR.,
8 having been duly sworn by the Deputy Clerk of Court,
9 testified as follows:

10 THE DEPUTY CLERK OF COURT: Please be seated.
11 State your name for the record.

12 THE WITNESS: My name is Willie Gene Gerido, Jr.

13 **DIRECT EXAMINATION**

14 BY MS. WINGARD:

15 Q Mr. Gerido, you are Jermaine Mayweather's father; is
16 that correct?

17 A Yes, ma'am.

18 Q And did you have occasion to take him to the Sheriff's
19 Department out in Effingham on the afternoon of July 28 of
20 the last year?

21 A Yes, ma'am.

22 Q And was the purpose of your taking him out there for
23 him to be interviewed by the Sheriff's Department?

24 A Yes, ma'am.

25 Q How did you come to take him out there?

1 A The lady lieutenant called me on the phone.

2 Q And what --

3 A Well, she called the Williams' phone and she gave me
4 the phone number and told me lieutenant wanted to talk to
5 me.

6 Q And what did she say to you?

7 A She told me she needed me to come out to the Sheriff
8 Department to give a statement, me and Jermaine.

9 Q And did you go out there?

10 A After we argued for a little while she got me to come
11 up there Monday.

12 Q What do you mean after you argued for a while?

13 A 'Cause I kept asking her why can't she come to the
14 house and give me a statement. She said I had to come
15 down there into some room and give a statement. I asked
16 her why couldn't they come out to the house because I
17 didn't have no transportation.

18 Q So you asked her to come to your house and she said no,
19 you have to go to the Sheriff's Department?

20 A Yeah, she told me I had to go down to the Sheriff's
21 Department.

22 Q And so then you went to the Sheriff's Department?

23 A Yeah, I went down to the Sheriff's Department Monday.

24 Q Did you take Jermaine with you?

25 A Yes, ma'am.

1 Q Did you sign off on Jermaine's Miranda warnings and
2 waiver of rights on an attorney?

3 A Yes, ma'am.

4 Q Did you have any conversation with Jermaine about
5 whether he should sign this, whether he should waive his
6 rights to make a statement? Did you in any way discuss
7 with him as a father whether this was a good idea or not,
8 or did you just sign off on it?

9 A Basically I just signed off. I was right there in
10 front of him. He was like, I ain't go anywhere. I just
11 say, just talking to him right there. He said, you
12 know -- I asked him if it was okay. He said he didn't
13 mind and signed off on it.

14 Q So you didn't have any discussion with him about having
15 the right not to make a statement. He said -- you said,
16 okay, make a statement if you want to, in effect?

17 A If he felt that he had wanted to do it, then he could
18 just make a statement.

19 Q Did you call other people and get their advice?

20 A Well, I called my mom but they was asking me to --
21 about some lie detector test. They wanted me say I
22 should -- they was asking me, talking about, talking
23 taking a lie detector test, and I said I didn't know too
24 much about that.

25 Q So you talked to your mom after the statement was

1 given?

2 A Yeah. They asked me about a lie detector test trying
3 to tell me I should talk him into taking a lie detector
4 test.

5 Q So you did not talk to your mother prior to the
6 statement being made? It was after Jermaine had made the
7 statement and there was that discussion?

8 A Yes, ma'am.

9 Q Thank you.

10 THE COURT: Cross-exam.

11 **CROSS-EXAMINATION**

12 BY MR. JEPERTINGER:

13 Q Let me ask you, Mr. Gerido, you said you got a phone
14 call from Debra?

15 A No, I -- she called Debra's phone and Debra had gave me
16 her phone and lieutenant -- I spoke to lieutenant through
17 her phone.

18 Q Did he call you in Anderson? Where were you at the
19 time you when received the phone call?

20 A No, I was in -- I was at -- at the house.

21 Q Okay. When did you get back from Anderson?

22 A This is-- this is before. I mean, this is after I came
23 home and that was during the day. This was about 3:30
24 now.

25 Q I'm trying to get this straight. You went to Anderson,

- 1 what, about 2:00 Friday morning?
- 2 A This is Saturday afternoon.
- 3 Q Okay. No, just answer my question. You left for
- 4 Anderson about 2:00 Friday morning; is that right?
- 5 A I left the house at 2:00 that night, yeah.
- 6 Q Okay.
- 7 A The night before, yeah.
- 8 Q Friday morning, 2 in the morning, right?
- 9 A Thursday night, going on Friday morning, yeah.
- 10 Q Okay. And you went to — did you go to Anderson like
- 11 Jermaine said in the statement or where did you go?
- 12 A We had rent us a tuxedo. My cousin had to go get his
- 13 tuxedo done right away, sized up for tuxedo for his
- 14 sister's wedding.
- 15 Q Okay. And where was that that you went to?
- 16 A That was in Jersey.
- 17 Q New Jersey. So it wasn't Anderson, South Carolina?
- 18 A Yeah, 'cause we came right back. We like went there
- 19 and did it and turned right back around and come back.
- 20 Q So you went to New Jersey and not Anderson?
- 21 A Yeah.
- 22 Q Okay, very good. And so you drove from —
- 23 A It was a change of plans.
- 24 Q That's okay. So you went to — you went to New Jersey
- 25 from South Carolina and made a turnaround trip?

1 A Yeah, 'cause we got back Saturday morning.

2 Q Saturday morning about what time?

3 A 6:30, 7:00 that morning, maybe a little earlier, about
4 5 'cause I had heard everything on the road about 12:00
5 that morning that we got robbed and I got there a couple
6 of hours later.

7 Q You got burglarized sometime —

8 A About 12:00, 12:30, 1:00 that morning, yeah, and I was
9 on the road.

10 Q Saturday morning that they found out, correct?

11 A That was Friday night going to Saturday morning.

12 Q When they got back from the hospital?

13 A Yeah, they called me and told me that we had got
14 burglarized. It was about 2:00 Saturday morning it was.

15 Q Okay, all right. So you got back into town, what, 5, 6
16 in the morning, correct?

17 A Yeah.

18 Q All right. And at — did — kind of a long trip up
19 there. Did you take a nap or what did you do? I know
20 this whole thing with this —

21 A His father was driving and he didn't really take much
22 nap. We still had to wait until the guy that was doing
23 the thing we had to wait. He had another somebody else to
24 take care of and then we got take care of and we got back
25 on the road and got right back.

1 Q So what time did you get back to on Gilbert Drive here
2 in South Carolina?

3 A About 4 or 5 o'clock in the morning --

4 Q 4 or 5 o'clock in the morning --

5 A --that day.

6 Q And by that time you already heard about Minor Child
7 correct?

8 A Yeah.

9 Q Okay. And at that point did you go to the hospital or
10 morgue, or where did y'all go?

11 A Well, I was hearing everything. I had soon -- I had
12 finally seen Debbie. I left her at the hospital, came
13 back. They came to the house at about 3:30, about 3:30,
14 and that's when I got -- she got the phone call from the
15 lieutenant and she said I need to see and then me and her
16 was going back and forth. I said why can't you come
17 around to the house. I said, I don't really got no way of
18 getting out there. I said, why can't you come out to the
19 house. Me and her was going back and forth. Well
20 eventually she got me to come out there. So I said, I'll
21 come out there Monday morning and I'll try to get a ride,
22 which I did get a ride, and I made it out there Monday
23 morning. But I asked her Saturday why can't you just come
24 out here. I said, I'm at home right now, you can come out
25 here now, I'm getting ready to go to the hospital but you

1 can come talk to me now. She didn't want to come out
2 there at that time. I said---

3 Q Now that was the investigator?

4 A Yeah. I asked her to come out there right then and
5 there.

6 Q So that would have been you -- you're saying that would
7 have been sometime on Saturday the 26th?

8 A The Saturday afternoon, yeah, Saturday afternoon.

9 Q But it -- that didn't work out and they requested
10 you---

11 A I end up going there Monday morning?

12 Q Which would be the 28th?

13 A Yeah, because she -- she said Monday. She told me to
14 come there Monday.

15 Q Okay, all right. So this would have been after a full
16 night's sleep and knowing that Child had passed by that
17 time, correct?

18 A Yeah.

19 Q By Monday morning you knew Child had passed,
20 correct?

21 A Yeah, I knew Saturday when I came back 'cause I was
22 like --

23 Q All right. So the police wanted to talk to you. At
24 any time on Saturday afternoon when you had that
25 conversation --

1 A I told her to come up there.

2 Q Okay. But let me answer -- ask the question. On
3 Saturday afternoon or Sunday did you call Jermaine's mom
4 in Virginia saying, I got to go see the police, you want
5 to come, you know, they want to talk to both me and your
6 son. Did you make that phone call Saturday or Sunday?

7 A I talked to the mother but she never made no comment
8 that she needed to talk to both us. She just asked for
9 me.

10 Q But you didn't think it was that, you know, this --
11 your little boy's dead and they want to talk, the police
12 want to talk to you. You didn't think it was good that
13 she come down from Virginia?

14 A Well, she couldn't make it that quick, and plus, she
15 actually talked to me. She said you and Jermaine, I need
16 both of yous to come down and make a statement.

17 Q Okay.

18 A She didn't mention her mother. She said me and
19 Jermaine come make a statement. That's exactly what she
20 said.

21 Q Okay, I understand. I understand. Okay, thank you.

22 THE COURT: Redirect.

23 MS. WINGARD: Nothing. You may step down.

24 THE COURT: Next witness please.

25 MS. WINGARD: We don't have any further witnesses.

1 THE COURT: All right. Anything in reply?

2 MR. JEPERTINGER: I don't think so, Your Honor.

3 THE COURT: Okay. All right, argument or
4 discussion?

5 MR. JEPERTINGER: Your Honor, I think the case law
6 is somewhat clear that, one, Mirandas were given, Your
7 Honor. And I consider the fact that this is even a
8 juvenile, Your Honor, and I think that the test that we
9 look at is totality of the circumstances test just like we
10 would with adults. Look at the person's background,
11 experience, conduct of the accused, length of custody,
12 police misrepresentation, so on, so forth, Your Honor. I
13 don't think there were any threats of violence, any
14 withholding of food or water or not going to the bathroom.
15 They did have the father come in, Your Honor, and he
16 signed it. The 15-year old who was either going into the
17 ninth grade or completed the ninth grade never said, oh, I
18 want my mom here or I want my grandmother here. I just
19 think based on everything that was elicited this was a
20 free and voluntarily confession, Your Honor, and should be
21 allowed in.

22 THE COURT: All right. Counsel.

23 MS. WINGARD: Judge, I am particularly concerned
24 about the fact that law enforcement had a 15-year old who
25 had only finished the eighth grade taken down to the

1 Sheriff's Department by his father who was a co-suspect,
2 had that father signed off on these Miranda warnings and
3 waiver of rights. It seems to me that the totality of the
4 circumstances suggest that this was not freely and
5 voluntarily given, and that he did not have appropriate
6 guidance in waiving his rights. Couple that with the fact
7 that, you know, they use the dad as they want to for
8 having him to sign off on the form and bring the child
9 down there, and then they get him in a room with three
10 adults and say all of these very damaging things to him
11 like: We know you're lying, you're not telling the
12 truth, you're covering up, and saying these various things
13 and I think that the statement should be excluded. Now I
14 don't know whether you want me to order about a redaction
15 or if you want me to stop there and---

16 THE COURT: No, we'll come to the redaction if I
17 conclude it's admissible. All right, anything further,
18 Counsel?

19 MS. WINGARD: Mr. Bell might have something to
20 add, Your Honor.

21 THE COURT: Okay.

22 MR. BELL: I would just emphasize the point, Your
23 Honor, that given that he's a 15-year old I just feel it's
24 inherently coerced being in the room with three adults a,
25 eight by ten room, with no one there providing him

1 guidance or serving as a guardian and the one that they
2 used as a – in that purpose earlier was a co-defendant
3 whose interest certainly would be separate from this
4 defendant.

5 THE COURT: Order: The Court has conducted a
6 hearing as mandated by Jackson versus Denno, 378 United
7 States 368, 84 Supreme Court 1774, 12 Lawyers Edition 2d,
8 2008. The process for determining whether a statement is
9 voluntarily and thus admissible is bifurcated: It
10 involves determinations by both the judge and the jury.
11 First, the trial judge must conduct an evidentiary
12 hearing, outside the presence of the jury, where the State
13 must show the statement was voluntarily made by a
14 preponderance of the evidence. If the statement is found
15 to have been voluntarily given, it is then submitted to
16 the jury, which voluntariness must be established beyond a
17 reasonable doubt. State versus Washington, 296 S.C. 54,
18 370 S.C.2d 611.

19 A statement obtained as the result of custodial
20 interrogation is inadmissible unless the suspect was
21 advised of and voluntarily waived his rights. Miranda
22 versus Arizona, 384 U.S. 436, 86 Supreme Court 1602, 16
23 Lawyers Edition 2d, 694; State versus Saltz, S-A-L-T-Z,
24 346 S.C. 114, 551 S.C.2d 240. If a suspect was advised of
25 his Miranda rights but made a statement, the burden is on

1 the State to prove by a preponderance of the evidence that
2 his rights were voluntarily waived. A statement is not
3 admissible unless it was voluntarily made. State versus
4 Von Dollen, 322 S.C. 234, 471 S.C.2d 689; State versus
5 Compton, 366 S.C. 671, 623 S.C.2d 661; and State versus
6 Childs, 299 S.C. 471, 385 S.C.2d 839.

7 The test of admissibility of a statement is
8 voluntariness. This voluntariness requirement is in
9 addition to the intelligent waiver mandate of Miranda.

10 Addressing Miranda it is apodictic that the Miranda
11 rights were given in this instance and were explained with
12 absolute certitude. An additional factor in regard to
13 Miranda insofar as the warning given in this case is the
14 initialing of the Miranda rights form both by the
15 defendant and his father. Concomitantly I conclude that
16 Miranda has been given without doubt in this case and that
17 the Miranda rights were voluntarily and freely waived.

18 In regard to the prong concerning voluntariness I
19 visit a writing emanating from the Court of Appeals,
20 opinion number 4475 filed 23 of December, 2008. In Parker
21 it involved a minor of the age of 16 years of age at the
22 time of his arrest. The Defense argued in Parker that the
23 defendant's father had suggested that he make a statement.
24 The defendant's position was that the father had aided and
25 assisted the State. I will proceed to quote with

1 exactitude Parker as it outlines what I believe to be the
2 law as it relates to a minor giving a statement. Suffice
3 it to say, so that there will be no doubt of what I'm
4 doing it is an opinion penned by a judge from the Pee Dee
5 region with the last name of Anderson. Quote,
6 "Questioning suspects is often indispensable to crime
7 detection."

8 And Ms. Court Reporter, I stop here, you put the
9 periods in or otherwise I'll let you look at the writing
10 and see where you put the periods.

11 "It's compelling necessity has been judicially
12 recognized as its sufficient justification. Even in a
13 society which like ours stand strongly and
14 constitutionally committed to the principle, that persons
15 accused of crime cannot be made to convict themselves out
16 of their own mouths. *Columbia versus Connecticut*, 367
17 U.S. 568. However, a statement obtained as a result of
18 custodial interrogation is inadmissible unless the suspect
19 was advised, advised of, and voluntarily waived of his or
20 her rights under *Miranda versus Arizona*. If a suspect is
21 advised of his *Miranda* rights but chooses to make a
22 statement the burden is on the State to prove by a
23 preponderance of the evidence that his rights were
24 voluntarily waived."

25 And for the sake of the record, Ms. Court Reporter,

1 I'm skipping a lot of this writing so as to get down to
2 the ultimate issue involved in this case. In State versus
3 Pitman, 373 S.C. 527, 647 S.C. 2d 144, our Supreme Court
4 instructed: In determining whether a confession was given
5 voluntarily this Court must consider the totality of the
6 circumstances surrounding defendant's giving the
7 confession. Shecknaloff versus Bustamonte – and I omit
8 the cite – as the United States Supreme Court has
9 instructed the totality of the circumstances includes the
10 youth of the accused, his education or his low
11 intelligence, the lack of any advice to the accused of his
12 constitutional rights, the length of detention, the
13 repeated and prolonged nature of the questioning, the use
14 of physical punishment such as deprivation of food or
15 sleep. Further, no one factor is determinative but each
16 case requires careful scrutiny of all the surrounding
17 circumstances. See Arizona versus Fulminante – I'll get
18 it right in a minute and I skip the cite applying the
19 totality of the circumstances test to determine the
20 statement's voluntariness. State versus Myers, a
21 determination whether a statement was given voluntarily
22 requires examination of the totality of the circumstances.

23 And then I go down to the more relevant quote.
24 Statements of juveniles are reviewed under the totality of
25 the circumstances. In Fare, F-A-R-E versus Michael C.,

1 442 U.S. 707, the United States Supreme Court held a
2 juvenile's request for his probation officer was not a per
3 se invocation of his Miranda rights. Rather, the efficacy
4 of his waiver should have been determined by considering
5 all the circumstances surrounding the interrogation.
6 Specifically, the Court expounded: This totality of the
7 circumstances approach is adequate to determine whether
8 there has been a waiver even where interrogation of
9 juveniles is involved. We discern no persuasive reasons
10 why any other approach is required where the question is
11 whether a juvenile has waived his rights as opposed to
12 whether an adult as done so. The totality of the approach
13 permits indeed it mandates inquiry into all circumstances
14 surrounding interrogation. This includes the evaluation
15 of the juvenile's age, experience, education, background,
16 and intelligence and into whether he has the capacity to
17 understand the warnings given to him, the nature of the
18 his Fifth Amendment Rights, and the consequences of
19 waiving those rights.

20 Additionally, the case of *in re: Williams*, 265 S.C.
21 295, 217 S.C.2d 719 articulates the principle, "While the
22 age of the individual is a factor to be taken into
23 consideration the admissibility of statements of a minor
24 depends upon its voluntariness to be determined from the
25 totality of the circumstances under which it is made."

1 Multiple factors are considered when deciding
2 whether a statement was made voluntarily. In Miller the
3 Court observed the Supreme Court in Withrow versus
4 Williams, 507 U.S. 680 set forth a nonexclusive list of
5 factors which may be considered in the totality of the
6 circumstances analysis. Under the due process approach
7 courts look to the totality of circumstances to determine
8 whether a statement was voluntarily. Those potential
9 circumstances include not only the crucial element of
10 police coercion, Colorado versus Connelly, cite omitted.
11 The length of the interrogation, Ashcraft versus
12 Tennessee, cite omitted. It's location, Wreck versus
13 Pate, cite omitted. Its continuity, Leyra versus Denno,
14 cite omitted. The defendant's maturity, Haley versus
15 Ohio, cite omitted. Clunis versus Texas, cite omitted.
16 Physical condition, Greenwall versus Wisconsin, mental
17 health, cite omitted. Fikes versus Alabama cite omitted.
18 Appellate entities in South Carolina have recognized that
19 the appropriate factors to consider in the totality of
20 circumstances analysis include background, experience,
21 conduct of the accused, age, length of custody, police
22 misrepresentation, isolation of a minor from his parent,
23 threats of violence and promises of leniency.
24 Additionally, background, experience, and conduct of the
25 accused is enunciated in Childs, age in Williams, length

1 of custody in Jennings, misrepresentations in Rabon, Smith
2 isolation of minor, and Rochester, threats of violence and
3 promises of leniency. Michael C., 442 U.S. 707 involved a
4 16 year old and the consequences of waiving Miranda
5 rights in that case.

6 There are numerous precedents around the country in
7 regard to minors. In re: Gault 387 U.S. 1; Haley versus
8 Ohio, 332 U.S. 596; Gallegos versus Colorado, 370 U.S. 49.
9 That was the 12 year old statement. And here in South
10 Carolina we dealt with age scenarios in re: Christopher
11 W., confession of 11 year old, 285 S.C. 329. Thomas
12 versus State, 15-year old. Without burdening the record
13 with undue recitation of precedence, suffice it to say
14 that applying the totality of circumstances test and the
15 case subjudice I come to the undelectable conclusion that
16 the statement was freely and voluntarily given under all
17 of the circumstances and will be admissible subject to
18 redaction or extirpation by the Court of inadmissible
19 comments contained within the rubric of the statement.

20 And it is so ordered. All rights are reserved. All
21 rights are protected for appellate review.

22 All right. Let's address the statement itself in
23 terms of the need for redaction. I will use my copy of
24 the statement and we go by line-by-line rulings.

25 MR. JEPERTINGER: Your Honor, initially I can tell

1 you that the State would be in agreement to redact
2 everything from line -- Page 22, Lutcken's last statement
3 was no, afraid you didn't -- afraid you didn't. That
4 would be the sixth thing down. No, afraid you didn't,
5 afraid you didn't.

6 THE COURT: Are you on Page 21 or 22?

7 MR. JEPERTINGER: 22, sir.

8 THE COURT: 22. All right, I'm not seeing these.

9 MR. JEPERTINGER: You have Lowder, Lutcken,
10 Mayweather. Lutcken says, no, afraid you didn't, afraid
11 you didn't.

12 THE COURT: All right, I'm on that line and you're
13 saying you consent to redact?

14 MR. JEPERTINGER: Everything after that?

15 THE COURT: Through the -- to the end of the
16 statement?

17 MR. JEPERTINGER: Yes, sir.

18 THE COURT: All right.

19 MR. JEPERTINGER: I think that goes into polygraphs
20 and problems in Virginia, which are not germane.

21 THE COURT: Okay, let the record show that is
22 redacted by the State in terms of its offer of redaction.

23 You consent to that of course; don't you?

24 MS. WINGARD: Yes, sir.

25 THE COURT: All right, that's redacted. What other

1 items are in contest, Ms. Wingard?

2 MS. WINGARD: Judge, I would -- yeah, I'm gonna
3 start on Page 14. I think when I reviewed it I felt like
4 it was clean up until then -- Michael, see if you check
5 behind me. Midpage on 14, Lowder. That doesn't add up
6 with everything we have, okay, and I'm probably gonna let
7 Mr. Lutcken talk to you a little bit. I would ask to have
8 that---

9 THE COURT: Wait one -- let me make sure. Page 14?

10 MS. WINGARD: Yes, sir, midway in the page.

11 THE COURT: Okay. All right, I see it, okay.

12 MS. WINGARD: That through: Okay, so you're
13 covering up for your dad. I would ask to have that
14 redacted.

15 THE COURT: What do you say to that?

16 MR. JEPERTINGER: Your Honor, the whole line of
17 questioning, you know, in all these cases that you've just
18 cited, at times, I know these are conclusory statements
19 based on conversations that the officers had with
20 pathologists and medical doctors and so on, so forth, but
21 they are statements. They're -- these doctors are going
22 to testify, Your Honor, they're gonna be duplicative to a
23 certain extent what the doctors testify to, but I think
24 this was more informational purpose that what they were
25 giving to Mayweathers is it'd be akin to having a police

1 officer tell a defendant when he's giving him a statement,
2 well, we found a gun with fingerprints on it. Now the
3 investigator may not be qualified to give expert testimony
4 in terms of fingerprint analysis, but he might tell the
5 person, look, we found a gun with your fingerprints on it.
6 It's still a conclusory statement, but I think that that
7 could be allowed in that case, Your Honor. I don't see
8 any problem with this.

9 THE COURT: Well, I see a problem with the first
10 sentence: That doesn't add up with everything we have. I
11 mean, you, how can I let that come in in regard to a
12 statement made concerning what the investigation has. I'm
13 going to redact that.

14 MR. JEPERTINGER: Which — how far, Your Honor?

15 THE COURT: I'm going down — I'm going down
16 through: A seven year old couldn't beat him this severe.
17 I mean, that's just absolutely testimony, I can't let that
18 in.

19 MR. JEPERTINGER: So from Lowder to Lowder?

20 THE COURT: That's correct.

21 MS. WINGARD: Well, I think Mayweathers is
22 responding, I don't know, to that statement so through
23 there.

24 MR. JEPERTINGER: Okay.

25 THE COURT: Yeah, all right. So through

1 Mayweathers, I don't know.

2 MR. JEPERTINGER: Very good.

3 THE COURT: All right, we understand?

4 MR. JEPERTINGER: Yeah, from Lowder -- and I'm just
5 trying to get this clear so because we're gonna have to

6 ---

7 THE COURT: Yeah, I know.

8 MR. JEPERTINGER: --work with the cassette, I mean
9 the CD, where it says that doesn't add up to, I don't
10 know.

11 THE COURT: Yes.

12 MR. JEPERTINGER: Okay, very good.

13 THE COURT: That's where we are.

14 MS. WINGARD: Now we're on Page 16. When
15 Lieutenant Lutcken says, Child listen to me. That's
16 slightly more than halfway down.

17 THE COURT: Okay.

18 MS. WINGARD: Through the next page towards the
19 bottom, Mayweathers: No, there's not.

20 THE COURT: What does the State say about that?

21 MR. JEPERTINGER: Well, Your Honor, based on your
22 earlier -- you just -- your prior ruling, you have more
23 medical testimony. I, you know, I would say the first
24 thing, come listen to me, now Ms. Lowder told you when we
25 started this this is extremely important. So that doesn't

1 say anything one way or the other, Your Honor, that first
2 statement. And he goes, yeah, I know.

3 THE COURT: What about that, Ms. Wingard?

4 MS. WINGARD: Well, I don't have strong feelings
5 about taking that out 'cause it is obviously very
6 important if -- but certainly if we could start where they
7 start talking about, we examined Child and talking
8 about he's been severely beaten. I mean, that's all stuff
9 that --

10 THE COURT: All right, I'm gonna take that out.
11 We're gonna start there.

12 MR. JEPERTINGER: Can you -- can you tell me,
13 Judge, where?

14 THE COURT: Lutcken. I don't think you understand
15 how important this is.

16 MR. JEPERTINGER: Okay.

17 THE COURT: And go to the end of the page.

18 MR. JEPERTINGER: All right.

19 MS. WINGARD: And then on the 17 where he starts
20 talking about -- I would take out it was just the three of
21 you, and he says, uh-huh. I mean, that doesn't make any
22 sense in that context, but what I really am concerned
23 about taking out is when Lieutenant Lutcken says the
24 amount of trauma to his body. He talks about that and
25 then they accuse him of lying and so that would be

1 through Mayweathers, no, there's not, which is the fourth
2 up from the bottom of Page 17.

3 THE COURT: What do you say to that?

4 MR. JEPERTINGER: We have no problem with starting
5 off at the amount of trauma to his body to go, no, there's
6 not.

7 THE COURT: Okay.

8 MR. JEPERTINGER: We'll keep -- it's the three of
9 you, uh-huh, in there.

10 THE COURT: Yes.

11 MS. WINGARD: Okay, I mean, that's --

12 THE COURT: Yes. All right, what's the next?

13 MS. WINGARD: Then on Page 18 starting with
14 Lieutenant Lutcken: No, that can't 'cause it, that cannot
15 cause it, that won't cause it, that's not a hard enough
16 lick.

17 MR. JEPERTINGER: Where are you, Carrington?

18 MS. WINGARD: It's the top third. And I have
19 highlighted on yours, I think, Mayweathers but I'm not
20 asking to have that taken out. I'm just having from
21 Lutcken.

22 THE COURT: Begins with, no, that can't cause it.

23 MS. WINGARD: No, that can't cause it, 'cause
24 that's not a hard enough lick. And then Investigator
25 Lowder says huh-uh. I ask to have those two lines taken

1 out.

2 THE COURT: All right. Just the statement from
3 Lutcken and then the statement from Lowder in response.
4 Is that it?

5 MS. WINGARD: Okay. And then I would ask to have
6 again, Lieutenant Lutcken says: Son, let me tell you,
7 even if he had fallen from the top bunk on to the floor it
8 could not have created that much damage to his brain, the
9 amount of bruising that's up and down his body on the
10 front and back side. You want to tell me that came from
11 the bunk beds, somebody has to beat him. So what I would
12 do is ask you to redact from Lutcken and Lutcken right
13 there.

14 MR. JEPERTINGER: Where it says, the final thing
15 bruised from head to toe, front and back side of his body?

16 MS. WINGARD: Yes.

17 MR. JEPERTINGER: Okay. Those two statements we're
18 going to have testimony to that effect from medical
19 doctors, Your Honor.

20 MS. WINGARD: Yeah, the doctors will testify to
21 that.

22 THE COURT: All right, so that's taken out.

23 MS. WINGARD: And then, in fact, really the whole
24 rest of that page needs to come out because he then starts
25 talking about a prior spanking. This was Christmas that

1 would have been six months before this happened.
2 Lieutenant Lutcken said, have you ever spanked him and he
3 says, a while ago when we came for Christmas. I think
4 that should come out.

5 THE COURT: What about that, Mr. Solicitor?

6 MR. JEPERTINGER: Yes.

7 THE COURT: Okay, all right.

8 MS. WINGARD: And then on 19.

9 MR. JEPERTINGER: Let's just to simplify it, let's
10 just do it from well, continue that thing from the side of
11 his body to all the way to climbing on the counter.

12 MS. WINGARD: That's fine.

13 THE COURT: Okay, that will take care of it.

14 MS. WINGARD: And then on Page 19, fourth, fifth
15 person to speak, it's Investigator Lowder: Well, it only
16 comes down to you for that whole day, there's no one else
17 unless your dad did it before he left to go out of town.

18 MR. JEPERTINGER: I think that should stay in, Your
19 Honor. It is a conclusory statement, but I mean —

20 MS. WINGARD: Yeah.

21 MR. JEPERTINGER: —what it does, if there was
22 someone else in the house he had his opportunity to say,
23 no, someone else came in the house, or Willie came in the
24 house, or the seven year old beat him, you know, it's...

25 MS. WINGARD: Well, I mean.

1 MR. JEPERTINGER: He had his opportunity to speak
2 at this point.

3 MS. WINGARD: I think he has the right to say did
4 your dad beat him before he left and he says no. And I do
5 think that same question as you have posed it is asked
6 somewhere.

7 MR. JEPERTINGER: It is repetitive, but I don't
8 think it is that damaging nor is it -- well, some of it
9 conclusory but I don't think it's that damaging, Your
10 Honor, that point.

11 THE COURT: I'm gonna leave that in. That stays
12 in. All right, what's next?

13 MS. WINGARD: On Page 21 towards the bottom, the
14 fifth speaker up, Lieutenant Lutcken says, you didn't
15 touch him with anything, that's what you're telling us,
16 you never laid a hand on him. And then Jermaine says,
17 yeah, I told you I had beat him before. I would ask to
18 redact that statement. I think that's referring back to
19 the Christmas incident.

20 MR. JEPERTINGER: Yes, sir, that can come out.

21 THE COURT: All right, take it out.

22 MR. JEPERTINGER: Mayweather says that.

23 MS. WINGARD: Mayweather.

24 THE COURT: Yes.

25 MS. WINGARD: And then on 22 we started redacting

1 from this --

2 MR. JEPERTINGER: When you were back in Virginia.

3 MS. WINGARD: What I would like is the second
4 speaker, Lutcken: You know, we don't think you're being
5 honest, I don't know if you're trying to protect somebody,
6 if you're trying to save yourself, you know it's gonna
7 come out, you can do yourself a big favor by telling us.
8 And he said, I told you, no, you didn't. And Mayweathers
9 said, I did. So...

10 MR. JEPERTINGER: I don't think that -- I think
11 that's standard police work, Your Honor, with police
12 expressing opinion, however, that doesn't have any-- all
13 of this, Your Honor, they're gonna look at in terms of
14 voluntariness. I mean, he doesn't admit doing anything at
15 this point, but I don't think that that's harmful. It
16 doesn't talk about any prior beatings. It doesn't talk
17 about medical evidence that will come in. It's just
18 police explaining to him that they felt he wasn't being
19 truthful.

20 THE COURT: I'm going to leave that in. All
21 right. That takes care of it because the rest of it has
22 been redacted.

23 MR. JEPERTINGER: What we're gonna need to do,
24 Judge, if you would allow us we need to get State's
25 Exhibit Number 5 to which is in only -- we don't need it?

1 We've got a copy. We're gonna clean it up.

2 THE COURT: All right. So as to place the record
3 in a pristine position, Number 3 is admitted over
4 objection. 4, the tape of course is admitted with
5 redaction and extirpation if you're going to do that in
6 that fashion, or you're just going to do another one?

7 MR. JEPERTINGER: Your Honor, what we're gonna
8 do -- the taped statement only, I guess, fits this purpose
9 that that's the vehicle that they used to --

10 THE COURT: Yes.

11 MR. JEPERTINGER: --transcribe the statement, to
12 record his statement.

13 THE COURT: Okay.

14 MR. JEPERTINGER: We don't intend to play that for
15 the jury. In fact, if they ask to hear the taped
16 statement we can't play it because it's not going to be
17 redacted.

18 THE COURT: Okay, that is not coming in then for
19 jury purposes.

20 MR. JEPERTINGER: No, sir. That was just for the
21 purposes of this hearing.

22 THE COURT: And so you prepare a redacted statement
23 and that's what will be presented to the jury.

24 MR. JEPERTINGER: That's correct, Your Honor.

25 THE COURT: All right. And at this point it

1 doesn't have a marking so you hadn't prepared it, okay.

2 What other matters do we have?

3 (WHEREUPON, State Exhibit No. 3 was admitted into
4 evidence.)

5 MS. WINGARD: Judge.

6 MR. JEPERTINGER: There are some photographs I
7 understand.

8 MS. WINGARD: Yes. We've got the photographs, and
9 I will hand up the ones that they have given me they want
10 to use. We strenuously object to the photographs of the
11 autopsy, the child's head after surgery, and none of these
12 have been marked so...

13 MR. JEPERTINGER: Well, let's mark them if we
14 could.

15 THE COURT: Counsel, the latest case from the State
16 Supreme Court on autopsy photographs is State versus
17 Holder and I'm going to follow State versus Holder without
18 deviation. And it works like this. It is an analysis of
19 the autopsy photographs from the standpoint of nexus to
20 relevant testimony as is explicated. In the State versus
21 Holder in the current appeal, the pathologist Doctor
22 Michael Eugene Ward testified in camera that the
23 photographs would help him in demonstrating the anatomic
24 relationships and the disruption of those anatomic
25 relationships. There may be some lack of knowledge of

1 internal anatomy among the jurors. Doctor Ward stated he
2 could explain the injuries to the jury without the
3 photographs but he was not sure if he could explain it to
4 their understanding. He also noted that this would be the
5 best way by not only demonstrating the anatomic
6 relationships but also showing the injuries. Therefore, I
7 am going to listen to the testimony of the pathologist and
8 I'm going to determine what the pathology says. If the
9 pathologist gives testimony that is consistent with Doctor
10 Ward's testimony, just as sure as God made little green
11 apples the autopsy photographs are coming in.

12 MR. JEPERTINGER: Yes, sir.

13 THE COURT: Because I'm gonna follow that rule.

14 MR. JEPERTINGER: Yes, sir.

15 THE COURT: And I know that case. I had it for
16 months in my office, and so I understand it. That's what
17 I'm gonna do so I would suggest to you lawyers -- you
18 don't have to follow my suggestions of course -- but I
19 would ask you to just take a look at what the writing is
20 from the State Supreme Court on Doctor Ward's testimony
21 and how the autopsy photographs in that case, which were a
22 little gruesome, but they came in because they did what?
23 They explain to the jury and demonstrated to the jury the
24 anatomic relationships and the disruption of those
25 anatomic relationships so that's how I'm going to rule.

1 Okay. All right, what's the next issue?

2 MS. WINGARD: We need to renew our Rule 5 and Brady
3 motions to make sure we have everything. The one thing
4 that we don't have is the DSS records.

5 MR. JEPERTINGER: There was nothing.

6 MS. WINGARD: You don't have any records, okay.
7 Verygood.

8 THE COURT: Well, Rule 5 has continuous efficacy,
9 no doubt about that. And that's understood, right, Mr.
10 Solicitor?

11 MR. JEPERTINGER: We have an open file policy.
12 Anything that we have here we've shown them the evidence
13 in the case. I — there was a stick that we're not — we
14 done intend to introduce. It was a branch that are stated
15 that was found on the outside of the trailer. I've made
16 them aware of it. It was just something they picked up.
17 We don't intend to do anything with it, Your Honor, but
18 other than that they've seen everything.

19 THE COURT: Okay. Anything further?

20 MS. WINGARD: Nothing, Your Honor.

21 THE COURT: Okay, all right. As I understand it,
22 before we take the nighttime lacuna we have the exhibits
23 have been reviewed by the parties and everything has been
24 reviewed for purposes of marking; is that correct?

25 MR. RICHARDSON: Yes, sir.

1 MR. JEPERTINGER: Yes.

2 THE COURT: All right. Make sure you do your work
3 in terms of this redaction over the crepuscular period.

4 MR. JEPERTINGER: Yes, sir.

5 THE COURT: And you, of course, Mr. Jepertinger,
6 understand without doubt the Latin word crepuscular.

7 MR. JEPERTINGER: Twilight, Your Honor, and I quite
8 enjoy it, Your Honor. We'll have -- Mr. Godbolt is the
9 technological wizard in our office so we've handed him
10 everything we've marked out for review.

11 THE COURT: And I can see from his physiognomy he's
12 delighted to stay late.

13 MR. JEPERTINGER: Absolutely. Absolutely.

14 THE COURT: Anything else we need to put on the
15 record?

16 MR. JEPERTINGER: No, sir. Thank you very much.

17 THE COURT: Have a good evening everyone.

18 (WHEREUPON, State Exhibit Nos. 6-A, 6-B through
19 17-A, 17-B, photos, were marked for identification only
20 and the proceedings were concluded for the day to be
21 reconvened on September 22, 2009.)

22 THE COURT: Before we swear the jury what issues
23 are presented in regard to the matter that I need to
24 discuss before I bring the jury out?

25 MR. RICHARDSON: Your Honor, we have a child

1 witness who will be the first witness to testify. He's
2 now eight years old and I believe we will need to cover
3 his competency to testify before we bring the jury out.

4 THE COURT: Well, listen carefully everybody.

5 Order: The issue posited in regard to the first
6 witness is competency. The witness is of tender years.
7 At common law there were numerous grounds which would
8 render a witness incompetent. Legislation has eliminated
9 many of these common law disqualifications resulting in a
10 liberalization of the rules regarding competency.

11 When the South Carolina Supreme Court adopted the
12 rules of evidence a major change in the law in many areas
13 occurred.

14 Competency of witnesses was one of the major issues
15 in regard to the adoption of the rules of evidence. It
16 was my privilege to serve as a guest lecturer at the law
17 school on at least four occasions concerning the rules of
18 evidence when they were first adopted.

19 Without doubt the adoption of Rule 601 of the South
20 Carolina Rules of Evidence resulted in a major change in
21 the law regarding competency of children. Under prior
22 South Carolina law, proof of competency for children under
23 the age of 14 was required. Unless the child was a victim
24 of a abuse or neglect as defined in the children's code,
25 who was testifying concerning abuse or neglect. South

1 Carolina Department of Social Services versus Doe, 292
2 S.C. 211, 355 S.C.2d 543. And South Carolina code
3 19-11-25. Under this rule, children are presumed to be
4 competent unless it is shown otherwise.

5 In a bifurcated fashion, one, the child is presumed
6 to be competent under Rule 601; and two, the witness is
7 presumed to be competent under Section 19-11-25. And it
8 is so ordered. Unless there is a challenge by the
9 defendant as to the presumption of competency I shall
10 proceed to give efficacy to Rule 601 and Section 19-11-25.
11 What saith the Defendant?

12 MS. WINGARD: Judge, this child is not the victim.
13 This child is a witness like any other witness so he --
14 there are no allegations that he has been abused or
15 neglected.

16 THE COURT: All right. In that regard I shall
17 proceed under Rule 601 which still gives a presumption of
18 competency to a child witness.

19 MS. WINGARD: Moreover, in the waiver hearing he
20 initially said that he did not understand what an oath is.
21 Now he was rehabilitated at that time, but I would like to
22 put on the record his understanding because he did say --
23 and I do have a transcript of that hearing. But I believe
24 they will agree that he initially said he did not
25 understand what an oath is and thereafter he was

1 rehabilitated and was allowed to testify.

2 THE COURT: Anything further?

3 MS. WINGARD: Nothing further. Moreover, Your
4 Honor, he has given various statements and contradictory
5 statements so I once again would like to have him under
6 oath and have him explain what he means when he says he's
7 going to tell the truth.

8 THE COURT: We shall proceed in this fashion.
9 First and foremost we're going to give the oath to the
10 jury which has not been done. Then I'm going to give them
11 an opening statement from the Court and then the lawyers
12 will give an opening statement. Once the witness is
13 presumed competent, which is the law, the witness will
14 take the stand and counsel will posit query to the witness
15 concerning the understanding of the oath. And I shall
16 observe the witness myself and in a personal fashion and
17 shall review the answers as queries are posited to the
18 witness; and if there is some difficulty in the matter I
19 will stop at that point, but I decline to hold a pretrial
20 ruling. And of course I am not bound under any
21 circumstances by the Family Court order.

22 MS. WINGARD: Yes.

23 THE COURT: Bring the jury out.

24 (WHEREUPON, the jury was returned to the courtroom
25 at approximately 9:38 a.m., and the following proceedings

1 commenced in open court.)

2 THE COURT: Mr. Bailiff, I don't want anyone living
3 coming in.

4 THE BAILIFF: All right, sir.

5 THE COURT: Good morning, jurors. Everybody
6 feeling well? Very good.. We now give to you the oath of
7 office, the most serious oath that you can take under our
8 law.

9 Ms. Clerk, you're recognized.

10 DEPUTY CLERK OF COURT: Please stand and raise your
11 right hand to be sworn.

12 (WHEREUPON, the jury was sworn at 9:39 a.m.)

13 DEPUTY CLERK OF COURT: Please be seated.

14 THE COURT: Mr. Foreman, members of the jury,
15 please turn and face me now. Please turn and face me.
16 The paper that I hold in my hand is called an indictment.
17 It's not evidence. It does not prove anything. It's the
18 charging paper that we use in the law. And in this
19 indictment the charge is homicide by child abuse. Now as
20 we proceed to try this case there are constitutional rules
21 that apply to this particular case. One, the defendant is
22 presumed to be innocent. That is called the presumption
23 of innocence rule. That is a constitutional principle in
24 the law. The presumption of innocence applies from the
25 moment of the defendant's arrest throughout the trial

1 proceeding and goes into your jury room and remains with
2 the defendant there unless and until you, the jury, remove
3 the presumption of innocence by evidence satisfying you of
4 his guilt beyond a reasonable doubt. The second
5 constitutional principle is the burden of proof rule.
6 Under our law and under the constitution the State must
7 prove the defendant guilty beyond a reasonable doubt.
8 That's the standard. I will define that term for you in
9 detail in my charge on the law at the end of the
10 testimony.

11 I love Latin and in the law today we use Latin in
12 its pure form to indicate doctrines and principles.
13 You're called a juror. That word comes from the Latin
14 word jurat. That word in Latin means an oath person, a
15 person who has taken a solemn oath to do what, to bring
16 your best talents and capabilities to the task so that a
17 true verdict will be reached in this case. An oath
18 person, a solemn oath. You've taken that oath and I know
19 you will fulfill that oath.

20 As we proceed to try this case the State goes first
21 because the State has the burden of proof, and in regard
22 to that the witnesses will be called forward, direct
23 examined, and then there will be cross-examination. The
24 final matter in terms of your position in this case is a
25 verdict. We will ask you to reach a verdict that speaks

1 the truth. The word verdict comes from Latin. The two
2 words in Latin, "verus," the word means truth. In the old
3 Latin the concept is pure truth. I love that word.
4 Verus, truth. The other word in Latin is dicto. It means
5 to speak. The two words are combined in Latin. The word
6 verdict is veredicto, to speak the truth. When the
7 foreman says on your behalf that you reached a unanimous
8 verdict, that verdict must speak the truth in this case.

9 Now in regard to your function it is most important
10 that you pay attention, close attention, to the witnesses
11 as they testify because you will take your common memory
12 and your common recollection of the witness' testimony
13 into the jury room in determining the truth of this
14 matter. The constitution mandates unanimity in a jury
15 verdict. All twelve must agree. All twelve must freely
16 and voluntarily agree. And Mr. Foreman, when you sign the
17 jury verdict on behalf of this jury it must be a unanimous
18 verdict. Do not, do not place your name on the jury
19 verdict unless it is absolutely unanimous. It must be
20 unanimous whatever it is. Unanimity is mandated.

21 Now there are two rules that govern your conduct.
22 One, you cannot talk about this case, you cannot discuss
23 this case, from this point forward until I give you the
24 case for decision. That means as you go to your jury room
25 on break from time to time you cannot, you must not, go in

1 there and start talking about the case. Now jurors, that
2 rule cannot be violated. That is an absolute rule
3 prohibiting the jury from beginning deliberation until all
4 of the testimony is in and the judge has charged the law.
5 Talk about weather, sports, politics, gossip, or whatever,
6 do not talk about this case under no circumstances. Now
7 all jurors are bound under your oath to follow that rule.
8 Please jurors, please follow that rule. The second rule
9 is this: You cannot as we try the case this week talk to
10 anyone else about the matter. You cannot go home and talk
11 to your spouse. You cannot talk to a friend. You cannot
12 talk to any confidant in regard to this case. You alone
13 must vote and decide this case, no outside information, no
14 outside source. Occasionally there will be a review of
15 the jury conduct, and at that time the judge has to hold a
16 hearing afterwards to see if there is any conduct or
17 misconduct. Jurors, help me try the case under the rules.
18 I'm trying to explain them to you in a straightforward
19 fashion so that you will understand as we proceed to try
20 this case.

21 Now your role is to decide the facts of the case.
22 My role is to decide the law. Our roles do not conflict
23 in the slightest. We simply blend our duties and
24 responsibilities together, the jury deciding the facts,
25 the judge deciding the law to reach a true, just, and

1 proper verdict. As we proceed to try this case, on
2 occasions I will rule on matters of evidence in your
3 presence. The lawyers will say, I object. I will say,
4 sustained, meaning I agree with that objection, or
5 overruled, meaning I disagree. As I make those rulings
6 please understand I'm simply performing my role as a judge
7 of the law. I do not have an opinion on the facts. I'm
8 not entitled to an opinion on the facts. I'm simply
9 deciding that particular issue and that particular point
10 of law. The lawyers are officers of the Court. They not
11 only have the right to bring matters to my attention.
12 They have the duty to bring matters to my attention. So.
13 please be comfortable with the lawyers as they bring
14 matters to the Court's attention by way of objection or
15 motion. Please recognize that.

16 On occasions I will send you to the jury room while
17 I take up these matters of law in your absence, which is
18 also required under certain circumstances so please
19 understand as we now begin the trial we operate under
20 these general rules of court. I look forward to trying
21 the case with you. I hope you feel welcome here. We will
22 certainly regard you as the guests of the Court. We'll
23 try to keep you comfortable. We'll try to take breaks
24 from time to time as necessary, and we probably will run
25 till about 5 or 5:30 this evening in regard to the actual

1 trial. Thank you for being here. Thank you for your good
2 attitude. Thank you for the time and talent you bring to
3 this responsibility.

4 Opening statement for the State.

5 MR. RICHARDSON: Thank you, Your Honor, if it
6 please the Court.

7 THE COURT: You're recognized, Counsel.

8 MR. RICHARDSON: Ms. Wingard, Mr. Bell, ladies and
9 gentlemen. There are a lot of people in this courtroom
10 today and a lot of very important people, people who have
11 a lot on the line, people who are missing a relative,
12 people who are concerned about a lot of things. There's
13 one person particularly absent here today and he's who
14 this case is really all about. He's a five year old boy,

15 Minor Child His mother is here. His older brother
16 here, who is now eight. His name is K.P. and you'll be
17 hearing from him shortly. But Child is not here.

18 That's because he is the victim of this case. And as you
19 heard by the charge homicide by child abuse, unpleasant
20 topic, he is the victim of the homicide. This case is, I
21 guess in the grand scheme of things about a life that
22 never really had a chance. He never got to grow up,
23 experience the world as all of us have. And we're here
24 today to seek a final resolution to this situation.

25 I'm gonna give you a preview now what the State is

1 gonna present as evidence to you from this witness stand.
2 The evidence that comes from this witness stand is all
3 that you can consider in this case, and I ask that you be
4 diligent and pay very close attention because it's a very
5 important case to everyone involved. This case began on
6 July 25th, 2008, a little over a year ago here in Florence
7 County. Debra Williams, who is Child s mother, she's
8 present in the courtroom as well, got up the morning of
9 the 25th and went to work, Holiday Inn Express here in
10 Florence, checked in a little after 8:00 in the morning.
11 When she left home that day her two little boys, Child
12 and K.P. were sound asleep in bed, just where she had
13 put them when they went to bed the night before. The
14 night before they'd stayed up late watching a movie. The
15 two of them, Ms. Williams, her boyfriend Willie Gerido,
15 and Willie's son, Jermaine Mayweathers, who is the
17 defendant. Those were the individuals who were in the
18 house, five of them.

19 In the wee hours of that morning around 2:00 in the
20 morning of the 25th Willie left with an individual to go
21 on a trip, a day trip, so he was the first to go. Later
22 on that morning Debra got ready for work. She checked on
23 her two sons. She left them in the care and custody of
24 Jermaine Mayweathers, the 15-year old son of Willie. She
25 goes to work, works a full day, checks out a little after

1 5, somewhere around 5:20, comes home completely oblivious
2 to what was going on when she got there. She arrived to
3 see two people there, not three that she left. She saw
4 K.P. and she saw Jermaine but no Child Of course
5 you can imagine as a parent the emotions and the questions
6 that run through your mind when you get home the child is
7 not there. What happened, where is he? He's at the
8 hospital. Jermaine had called 9-1-1. They had come and
9 got him, taken him to McLeod. So she rushes over to the
10 hospital. And there he is lying unresponsive,
11 unconscious, brain dead, had been rushed to surgery and he
12 lay there dying of a massive brain injury that covered a
13 large part of his entire brain.

14 More questions arise, what happened, was there some
15 kind of freak accident, what could have caused something
16 like this. Well, as the doctors began to do their work
17 they realized that this could not be the product of some
18 freak household accident. This is not the product of a
19 fall, you know, a typical child bumping the head, two
20 little boys playing together in the house. This was much
21 worse. This was a severe fatal brain injury; he had no
22 chance. Doctors realized this. They immediately involved
23 law enforcement. Members of the Sheriff's Office
24 responded. Investigator Renea Jenco, who is present, this
25 is the lead investigator. And she began to ask questions

1 and interview people to find out the dynamics of the home,
2 who was there, when could this have happened. Child s
3 body was sent to the Medical University of South Carolina.
4 An autopsy was performed, and it confirmed what the local
5 doctors here speculated. He died of a severe massive head
6 trauma. He also had bruises up and down both sides of his
7 body, large marks across his chest, marks down both sides
8 of the back of his legs, his arms. He was covered in
9 bruises. As investigators began to get the pieces of this
10 puzzle together they were able to exclude certain
11 individuals. Willie was out of town. Debra was at work.
12 Doctors told law enforcement this can't have happened a
13 long period ago, not even a day ago. As bad off as he was
14 he had to have been put in this condition a mere couple of
15 hours before 9-1-1 was called. He couldn't have
16 maintained consciousness. All he could do perhaps is moan
17 and vomit, which he did. So that left three people in
18 that house at the time this could have happened: Child
19 the victim; K.P. the seven year old brother; and the
20 defendant, Jermaine Mayweathers.

21 Now the questions that you will be charged with
22 answering here today is one specifically: How did
23 Child die and who did it? And I submit to you, by the
24 time you hear all the evidence, specifically from the
25 mouths of K.P. and his mother, and the doctors who are

1 gonna testify before you, you'll have no doubt who that
2 individual is that did it and what caused the death of

3 Minor Child

4 Now this case is a homicide by child abuse case
5 which carries with it certain elements as we say in the
6 legal world. We have to prove certain elements to you
7 that he actually committed this crime. Because my memory
8 is bad, I have those elements here that I'll just briefly
9 go over. When the case concludes the judge will charge you
10 on the law. He'll give you everything that you need, but
11 I want to give you just a little sample so you'll know
12 what to look for as we go. Homicide by child abuse
13 according to the South Carolina Code of Laws is when death
14 of a child under eleven is caused by committing child
15 abuse or neglect and the death of occurs under
16 circumstances manifesting extreme indifference to human
17 life. Now they got several terms in there, definition of
18 which child abuse and neglect, meaning act or omission by
19 a person which causes harm of a child's physical health or
20 welfare. Harm to a child's health or welfare occurs when
21 a person inflicts or allows to be inflicted upon the child
22 physical injury including injuries sustained as a result
23 of excessive corporal punishment.

24 Ladies and gentlemen of the jury, as we stand here
25 at the beginning of this whole process Jermaine

1 Mayweathers is considered innocent until proven guilty.
2 At this point in time there are six-and-a-half or so
3 billion people on this planet that are just as innocent as
4 he is in this case. And he is shrouded by this cloak of
5 innocence here at the very beginning. But as each person
6 testifies and these pieces begin to fall in place that
7 cloak is gonna hit the floor. And I submit to you that
8 you will find beyond a reasonable doubt that Jermaine
9 Mayweathers is guilty of killing this child under the
10 elements of homicide by child abuse.

11 I ask again that you pay very close attention. I
12 can see on your face that you understand the importance of
13 this case, and again, I appreciate your service here today
14 and I'll be putting witnesses up for your consideration
15 here shortly. Thank you.

16 THE COURT: Ms. Wingard, you're recognized.

17 MS. WINGARD: May it please the Court,
18 Mr. Richardson, Mr. Jeperfinger, Mr. Foreman, ladies and
19 gentlemen of the jury, it is my grave responsibility to be
20 representing Jermaine Mayweathers in this most serious of
21 charges. This is indeed a tragic situation, no doubt
22 about it. There is a five year old little boy who has
23 died. And the State indeed does have a heavy burden, an
24 obligation, to prove young Jermaine guilty beyond a
25 reasonable doubt. Jermaine was visiting his dad in

1 Florence when this tragedy occurred. He had been at his
2 dad's home for about a month. His dad Willie Gerido, who
3 is behind him, was living at that time with Ms. Williams
4 and her children. Ms. Williams had a number of children
5 and some were at the home at different times. When
6 Jermaine first came to the home the two little boys,
7 K.P. and Child were not there. He had been there
8 maybe three-and-a-half weeks or so. And a few days, four
9 or five days before this tragedy, the little boys came
10 back home.

11 Jermaine was put in a difficult situation. His
12 father left in the early morning hours to go on a road
13 trip. Now here Jermaine has come down to Florence to be
14 with his dad, lives in Virginia with his mom. He'd come
15 down to Florence to live with his dad. And his dad
16 leaves. And then about 8:00 Ms. Williams leaves so here
17 he is in a strange place by himself, 15 years old, with
18 these two little boys, 5 and 7 years old. And the
19 evidence will show that they were handfuls. The evidence
20 will show that Ms. Williams on occasion had to get the
21 belt. The evidence will show that they played and
22 roughhoused. And Thursday, the day before, late afternoon
23 before this on Friday, Child was roughhousing, fell off
24 the bed, and had a knot on his head. There are bunk beds
25 in the room. He had a knot on his head the day before.

1 Jermaine was the one who was there with him when these
2 horrible grievous injuries were discovered, and so he is
3 the one that the investigation focused on. He is the one
4 that law enforcement decided had done this. This child
5 was an accident and it is so tragic that we have lost this
6 child. It is so tragic that he is no longer here and he
7 will not have a full life.

8 But we have another child, and Jermaine is a child,
9 only 15 when he was accused of this. We have another
10 child whose life may well be ended. I know that this is a
11 heavy, heavy burden that you have. You have the heaviest
12 burden of all in this courtroom, you, the collective jury,
13 because the truth is what you say it is. The truth is as
14 you find it and what you determine it to be. And you're
15 going to hear some inconsistencies in the testimony.
16 You're gonna hear that K.P. gave different stories.
17 You're gonna hear that K.P. initially said Jermaine
18 didn't do anything; that he was afraid of his mother. And
19 the more people talk to him, the more his story changed.

20 Jermaine, his family, Mr. Bell and I appreciate the
21 entire attention that you give to this case, and all we
22 ask is that at the end of the day when you've heard the
23 evidence that comes from the witness stand that you return
24 a verdict that speaks the truth.

25 MR. RICHARDSON: The State would call K.P.

SW K.P. - DIRECT

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DEPUTY CLERK OF COURT: If you would place your
left hand on the Bible, raise your right hand.

WHEREUPON,

K.P.

having been duly sworn by the Deputy Clerk of Court,
testified as follows:

DEPUTY CLERK OF COURT: Thank you. Please be
seated and state your name for the record.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q What's your name?

A K.P.

Q All right.

THE COURT: K.P. you've got to speak a little
louder now. Speak right into the mic. Right into the mic
there. And speak up loud, speak up loud please for me,
okay. Speak up loud.

BY MR. RICHARDSON:

Q Say your name again for us.

A K.P.

Q Good, good. How old are you, K.P. ?

A Eight.

Q All right. What's your birthday?

A April 21st.

SW - K.P. - DIRECT

- 1 Q Okay. So last year you were seven?
- 2 A Yes, sir.
- 3 Q Okay. What grade are you in in school?
- 4 A Second.
- 5 Q All right. And where do you go to school?
- 6 A Lake City.
- 7 Q In Lake City? All right. Who do you live with now?
- 8 A Mymomma.
- 9 Q Okay. Who else lives in the house with you?
- 10 A My two sisters.
- 11 Q Okay. So it's four of you in there?
- 12 A (Shakes head.)
- 13 Q Okay. I want to ask you a question, K.P. What
- 14 color is this sheet of paper?
- 15 A White.
- 16 Q Okay. If I told you it was black would that be the
- 17 truth or a lie?
- 18 A Lie.
- 19 Q Okay. Because it's white, right?
- 20 A (Shakes head.)
- 21 Q Okay. Is it good or bad to tell a lie?
- 22 A Bad.
- 23 Q Okay. What happens to you when you tell a lie?
- 24 A You in trouble.
- 25 Q Okay. So it's' important to tell the truth, right?

SW - K.P. - DIRECT

1 A Yes, sir.

2 Q Okay. And is that what you're gonna do for us here
3 today is tell the truth?

4 A Yes.

5 Q All right.

6 MR. RICHARDSON: Your Honor, I'd offer Mr. K.P.
7 as a competent witness to continue.

8 THE COURT: We will proceed under Rule 601 subject
9 to cross-examination. Proceed.

10 MR. RICHARDSON: Thank you, Your Honor.

11 BY MR. RICHARDSON:

12 Q K.P. do you remember back last year to the day where
13 your brother got hurt?

14 A Yes.

15 THE COURT: Keep talking loud now. Speak up.
16 Speakup.

17 MR. RICHARDSON: Keep your mouth on that
18 microphone.

19 BY MR. RICHARDSON:

20 Q Okay. Back on that day your brother got hurt do you
21 remember who all was in the house when you got up that
22 day?

23 A Yes.

24 Q Who was in there?

25 A Me and Jermaine and my brother.

SW - K.P. -DIRECT

1 Q Okay, so it was the three of you? Okay. So your mom
2 wasn't home?

3 A No.

4 Q And Willie wasn't home?

5 A No.

6 Q You call him Peanut, right?

7 A Yes.

8 Q Okay. So Peanut wasn't there either?

9 A No.

10 Q So it was just you and Child and Jermaine?

11 A Yes.

12 THE COURT: Counsel, jurors, on the back row over
13 there if you cannot hear now just raise your hand quickly
14 because I want to make sure everybody hears. Just raise
15 your hand.

16 Now K.P. speak up for me. Talk loud, okay? Talk
17 loud.

18 BY MR. RICHARDSON:

19 Q All right, K.P. when you got up that day, the day
20 that your brother got hurt, how -- was your brother okay
21 that morning?

22 A Yes.

23 MS. WINGARD: Judge, I'm gonna object. He is
24 clearly leading and I know you can give some leeway with
25 children but he is clearly leading.

SW K.P. - DIRECT

1 THE COURT: The rule definitely allows leading
2 query in regard to a child of tender age, and I simply
3 enforce the precedent extant in regard to a child witness
4 and leading is allowed so I'm going to apply that rule.

5 MS. WINGARD: And Judge, I would like my objection
6 to continue so I don't have to jump up at every question.

7 THE COURT: The objection is, one, overruled and
8 the objection is continuous. And specifically for the
9 record, absolutely without doubt the law allows leading
10 questions in regard to the direct examination of a child
11 witness. Proceed.

12 MR. RICHARDSON: Thank you, Your Honor.

13 BY MR. RICHARDSON:

14 Q So K.P. you said that morning that Child felt all
15 right?

16 A Yes.

17 Q All right. Do you remember what y'all did that day?

18 A Yeah.

19 Q What did y'all do?

20 A I played around and had - Jermaine had cook some
21 breakfast.

22 Q So you played around and Jermaine made you some
23 breakfast?

24 A Yeah.

25 Q Okay. After you had breakfast what did you do?

SW - K.P. - DIRECT

- 1 A We went in the room.
- 2 Q Okay. What did you do when you got in the room?
- 3 A Watch TV.
- 4 Q Okay. Were y'all watching TV the whole day or did
- 5 y'all play any at all?
- 6 A No.
- 7 Q Okay. Did you go outside any?
- 8 A No.
- 9 Q Okay. So you stayed inside the house the whole day?
- 10 A Yeah.
- 11 Q All right. At any time that day did anybody else come
- 12 in the house or was it just you, Jermaine, and Child ?
- 13 A Yes.
- 14 Q Somebody else came?
- 15 A Yes.
- 16 Q Who came to the house?
- 17 A Our next door neighbor.
- 18 Q Okay. So that was -- was that later on in the day?
- 19 A Yes.
- 20 Q All right. Before Child got hurt did anybody else
- 21 come in the house?
- 22 A No.
- 23 Q Okay. Who was in the house when Child got hurt?
- 24 A Me and Jermaine.
- 25 Q Okay. So do you remember where you were when Child

SW - K.P. - DIRECT

- 1 got hurt?
- 2 A Yes.
- 3 Q Where were you?
- 4 A In the room.
- 5 Q Okay.
- 6 A By the door.
- 7 Q By the door?
- 8 A (Shakes head.)
- 9 Q Okay. Were you inside the room or outside the room?
- 10 A Outside.
- 11 Q Okay. And was this a bedroom that you were outside of?
- 12 A Yes.
- 13 Q All right. Could you see in the room?
- 14 A Yeah.
- 15 Q All right. How could you see in there?
- 16 A By a little crack.
- 17 Q There was a crack?
- 18 A In the door.
- 19 Q A crack in the door?
- 20 A (Shakes head.)
- 21 Q Okay. What did you see going on in that room?
- 22 A Beating him and bamming.
- 23 Q Who was beating and bamming?
- 24 A Our brother.
- 25 Q Okay. Where was Jermaine?

SW - K.P. - DIRECT

1 A In the room with him.

2 Q Okay. What was Jermaine doing?

3 A Beating him.

4 Q What was he beating him with?

5 A The belt.

6 Q Okay. Hang on one second. I want to show you
7 something, okay.

8 MR. RICHARDSON: Can I have this marked for I.D.
9 purposes.

10 THE COURT: I.D. only at this time. Previous
11 marking brings it to 18. 18 I.D., Counsel.

12 (WHEREUPON, State Exhibit No. 18 was marked for
13 identification only.)

14 BY MR. RICHARDSON:

15 Q K.P. , I want to show you this. Do you recognize
16 that?

17 A Yes.

18 Q What is it?

19 A The belt.

20 Q Which belt is it?

21 A The belt that he beat him with.

22 Q All right. And how do you know that this is the belt?

23 A 'Cause it had holes in it.

24 Q Okay. So this is what it looked like?

25 A Yes.

SW - K.P. - DIRECT

- 1 Q Okay. What did he do after he hit him with the belt?
- 2 A He had called the ambulance.
- 3 Q Okay. Well, you said in the room that you heard
- 4 beating and bamming. Was that just the belt?
- 5 A No, the walls.
- 6 Q You heard---
- 7 A Bamming on the walls.
- 8 Q You heard bamming on the walls? Okay. So when -- so
- 9 who came out of the room then?
- 10 A Jermaine.
- 11 Q Okay. Was your brother still in there?
- 12 A Yeah.
- 13 Q What was he doing?
- 14 A Laying down on the floor.
- 15 Q All right. Did you try to talk to him?
- 16 A Yes.
- 17 Q Did he say anything back to you?
- 18 A No.
- 19 Q All right. He just wouldn't answer you?
- 20 A No.
- 21 Q Okay. Was he awake?
- 22 A No.
- 23 Q All right. When Jermaine came out of the room what did
- 24 he do then?
- 25 A He had called the ambulance.

SW - K.P. - DIRECT

- 1 Q All right. And where did you stay when the ambulance
2 was called?
- 3 A In the room.
- 4 Q With your brother?
- 5 A Yes.
- 6 Q Okay. Did your brother seem like he was sick?
- 7 A Yeah.
- 8 Q How could you tell that?
- 9 A He had throwed up.
- 10 Q He'd thrown up?
- 11 A Yes.
- 12 Q All right. So were you there when the ambulance got
13 there?
- 14 A Yeah.
- 15 Q All right. And they -- did they take your brother
16 away?
- 17 A Yes.
- 18 Q Okay. And what did you do after that?
- 19 A Sat down in the living room.
- 20 Q Okay. And you waited on your mom to get home?
- 21 A Yes.
- 22 Q Okay. And was Jermaine there with you?
- 23 A Yeah.
- 24 Q When your mom got home did you go to the hospital?
- 25 A Yes.

SW - K.P. - CROSS

1 Q Okay. Hang on one second for me. K.P. I want you
2 to answer any questions that Ms. Wingard has for you,
3 okay.

4 **CROSS-EXAMINATION**

5 BY MS. WINGARD:

6 Q Hi, K.P. how are you?

7 A Fine.

8 Q Okay. Do you remember talking to a lot of people about
9 what happened to your brother?

10 A Yes.

11 Q And the first person that you talked to was the day
12 after he got hurt. Do you remember that?

13 A Yes.

14 Q Do you remember that was a lady named Ms. Debbie?

15 A Yes.

16 Q And do you remember what you told her?

17 A No, ma'am.

18 Q Can you remember that you told her that Child bumped
19 his head on the bunk bed and that's how he got hurt?

20 A Yeah.

21 Q Remember telling her that?

22 A Yeah.

23 Q And do you remember also telling her that Jermaine had
24 never given Child a spanking? Do you remember that?

25 A Yeah.

SW - K.P. - CROSS

1 Q And remember she asked you if you were afraid of
2 Jermaine and you told her no. Is that the truth? You
3 weren't afraid of Jermaine?

4 A No.

5 Q You weren't afraid of him?

6 A No.

7 Q And you remember that on that afternoon when Child
8 got hurt you said that you and Child were fighting. Do
9 you remember that?

10 A Yes.

11 Q Were y'all fighting on that afternoon?

12 A No.

13 Q You weren't? So you told Ms. Debbie a story?

14 A Yeah.

15 Q Okay. So what were you doing on that afternoon?

16 A Nothing.

17 Q Nothing? You were fighting, weren't you, and you were
18 -- you also told Ms. Debbie that you were afraid your
19 mother was gonna get mad at you; didn't you?

20 A Yes.

21 Q Because your mother gets mad at you when you and
22 Child was to fight; isn't that right?

23 A Yes.

24 Q And your momma takes a belt after you too; doesn't she?

25 A Yes.

SW - K.P. - CROSS

- 1 Q And she used to take a belt after Child too?
- 2 A Yes.
- 3 Q And in fact, just a day or so before Child got sick
- 4 he'd gotten beaten and you'd gotten a beaten too; hadn't
- 5 you?
- 6 A Yes.
- 7 Q And your momma gave you that beating?
- 8 A Yeah.
- 9 Q And that's because y'all were roughhousing?
- 10 A Yeah.
- 11 Q And she told you not to roughhouse; isn't that right?
- 12 A Yeah.
- 13 Q Is this the belt your momma used too?
- 14 A No.
- 15 Q She used a different one?
- 16 A Yes.
- 17 Q But she used a belt on you?
- 18 A Yeah.
- 19 Q And you talked to Ms. Debbie again and you told her
- 20 that you were afraid of your momma; is that right?
- 21 A Yeah.
- 22 Q Are you still afraid of your momma?
- 23 A No.
- 24 Q Do you remember saying that, not to Ms. Debbie but
- 25 later on when you were testifying, do you remember saying

SW

K.P.

- CROSS

1 that on that afternoon y'all were playing and Jermaine was
2 playing and was swinging Child around, do you remember
3 saying that?

4 A Yes.

5 Q And that y'all played like that a lot, that y'all had
6 played like that before; is that right?

7 A Yes.

8 Q And do you remember also saying that on that day
9 Jermaine was not angry on the day that Child got hurt?
10 Jermaine wasn't angry on that day?

11 A No.

12 Q You remember saying he wasn't angry?

13 A No.

14 Q Was he angry?

15 A (No response.)

16 Q No?

17 A No.

18 Q He wasn't angry. And you also remember saying that
19 Child hit his head twice on the bunk beds; do you
20 remember that?

21 A Yes.

22 Q Did he hit his head twice on the bunk beds?

23 A No.

24 Q So you just said he hit his head twice on the bunk
25 beds? That wasn't the truth either?

SW - K.P. - CROSS

1 A No.

2 Q Okay. When Child woke up that morning, the morning
3 that he ended up being taken to the hospital, do you
4 remember that he wasn't feeling good when he woke up that
5 morning?

6 A Yes.

7 Q So if you said earlier that he was okay when he woke up
8 that morning you were mistaken 'cause you've told us in
9 the past that when he woke up that morning he wasn't
10 feeling good. Is that true?

11 A Yes.

12 Q Okay.

13 MS. WINGARD: Indulge me a moment, Your Honor.

14 THE COURT: All right.

15 BY MS. WINGARD:

16 Q Did you get separated, you and Child get separated
17 when y'all were fighting the afternoon that he went to the
18 hospital?

19 A Yes.

20 Q And he went to one room; is that right?

21 A Yes.

22 Q Okay. Now in the past you had told us about there
23 being a crack in the door and your seeing everything that
24 went on, had you?

25 A No.

SW - D. WILLIAMS - DIRECT

1 Q Okay. 'Cause y'all were put in separate rooms because
2 y'all had been fighting; is that right?

3 A Yes.

4 Q Thank you so much, K.P.

5 THE COURT: Redirect.

6 MR. RICHARDSON: None, Your Honor.

7 THE COURT: All right. You may step down, K.P.

8 MR. JEPERTINGER: Your Honor, may this witness be
9 excused to go back to school?

10 THE COURT: Yes. Next witness please.

11 MR. JEPERTINGER: The State would call Debra
12 Williams to the stand, Your Honor.

13 DEPUTY CLERK OF COURT: Place your left hand on the
14 Bible raise your right hand sworn.
15 WHEREUPON,

16 **DEBRA WILLIAMS,**
17 having been duly sworn by the Deputy Clerk of Court,
18 testified as follows:

19 THE DEPUTY CLERK OF COURT: Be seated and state
20 your full name for the record.

21 THE WITNESS: My name is Debra Williams.

22 **DIRECT EXAMINATION**

23 BY MR. JEPERTINGER:

24 Q Ms. Williams, how old are you?

25 A I'm 28.

SW - D. WILLIAMS - DIRECT

- 1 Q And how many children do you have, ma'am?
- 2 A Say again.
- 3 Q How many -- how many children do you have?
- 4 A Four.
- 5 Q Okay. And the names of your children please.
- 6 A Dayja (ph) Williams, Sheaquia (ph) Burgess, K.P.
- 7 and Minor Child .
- 8 Q Okay. And the two first names that you mentioned,
- 9 Dayja, and the other little girl --
- 10 A Sheaquia.
- 11 Q ---they're both girls, correct?
- 12 A Yes.
- 13 Q And of course we met K.P. and we know about Child
- 14 Child was your youngest child?
- 15 A Yes, that's my big boy.
- 16 Q Okay. Where do you live now, ma'am?
- 17 A I currently live in a Lake City mobile home.
- 18 Q All right. And with whom do you live?
- 19 A Myself, my two girls, and my son.
- 20 Q Okay. And how long have you lived there, ma'am?
- 21 A Ever since April of this year.
- 22 Q And prior to that where did you live?
- 23 A In Florence.
- 24 Q Did you ever live in Olanta?
- 25 A Oh, yes, with my stepmother and my father.

SW - D. WILLIAMS - DIRECT

1 Q And when did you move to Olanta, ma'am?

2 A Right after everything happened.

3 Q Okay, in July. So you lived there from July to April;
4 is that fair to say?

5 A Yes.

6 Q And then you found the home in Lake City?

7 A Yes.

8 Q Now this home that you lived with back when all this
9 happened, was that on Gilbert Drive?

10 A Yes, sir.

11 Q And I'm gonna show you State's Exhibit 1 in evidence.

12 MS. WINGARD: Without objection.

13 THE COURT: We had already introduced that as I
14 understand it.

15 BY MR. JEPERTINGER:

16 Q I'm just gonna hold it up here, and I'm going to keep
17 my voice up and you keep your voice up. Is -- what was
18 the name of the mobile home park that you lived in? Was
19 it Smith and Smith?

20 A Smith and Smith.

21 Q Okay. And I'm not trying to confuse you here. Was
22 that off Gilbert Drive?

23 A Yes, right off of Gilbert Drive.

24 Q And Gilbert Drive, does that hit Freedom Boulevard
25 here?

SW - D. WILLIAMS - DIRECT

- 1 A Yes.
- 2 Q Okay. So if we go further towards that back wall we'd
- 3 be going towards Pamplico Highway, correct?
- 4 A (No response.)
- 5 Q And Carolinas Hospital?
- 6 A Yeah, Carolinas Hospital System, yeah.
- 7 Q And ultimately this is kind of a new cut-through to —
- 8 A Yeah.
- 9 Q —the 76, correct?
- 10 A Yes.
- 11 Q Okay. And of course this is in Florence County, is it
- 12 not?
- 13 A Yes.
- 14 Q All right. And you lived in —
- 15 A The mobile home lot 43.
- 16 Q Three. And I believe that was the ninth one there you
- 17 told me, ma'am?
- 18 A Yes.
- 19 Q Okay. And all I'm gonna ask you to do on this ninth
- 20 one, and if you could just circle this ninth one here,
- 21 Ma'am, so the jury can see this later.
- 22 A (Complies.)
- 23 Q All right. And that was lot 43?
- 24 A Yes.
- 25 Q Right. Now how long had you lived at lot 43?

SW - D. WILLIAMS - DIRECT

1 A I was there a little over two months. We was there
2 ever since June.

3 Q Okay. So, and that we're talking 2008, correct?

4 A Yes.

5 Q Okay. And who did you live with at that mobile home,
6 ma'am?

7 A Me and my four children and Willie Gerido.

8 Q Now during that summer --

9 A Uh-huh.

10 Q --okay, did the girls stay with you all summer or did
11 they go visit their father?

12 A They-- my daughters went and visit their grandparents
13 off and on.

14 Q Okay. And where did they -- where did they live?

15 A They lived---

16 Q Grandparents?

17 A My oldest daughter and her grandparents lived in
18 Olanta. And my youngest daughter, her grandparents lived
19 at Lake City.

20 Q Okay, all right. And let me just refer to you to
21 State's Exhibit Number 2, which is on the flip side of
22 this which is in evidence.

23 THE COURT: Already in evidence.

24 BY MR. JEPERTINGER:

25 Q All right. This is a drawing of the inside of that

SWT-D. WILLIAMS - DIRECT

1 mobile home. Is it not a rough drawing?

2 A Yes.

3 Q Okay.

4 MR. JEPERTINGER: And may she step down, Your
5 Honor?

6 THE COURT: With one caveat, Counsel.

7 Ms. Williams, you have to speak up now. When you
8 stand before the jury the court reporter must take down
9 everything you say so please keep your voice up, keep your
10 voice up.

11 THE WITNESS: Yes.

12 THE COURT: Keep your voice up.

13 BY MR. JEPERTINGER:

14 Q I'm just going to set up the tripod. You can come
15 down, ma'am.

16 A (Witness complies.)

17 THE COURT: Counsel, let her stand on the side
18 facing the court reporter.

19 MR. JEPERTINGER: Yes, absolutely.

20 BY MR. JEPERTINGER:

21 Q If you can come just stand over here and direct your
22 voice and keep it up because Ms. Ray has to get all your
23 words, okay? Okay, can you show everybody where everyone
24 stayed in the mobile home?

25 A Sure. This bedroom right here would be my daughter's