

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 25 2018

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HEYWARD LEGREE MARTIN, **III**,

APPELLANT

APPELLATE CASE NO 2017-000559

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3713

ATTORNEY FOR APPELLANT

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit
Post Office Drawer 3368
Aiken, SC 29802
(803) 642-1557

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED FEBRUARY 14-16, 2017	1
<u>JACKSON V. DENNO</u> HEARING	7
TESTIMONY	
KRISTOPHER EVENSEN	
Direct examination by Mr. Grimes	7
OPENING STATEMENT BY MS. HAMMACK	29
OPENING STATEMENT BY MR. KATONAK	32
TESTIMONY	
STEVEN TYLER HILL	
Direct examination by Ms. Hammack	66
Cross-examination by Mr. Katonak	53
KRISTOPHER EVENSEN	
Direct examination by Mr. Grimes	62
Cross-examination by Mr. Katonak	81
LYLE EUGENE FISHER, JR.	
Direct examination by Ms. Hammack	86
Cross-examination by Mr. Katonak	117
Redirect examination by Ms. Hammack	122
BRANDEN GRIFFIS	
Direct examination by Ms. Hammack	123
Examination by Mr. Katonak (In-camera)	129
MATTHEW GASKINS	
Examination by Mr. Katonak	134
HEYWARD MARTIN, III (IN-CAMERA)	
Examination by Mr. Katonak	146
Examination by Mr. Grimes	150

JASON T. (IN-CAMERA)	
Examination by Mr. Katonak.....	151
Examination by Mr. Grimes	155
MOTION FOR DIRECTED VERDICT.....	157
MELLISA MARTIN	
Direct examination by Mr. Katonak	165
KAITLYNN T.	
Direct examination by Mr. Katonak	177
Cross-examination by Ms. Hammack.....	184
JASON T.	
Direct examination by Mr. Katonak	186
HEYWARD MARTIN, III	
Direct examination by Mr. Katonak	194
Cross-examination by Mr. Grimes.....	207
CLOSING ARGUMENT BY MR. KATONAK	227
CLOSING ARGUMENT BY MS. HAMMACK	242
VERDICT	275
MOTION FOR A NEW TRIAL	281
SENTENCING	295
STATE'S EXHIBIT NO. 2 (PHOTO-TEXTS).....	298
STATE'S EXHIBIT NO. 3 (PHOTO-TEXTS).....	299
STATE'S EXHIBIT NO. 4 (PHOTO-TEXTS).....	300
STATE'S EXHIBIT NO. 5 (PHOTO-TEXTS).....	301
STATE'S EXHIBIT NO. 6 (PHOTO OF FACE FROM FRONT).....	302
STATE'S EXHIBIT NO. 7 (PHOTO OF FACE FROM SIDE)	303
STATE'S EXHIBIT NO. 8 (PHOTO OF NECK FROM SIDE).....	304
STATE'S EXHIBIT NO. 9 (PHOTO OF NECK FROM FRONT)	305

STATE'S EXHIBIT NO. 10 (PHOTO OF BACK FROM SIDE)	306
INDICTMENT AND SENTENCING SHEET	307
CERTIFICATE OF COUNSEL	310

THE FOLLOWING EXHIBIT IS ON FILE WITH THE COURT:

STATE'S EXHIBIT NO. 16 (DEFENDANT STATEMENT AUDIO- DVD)

State of South Carolina

Court of General Sessions

County of Aiken

State	)	
	)	
	)	Transcript of Record
v.	)	2015-GS-02-00895
	)	
Heyward L. Martin, III	)	
	)	
<u>Defendant.</u>	)	

February 14 - 16, 2017
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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

Ashley Hammack, Assist. Solicitor
Samuel Grimes, Assist. Solicitor
Attorney for the State

Brian Katonak, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

	I N D E X	
1	<u>WITNESS</u>	<u>PAGE</u>
2		
3	<u>KRISTOPHER EVENSON</u>	37
4	DIRECT EXAMINATION	37
5	BY MR. GRIMES	
6	<u>STEVEN TYLER HILL</u>	65
7	DIRECT EXAMINATION	66
8	BY MS. HAMMACK	
9	CROSS-EXAMINATION	83
10	BY MR. KATONAK	
11	<u>KRISTOPHER EVENSEN</u>	91
12	DIRECT EXAMINATION	92
13	BY MR. GRIMES	
14	DIRECT EXAMINATION	103
15	BY MR. GRIMES	
16	CROSS-EXAMINATION	111
17	BY MR. KATONAK	
18	<u>LYLE EUGENE FISHER, JR.</u>	116
19	DIRECT EXAMINATION	116
20	BY MS. HAMMACK	
21	CROSS-EXAMINATION	147
22	BY MR. KATONAK	
23	REDIRECT EXAMINATION	152
24	BY MS. HAMMACK	
25	<u>BRANDEN GRIFFIS</u>	153

1	DIRECT EXAMINATION	153
2	BY MS. HAMMACK	
3	IN-CAMERA EXAMINATION	159
4	BY MR. KATONAK	
5	<u>MATTHEW GASKINS</u>	164
6	IN-CAMERA EXAMINATION	164
7	BY MR. KATONAK	
8	<u>HEYWARD MARTIN, III</u>	173
9	IN-CAMERA EXAMINATION	176
10	BY MR. KATONAK	
11	IN-CAMERA EXAMINATION	180
12	BY MR. GRIMES	
13	Jason T.	181
14	IN-CAMERA EXAMINATION	181
15	BY MR. KATONAK	
16	IN-CAMERA EXAMINATION	185
17	BY MR. GRIMES	
18	<u>MELLISA MARTIN</u>	195
19	DIRECT EXAMINATION	195
20	BY MR. KATONAK	
21	Kaitlynn T.	207
22	DIRECT EXAMINATION	207
23	BY MR. KATONAK	
24	CROSS-EXAMINATION	214
25	BY MS. HAMMACK	

1	Jason T.	216
2	DIRECT EXAMINATION	216
3	BY MR. KATONAK	
4	<u>HEYWARD MARTIN, III</u>	224
5	DIRECT EXAMINATION	224
6	BY MR. KATONAK	
7	CROSS-EXAMINATION	237
8	BY MR. GRIMES	
9	Opening Statement by Ms. Hammack.....	59
10	Opening Statement by Mr. Katonak.....	62
11	Closing Argument by Mr. Katonak.....	257
12	Closing Argument by Ms. Hammack.....	272
13	Jury Charge.....	291
14	Verdict.....	305
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1

E X H I B I T S

2

NO.DESCRIPTIONID.EVD.

3

STATE'S

4

1

Photo - House

70

70

5

2

Photo - Texts

70

70

6

3

Photo - Texts

70

70

7

4

Photo - Texts

70

70

8

5

Photo - Texts

70

70

9

6

Photo - Face

70

70

10

7

Photo - Face

70

70

11

8

Photo - Neck

70

70

12

9

Photo - Neck

70

70

13

10

Photo - Back

70

70

14

11

Photo - Bedroom

70

70

15

12

Photo - Bed

70

70

16

13

Photo - Loveseat

70

70

17

14

Photo - Loveseat

70

70

18

15

Photo - Loveseat

70

70

19

16

Miranda Waiver

70

70

20

17

Photo - Fundus Normal

70

70

21

18

Photo - Victim Fundus

70

70

22

19

Photo - Victim Fundus

70

70

23

COURT'S

24

1

Miranda Warning

38

40

25

2

Voluntary Stmt.

43

44

1	3	DVD.- Interview	42	43
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 MR. GRIMES: The State has a Jackson v. Denno
2 motion in this case, and we'd call Investigator Kris
3 Evensen to testify.

4 THE COURT: Come around to be sworn, please.

5 KRISTOPHER EVENSON

6 being first duly sworn, testified as follows:

7 THE WITNESS: Yes, sir.

8 THE COURT: Good afternoon, sir.

9 DIRECT EXAMINATION

10 BY MR. GRIMES:

11 Q. Investigator Evensen, were you the investigator
12 on this case with Heyward Martin as the defendant?

13 A. Yes, sir.

14 Q. And in investigating that case -- well, what
15 was the incident date?

16 A. It was 6/10/2014.

17 Q. And on June 11th, 2014, did you meet with the
18 defendant in this case --

19 A. Yes, sir.

20 Q. -- Heyward Martin?

21 A. Yes, sir.

22 Q. Where did you meet with Heyward Martin at?

23 A. At his residence in Jackson, South Carolina.

24 Q. Okay. At the time you met with him, did -- had
25 you already been to the hospital in this case and

1 were familiar with the injuries that the child had
2 suffered?

3 A. Yes, sir.

4 Q. Okay. And had you discussed the doctors'
5 opinions of the case at the time you met with him?

6 A. Yes, sir.

7 Q. Okay. I believe you said you met with him at
8 his house. Was he there when you initially got
9 there?

10 A. No, sir.

11 Q. What were you at the house for?

12 A. I obtained a search warrant earlier in the day
13 for the residence and I was executing that search
14 warrant.

15 Q. Okay. And while you were there, did Mr. Martin
16 come to the house?

17 A. Yes, sir.

18 Q. And did he meet you and discuss this case with
19 you there?

20 A. Yes, sir.

21 (Court's Exhibit No. 1 marked for
22 identification.)

23 Q. I'm going to show you what's been marked as
24 Court's Exhibit 1. What is that form?

25 A. It's the form the Aiken County Sheriff's Office

1 uses to advise people their Miranda Rights.

2 Q. Y'all's standard form?

3 A. Yes, sir.

4 Q. Is that the form that you covered with Heyward
5 Martin on June 11th prior to interviewing him?

6 A. Yes, sir.

7 Q. Okay. And if you could, just briefly read the
8 rights on that form for us.

9 A. Before you ask [sic] any questions, you must
10 understand your rights. You have the right to
11 remain silent... Anything you say can and will be
12 used against you in a court of law. You have the
13 right to talk to an attorney for advice before we
14 ask any questions and to have him or her present
15 during questioning. If you cannot afford an
16 attorney, the Court will appoint an attorney to
17 represent you at no cost if you wish.

18 If you decide to answer questions now without
19 an attorney present, you will still have the right
20 to stop answering at any time. You also have the
21 right to stop answering until you have time to talk
22 to an attorney. There's a section that says I have
23 read this statement of my rights and I understand
24 what my rights are.

25 It continues: That I'm willing to make a

1 statement and answer questions. I do not want an
2 attorney at this time. I understand and know what I
3 am doing. No promises or threats have been made to
4 me and no pressure of coercion of any kind has been
5 used against me.

6 Q. All right. And are his initials next to each
7 of those rights on the page?

8 A. Yes, sir.

9 Q. And is his signature on the bottom of that
10 indicating he wished to waive those rights?

11 A. Actually two places he signed, sir.

12 MR. GRIMES: Okay. At this time the State
13 would move to introduce that as Court's Exhibit 1.

14 THE COURT: Any objection?

15 MR. KATONAK: No, sir.

16 (Court's Exhibit No. 1 admitted into evidence.)

17 BY MR. GRIMES:

18 Q. Before we move on, I just want to ask you, when
19 you met with Mr. Martin, you were at his house, was
20 he under arrest?

21 A. No, sir.

22 Q. Did you want to talk to him about what happened
23 to the child?

24 A. Yes, sir.

25 Q. When you left his house, was he under arrest?

1 A. No, sir.

2 Q. At any time while you spoke with him, was he in
3 handcuffs? Was he restrained in any way?

4 A. No, sir.

5 Q. Was he threatened in any way?

6 A. No, sir.

7 Q. Was he outnumbered or outforced in any way?

8 A. No, sir.

9 Q. Did he appear to be intoxicated in any way?

10 A. No, sir.

11 Q. Did he appear to understand the questions you
12 asked him?

13 A. Yes, sir.

14 Q. Did he appear to understand those rights?

15 A. Yes, sir.

16 Q. Did he appear to have any type of deficiency
17 that was preventing him from making free decisions?

18 A. No, sir.

19 Q. Did he at any time ask for an attorney to help
20 him?

21 A. No, sir.

22 Q. Did he at any time tell you that he wanted to
23 stop answering your questions?

24 A. No, sir.

25 Q. All right. Did you -- did you audio record

1 your interview with him?

2 A. Yes, sir.

3 (Court's Exhibit No. 3 marked for
4 identification.)

5 Q. Okay. And I have Court's Exhibit 3. Do you
6 know what that is?

7 A. Yes, sir. It's a CD-R containing my interview
8 with Mr. Martin.

9 Q. I think there are two files on there. Did you
10 stop that recording at any point?

11 A. Yes, sir.

12 Q. And what did you do when you stopped the
13 recording?

14 A. I went outside to my vehicle.

15 Q. To get...

16 A. To retrieve a doll we use sometimes to
17 demonstrate, in similar cases, positions and so
18 forth where children or people would be located, how
19 they were positioned, and so forth.

20 Q. Okay. And when you came back inside with the
21 doll, did you start the recording again?

22 A. Yes, sir.

23 Q. Is that why there are two files on there?

24 A. Yes, sir.

25 MR. GRIMES: Your Honor, for the Court's

1 information, and we've discussed this with
2 Mr. Katonak, there are two items on that recording
3 that have been removed; one is a reference for -- to
4 a polygraph and the other is a reference or an
5 introduction to the DSS agent that showed up on the
6 scene.

7 We removed those from this in agreement with
8 Mr. Katonak. I don't think he requested that we
9 remove anything else from the audio recording. But
10 we'd move to introduce that as Court's Exhibit 3.

11 THE COURT: Is that the redacted copy?

12 MR. GRIMES: That is the redacted copy. And
13 that's just what the redactions are. I think it's
14 agreed to by both parties, from what I understand.

15 MR. KATONAK: Your Honor, that's agreed to by
16 us.

17 THE COURT: Thank you.

18 (Court's Exhibit No. 3 admitted into evidence.)

19 (Court's Exhibit No. 2 marked for
20 identification.)

21 BY MR. GRIMES:

22 Q. And I'm going to show you what's been marked as
23 Court's Exhibit 2. What is the that document -- or
24 what is the form first?

25 A. It's the form the Aiken County Sheriff's Office

1 uses to collect voluntary written statements from
2 people.

3 Q. And whose statement is on that form?

4 A. Mr. Heyward Martin, III.

5 Q. And did he fill that form out while you were
6 interviewing him on June 11th?

7 A. Yes, sir.

8 Q. This form was filled out after you had provided
9 him with his Miranda Rights?

10 A. Yes, sir.

11 Q. Okay. And I talked about the Miranda Rights a
12 couple of times already. But just to reiterate, he
13 was never under arrest or detained while you were
14 interviewing him; is that correct?

15 A. No, sir.

16 Q. But you provided him his Miranda Rights anyway?

17 A. Yes, sir.

18 MR. GRIMES: And I don't recall, but I think I
19 moved to introduce this as Court's Exhibit 2. If
20 not, I'll --

21 THE COURT: Any objection?

22 MR. KATONAK: No, sir.

23 (Court's Exhibit No. 2 admitted into evidence.)

24 MR. GRIMES: Your Honor, would you like us to
25 play Court's Exhibit 3? It's about 25 minutes. I'm

1 not sure that there is any contest that he was
2 coerced during the interview.

3 MR. KATONAK: Judge, we're not contesting it,
4 no.

5 THE COURT: No need to then.

6 MR. GRIMES: That's all from the State, Judge.

7 MR. KATONAK: In regards to this motion, we
8 don't have anything.

9 THE COURT: All right. You may step down.
10 Any additional witnesses?

11 MR. GRIMES: None, Your Honor.

12 THE COURT: All right. I find under Miranda --
13 strike that. I find under Jackson vs. Denno that
14 Miranda Rights were given and, as stipulated by
15 defense counsel, there was no coercion. So,
16 obviously, the statement will be allowed to be
17 admitted into evidence and the jury can give
18 whatever weight, if any, it deserves. And I'll give
19 the regular statement charge, voluntariness, et
20 cetera, at the conclusion of the trial.

21 Anything else?

22 MR. GRIMES: Your Honor, we just have a couple
23 of matters that I just wanted to address today
24 before we get to opening statements tomorrow.

25 THE COURT: Certainly.

1 MR. GRIMES: One, and we've kind of been
2 dealing with this along -- this case was continued
3 so we could get some DSS records and also so that
4 defense counsel would have a chance to talk to the
5 DMH doctor who, at some point, interviewed the
6 child's mother.

7 The child's mother is not alleged, even by the
8 defendant, to have been present in the home when
9 these injuries were sustained by the child, at least
10 that's the State's case. I think the doctor's
11 testimony is going to support a limited timeframe
12 that these injuries could have taken place which
13 would exclude the victim's mom, Melanie Tucker, from
14 even being around when they happened.

15 But what I would move in limine is to limit
16 discussion by the defense, particularly in opening,
17 of evidence of third-party guilt. I think, based on
18 the continuance, based on the motions, and based on
19 the discovery that happened in the last month or so,
20 it appears that the Defense intends to kind of put
21 this on the mother, that she may have caused these
22 injuries to the child.

23 The mother was not present in the home when the
24 child's injuries were sustained. And there's a
25 burden that's required before evidence of

1 third-party guilt can be admitted in the trial. I
2 would ask that if the Defense intends to introduce
3 evidence of third-party guilt or make reference to
4 inferences of third-party guilt, that that evidence
5 be proffered prior to its admission before the jury
6 and that they be limited from discussing that in
7 opening remarks until they've met that burden that's
8 required.

9 And, additionally, the doctor from the
10 department of mental health that -- I believe he's
11 subpoenaed, I think he's on their witness list --
12 contacted our office. He had some concerns about
13 whether he could legally testify to the information
14 that he got from Melanie Tucker. Melanie Tucker was
15 interviewed --

16 THE COURT: The victim's mom?

17 MR. GRIMES: The victim's mom. And she was
18 interviewed by him for her criminal case back in
19 2012. Actually, I think I prosecuted her. I've
20 prosecuted so many cases since then that I don't
21 really remember anything about it. But he indicated
22 to our office, Ms. Hammack and I, that there would
23 be a law that would prevent him from testifying to
24 information that she told him, other than to deal
25 with legal issues regarding her competency.

1 We didn't attempt to resolve that issue for him
2 in any way and, as far as I know, he still plans on
3 coming here. But we may have to deal with that
4 prior to him testifying. So I would ask that
5 because we're not, at this point, certain that any
6 of that type of evidence is going to come into this
7 trial; I would ask that we limit references to that
8 testimony until its proffered and deemed to be
9 admissible in this trial, and particularly limit the
10 defense counsel from mentioning it in an opening
11 statement.

12 THE COURT: I'm not sure what he's concerned
13 about being precluded from testifying about.

14 MR. GRIMES: Well, he interviewed her pursuant
15 to a court order. She was required to go
16 participate with a DMH evaluation. And, apparently,
17 pursuant to the statute that Ms. Hammack and I
18 were --

19 THE COURT: You said that was in 2012?

20 MR. GRIMES: Right.

21 THE COURT: This occurred in 2014, didn't it?

22 MR. GRIMES: Yes, Your Honor. But I think his
23 concern was that there was a law regarding his
24 disclosure of what she would have told him that
25 essentially prevents him from disclosing it other

1 than in a hearing related to her competency. Her
2 competency is not in question in this case.

3 THE COURT: Are you aware of the law he's
4 referring to?

5 MR. GRIMES: We looked at on of the statutes
6 and -- he didn't refer to a specific statute that I
7 am aware of.

8 THE COURT: Are you aware of what he was
9 talking about?

10 MR. GRIMES: I believe he was referring to
11 44-23-100, if I'm not mistaken, or 120. But,
12 nevertheless, I think we can certainly present it to
13 Your Honor. It's not our witness. I just want to
14 limit those references to prevent us from mis-trying
15 this case if his testimony doesn't actually come in.

16 MR. KATONAK: Yes, sir. I'm certainly aware of
17 that as far as our allegation of third-party guilt.
18 I want to lay a foundation before I start referring
19 to that. I've read the statement and have no plans
20 referring to that whatsoever. I'm not going to lay
21 down a track, a connection, in order to get to the
22 mother. And, certainly, when I get to that
23 evidence, both the DSS worker and the doctor, I will
24 have them proffer that before I let the jury hear
25 it.

1 THE COURT: How about the doctor's testimony
2 about some --

3 MR. KATONAK: Judge, I actually spoke with the
4 doctor yesterday about it. He gave me a statute
5 number and when I got off the phone, I looked up the
6 statute, but it didn't refer to what he was saying.
7 His statement basically was, I talked to my legal,
8 and I'm not supposed to testify about it, but I'll
9 leave it up to the judge. But the statute he gave
10 me didn't show me anything one way or another.

11 THE COURT: Well, it's pretty hard for me to
12 make a determination of what y'all are talking about
13 with the descriptions y'all are giving me. So...

14 MR. KATONAK: Well, Mr. Grimes is right; that's
15 a bridge we'll cross when we get there in the case.

16 THE COURT: I know that, but I don't want to be
17 crossing bridges all day. That's what we were going
18 to do today, was crossing bridges.

19 MR. GRIMES: Your Honor, we'll provide you with
20 the statute we believe he was referencing and --

21 THE COURT: In the next hour?

22 MR. GRIMES: Yes.

23 THE COURT: All right. Now, with all this
24 coming up, we start at 9:30. What time is your
25 doctor going to testify?

1 MR. GRIMES: We're going to have him here at
2 10:00. I think he'll probably be on the witness
3 stand by 11:00, if not before then.

4 THE COURT: And y'all can be through with your
5 case about what time, 12:00 or 12:30?

6 MR. GRIMES: Yes, Your Honor.

7 THE COURT: All right. Mr. Katonak, I want
8 your guy here -- I said yesterday 1:30. Let's back
9 it up to about 12:30 so we can do all these proffers
10 and take care of all these matters so we don't get
11 slowed down.

12 MR. KATONAK: Yes, sir.

13 THE COURT: And y'all find me that statute
14 you're talking about.

15 MR. GRIMES: Yes, sir, Your Honor. And we do
16 have the cases on the third-party guilt if you'd
17 like us to hand that up at this point.

18 THE COURT: Yes, please. Hand it to Scottie.
19 He's looking them up too as we speak.

20 Anything else, gentlemen? How about exhibits?
21 You got many exhibits?

22 MS. HAMMACK: The State has about 19 exhibits.

23 THE COURT: Can we go ahead and get those
24 marked today? And talk to Mr. Katonak; those that
25 are not contested, we can go ahead and get those in.

1 Only the ones we have problems with, we'll mark
2 those for ID and have that done. What else? All
3 right. We'll start at 9:30. Y'all be here by 9:00.

4 Before we break, Mr. Martin, do you have any
5 questions?

6 THE DEFENDANT: No, sir.

7 THE COURT: Thank you.

8 (Trial in recess 2:08 PM.)

9 (The following proceedings were held February
10 15, 2017.)

11 MR. GRIMES: Your Honor, I have one matter
12 before the jury comes in. Yesterday we introduced,
13 I believe, Court's Exhibit 3, the DVD -- or the
14 audio CD of the defendant's statement.

15 THE COURT: You introduced three Court
16 exhibits.

17 MR. GRIMES: That's correct, Your Honor. We'd
18 like to use that as a State's Exhibit for the trial.
19 It would be a Court's exhibit, obviously, for the
20 hearing, but a State's exhibit today for the trial.

21 THE COURT: Very well.

22 Any objection?

23 MR. KATONAK: No objection.

24 THE COURT: Is the State ready to proceed?

25 MS. HAMMACK: Yes, Your Honor.

1 THE COURT: The defendant?

2 MR. KATONAK: Yes, sir.

3 THE COURT: All right. Bring the jury in,
4 please.

5 (The jury enters the courtroom at 9:33 AM.)

6 THE COURT: Good morning, ladies and gentlemen.
7 I hope you had a pleasant Valentine's evening. For
8 those of you who got here on time, I hope you
9 enjoyed your fruit and biscuits.

10 Okay. As stated yesterday, we've taken care of
11 everything yesterday afternoon, so we're ready to
12 begin the trial of the case. And the first order of
13 business is I have to, once again, swear you in for
14 this particular case. So if you would, please
15 stand, raise your right hand, and the clerk will
16 administer the oath.

17 (Jury sworn.)

18 THE COURT: Ladies and gentlemen, let me --
19 what we normally do is -- let me give you a few
20 opening remarks to sort of lay the ground rules,
21 sort of where we're going and where we're headed.
22 First of all, in this particular case the State of
23 South Carolina has indicted Heyward Legree Martin,
24 III, for the offense of inflicting great bodily
25 injury upon a child. That offense is set out in the

1 South Carolina Code of Laws in Section 16-03-95,
2 Subsection A.

3 To the indictment the defendant has pled not
4 guilty and, obviously, by pleading not guilty, that
5 puts the burden on the State to prove his guilt to
6 you beyond a reasonable doubt. And at the
7 conclusion of the case, I will describe to you
8 burden of proof and the terms reasonable doubt and
9 those sorts of things. But under the constitution
10 of the United States and of the State of South
11 Carolina, the defendant is presumed to be innocent
12 unless the State is able to prove to you by evidence
13 convincing you of his guilt beyond a reasonable
14 doubt.

15 The fact that he's been charged and arrested
16 and indicted in the case, that is not evidence in
17 the case, that is simply the legal process by way
18 this case comes into the courtroom; it's the
19 charging document, it's allegations, it's not
20 evidence.

21 So please don't infer anything from the fact
22 that he's been indicted and a true bill has been
23 returned; that's simply how it gets in the
24 courtroom. He's pled not guilty and he's presumed
25 to be innocent unless the State can prove him guilty

1 beyond a reasonable doubt. And that burden of proof
2 is on the State. The defendant has absolutely no
3 burden to prove anything; the burden is on the State
4 to prove his guilt.

5 Now, since the State has the burden of proof,
6 they go first. So when I finish my opening remarks,
7 the trial will start. It starts like this: It
8 starts with the State, since they have the burden of
9 proof, making an opening statement, is what we call
10 it. Followed by that, the Defendant has an
11 opportunity to make an opening statement. Please
12 bear in mind that the opening statement is not
13 evidence in the case; it is simply what the lawyers
14 want to tell you about the case. It's sort of them
15 giving you a roadmap as to how they're going from
16 point A to point B and what they intend to show you
17 along the way and what they intend to prove and what
18 they have to prove. But that is not evidence in the
19 case.

20 So please just listen to the opening statements
21 to receive it as sort of an information of them
22 telling you what they want to present to you during
23 the trial, things to look out for, things of that
24 nature. Once we conclude the opening statements,
25 then the State, having the burden of proof, they

1 will call their witnesses first.

2 And the way that works is they'll call
3 witnesses and the State will directly examine them,
4 ask them questions. The defendant has the right to
5 cross-examine. And once the cross-examination is
6 over, the State has the right to redirect. So you
7 can go direct, cross, redirect, so there's three
8 questioning periods on a witness.

9 Once the State has completed their evidence,
10 then the Defendant, if he so chooses, bearing in
11 mind has absolutely no burden to prove anything, he
12 has the opportunity to put up any defense or his
13 side of the story, so to speak. And at that time
14 then, obviously, his lawyer goes first calling the
15 witnesses and directly examines them, the State
16 crosses, and then he can redirect.

17 At the conclusion of the defense witnesses, if
18 they put up any, the State has a right to reply to
19 that. Normally you don't hear reply testimony;
20 there may be some, but it's normally very short.

21 Once all the testimony is in, then the lawyers,
22 once again, will make final arguments, which is not
23 evidence; it's arguing their position. And once
24 they conclude that, then I will, what we call,
25 charge you on the law or instruct you on the law,

1 and then you'll be in a position to start your
2 deliberations. So that's the way it will run.

3 Sometimes during the trial of the case there
4 will be objections made. I can rule straight from
5 the bench. Other times there will be things that I
6 need to discuss with the lawyers, perhaps even take
7 some testimony, and I have to do it outside of your
8 presence because if I rule it out, obviously I'll be
9 making some comments that would not come into the
10 trial. So if I have to ask you to step outside a
11 few minutes, I'm not trying to give us time to
12 stretch our legs, we're still working, but I'll try
13 to do so in a very efficient manner.

14 During the trial of the case I try to start on
15 time, try to move it along efficiently so your time
16 will be utilized the best way we can. But I'm not
17 trying to run a race up here, so if at any time you
18 become uncomfortable, you need a bathroom break,
19 need to stretch your legs, need a glass of water,
20 want to finish your biscuit, whatever, let me know
21 and we'll take a break. Don't get uncomfortable.
22 If you get hot or cold, tell me, we'll cut the air
23 up or down.

24 When we take our breaks, I'll ask that you
25 please do not discuss or start deliberating the

1 case. Do not do that until all of the evidence has
2 been presented, the final arguments are made, and
3 I've instructed you on the law. Obviously you can
4 talk about anything you want to back there, but
5 don't talk about the case until it gets in a posture
6 where you can properly start deliberating.

7 At the first break I'm going to ask that the 12
8 regular jurors to select a foreperson. That
9 foreperson is simply the spokesperson, spokeswoman,
10 spokesman of the jury who brings to me concerns you
11 may have, you will lead up the deliberations and
12 sign the verdict form once it's completed. So
13 please get me a foreperson. If you can't do that,
14 I'll just pick somebody's name because I don't know
15 any of you.

16 Obviously this is a very important trial both
17 for the State and for the Defendant. I ask that you
18 pay close attention and be cognizant of your job as
19 the most important judge in the courtroom. You'll
20 judge the credibility of the witness whose testify
21 at the trial. You'll be looking for the truth.

22 To do that, obviously, credibility means
23 believability. Who do you believe? So don't leave
24 your common sense at the door bring it into the
25 courtroom. You've all dealt with husbands, wives,

1 children, moms, dads, family, friends, employees,
2 employers; you know how to judge when someone is
3 telling the truth.

4 So use that common sense in judging the
5 credibility of the witnesses who testify here so
6 you'll be in a position to determine what the true
7 facts are. Once you do that, you apply the true
8 facts to the law as I give it to you and then you'll
9 be in a position to determine whether or not the
10 State has met their burden of proof in trying this
11 case.

12 We're going to start here in just a few
13 minutes, and I ask that you pay close attention to
14 the lawyers. Once the lawyers have spoken in
15 opening statements, we'll start in with the
16 testimony.

17 Any objections to my opening statements by the
18 State?

19 MS. HAMMACK: No, Your Honor.

20 THE COURT: By the Defendant?

21 MR. KATONAK: No, sir.

22 THE COURT: All right. Ms. Hammack?

23 MS. HAMMACK: Members of the jury, Melodi
24 Tucker trust the defendant. Melodi Tucker grew up
25 in Jackson with the defendant, she'd known him since

1 they were young; in fact, she was living with the
2 defendant and his wife on [REDACTED] in
3 Jackson. She'd been living there a few weeks. She
4 trusted the defendant to help care for her child
5 Minor . She trusted the defendant to watch
6 Minor when she wasn't home.

7 On June 10th, 2014, Melodi Tucker trusted the
8 defendant for the last time. On that day she asked
9 the defendant to watch Minor while she went to
10 class at the Aiken Center here in Aiken. When she
11 walked out the door of his house on [REDACTED]
12 [REDACTED], she left her child and the defendant playing
13 in the living room.

14 Hours later, when she came back, she saw the
15 defendant and Minor again but this the defendant
16 met her at the door holding Minor in his arms,
17 cold, stiff, and lifeless. Melodi immediately took
18 her child to the hospital, and that's the last time
19 that she trusted the defendant with Minor .
20 Minor was five months old.

21 You're going to hear today about what happened
22 on that day in June, 2014. You're going to hear
23 from the doctors who treated Minor at the
24 hospital. They're going to tell you about the
25 catastrophic injuries that he suffered, it will be

1 called trauma, about the trauma to his brain, the
2 trauma to his eyes, and the result of that trauma
3 that he suffered, that would be with Minor for
4 the rest of his life.

5 You're also going to hear about what happened
6 in those hours on [REDACTED]. You're going to
7 hear the defendant's explanation for the bruises
8 that were found on Minor. You're going to hear
9 the defendant's explanation for these traumatic,
10 catastrophic injuries that Minor suffered. And
11 when you hear all the evidence and when you hear
12 from the doctor that treated this five-month-old
13 baby, you're going to hear that the defendant's
14 explanation wasn't possible.

15 Now, the Judge told you that Heyward Martin is
16 charged with inflicting great bodily injury upon a
17 child. And at the end of this case, he's going to
18 explain the law to you, just like he said, and he's
19 going to explain to you what that means to inflict
20 great bodily injury upon a child.

21 It's pretty much what it sounds like, but he's
22 going to tell you what qualifies as great bodily
23 injury; that that's the type of injury that places
24 the child at a substantial risk of death or with a
25 loss or disfigurement of a bodily member or organ.

1 Now, at the end of this trial, I'm going to get
2 to come back before you and I'm going to get to
3 summarize the evidence that you heard from the
4 witnesses who testified, from the exhibits that you
5 get to look at; and at that time I'm going to ask
6 you to return the only verdict that this evidence is
7 going to lead you to. I'm going to ask you to
8 return a verdict that understands the only
9 explanation for the trauma that five-month-old
10 **Minor** suffered. I'm going to ask you to return
11 a verdict of guilty. Thank you.

12 MR. KATONAK: May it please the Court.

13 Good morning. You heard yesterday my name is
14 Brian Katonak. I've been practicing law, it's hard
15 to believe, 25 years I know. I know I look a lot
16 younger, but it has been for 25 years. For the
17 first seven years of my life I was an assistant
18 solicitor from Anderson, just like Ms. Hammack and
19 Mr. Grimes is. Then I came back home in Aiken in
20 1999 and started my own law practice and have been
21 doing that ever since.

22 Today, as you know, I'm sitting here
23 representing Mr. Heyward Martin. That's Heyward
24 sitting right over there. He's married, his wife
25 Melissa is in the back. He's got two, what he

1 calls, kids. They're actually his step-kids, but
2 he's been raising these two kids since -- well,
3 you'll hear from them later on.

4 Judge Early told you something yesterday about
5 our justice system, that anyone who comes in for a
6 trial is presumed innocent. That's an amazing thing
7 about our justice system. And as Judge Early told
8 you, the fact someone has been arrested, the fact
9 that they've been indicted, that doesn't change that
10 fact. As you sit here at this moment, you have to
11 assume that my client is innocent of these charges.

12 I'm going to be honest with you, this has been
13 a very troubling case for Heyward Martin. I've got
14 two kids myself, many of you probably have children,
15 and when any of us see a situation where a child has
16 suffered terrible trauma, it's really troubling.
17 The State is going to show you some photographs of
18 what this child suffered. These photographs are
19 going to make you sad, they're going to make you
20 angry, no doubt they are.

21 We don't dispute that this child suffered
22 trauma. We don't dispute the child suffered trauma.
23 What we are disputing, however, is that my client is
24 the one who inflicted it. So when you see these
25 pictures of what this child has gone through, that

1 angers you or upsets you, that by itself doesn't
2 mean my client is guilty.

3 The State will also call Dr. Gene Fisher. He's
4 a doctor over at GRU who treated the child. He's
5 going to tell you about these child's injuries and
6 he's going to tell you this child is going to have a
7 miserable life due to the trauma. We don't dispute
8 that. I think it is so sad. But, again, the mere
9 fact that this child is going to suffer these
10 injuries and have a terrible life doesn't prove that
11 my client inflicted this trauma on the child.

12 Much of what the State is going to present
13 we're not going to disagree with. We don't disagree
14 that Ms. Tucker and the child was living with my
15 client and his family. And we're not going to
16 disagree that Ms. Tucker left about 5:30 on June
17 10th, she had been watching the child all day and
18 went to the Aiken Center, and that my child -- my
19 client and his children were home with the child.

20 What you'll learn about this case and what the
21 Judge will tell you later on is this is a
22 circumstantial case. There is no direct evidence.
23 Direct evidence is a case where a witness says I
24 walked in and I saw Joe shoot the gun at Stan --
25 that's direct evidence -- or a video showing Joe

1 shoot the guy. That's direct evidence.

2 The State is trying to prove this by
3 circumstantial evidence. My client Heyward does not
4 say he abused or shook the child, his children do
5 not say that either. It's simply a circumstantial
6 case. And as the Judge told you, they have to prove
7 the case. The State has to prove it beyond a
8 reasonable doubt.

9 Heyward can choose not to do anything. I may
10 leave here and go sit down and Heyward may say,
11 Brian, sit here, don't say anything, don't question
12 witnesses, we're just going to stay. And if he did
13 that, that's perfectly fine because he doesn't have
14 to prove anything. The whole burden to prove him
15 guilty beyond a reasonable doubt lies on solely the
16 State. And they can't do that in this
17 circumstantial case.

18 You only have one choice at the end of the
19 case, and it's the choice I believe is correct, that
20 Heyward Martin is not guilty of this offense. Thank
21 you.

22 THE COURT: You may call your first witness.

23 MS. HAMMACK: Thank you, Your Honor. The State
24 calls Tyler Hill.

25 STEVEN TYLER HILL

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Have a seat in the witness box.

4 State your name for the Court and spell your last.

5 THE WITNESS: My name is Steven Tyler Hill,

6 H-I-L-L.

7 THE COURT: You need to respond I do.

8 THE WITNESS: Oh, I do.

9 My name is --

10 THE COURT: State your full name, spelling your
11 last, please.

12 THE WITNESS: Steven Tyler Hill, H-I-L-L.

13 THE COURT: Thank you, Mr. Hill. Ms. Hammack
14 is going to ask you some questions. Please respond
15 to those questions. All of my jurors have to be
16 able to hear both you and her and me, so please
17 speak up.

18 DIRECT EXAMINATION

19 BY MS. HAMMACK:

20 Q. Good morning, Tyler.

21 A. Good morning.

22 Q. Now, before we get started, can you tell me,
23 where are you from?

24 A. I was raised in Aiken County. I been in the
25 Jackson-Beech Island area. Haven't ventured far

1 from there since I was born.

2 Q. And do you know anybody involved in this case?

3 A. Yeah. I've known Melodi almost all my life,
4 probably since, you know, elementary school. We
5 grew up on almost the same street.

6 Q. And back in 2014 were you hanging out with
7 Melodi?

8 A. Yes.

9 Q. What was your relationship with Melodi about
10 June of 2014?

11 A. We were dating, probably about two weeks in.

12 Q. Before I ask you more about 2014, I got to ask
13 you a quick question about 2016. Tyler, a couple
14 months ago in December, did you get arrested?

15 A. Yes.

16 Q. What did you get arrested for?

17 A. Simple possession of methamphetamine and
18 cocaine base.

19 Q. And does that have anything to do with this
20 case that we're here for today?

21 A. No.

22 Q. Has anybody in the solicitor's office talked to
23 you about that case?

24 A. No.

25 Q. Is there any kind of deal or communications or

1 anything involved in your case that is connected
2 with this case?

3 A. No, ma'am.

4 Q. All right. Let's go back to 2014. You said in
5 June of 2014 that you had just started dating
6 Melodi, y'all were about two weeks in. Did you know
7 Minor ?

8 A. Yes.

9 Q. And can you tell the jury how old Minor was
10 and what Minor was like when you knew him?

11 A. He was a fat, happy little baby, real strong
12 when I met him, always laughing and giggling. He
13 was just a real happy baby.

14 Q. Did you have a nickname for Minor ?

15 A. Da-Da.

16 Q. Now I want to bring your attention to June 10th
17 of 2014. Do you remember that day?

18 A. Yes.

19 Q. Before that day, had you and Melodi been
20 hanging out?

21 A. Yeah.

22 Q. Had you seen Minor around that time?

23 A. Uh-huh.

24 Q. And how was he at that time?

25 A. Like I said, he was healthy, happy. Can you

1 repeat the question? What was the date again?

2 Q. June 10th of 2014.

3 A. Yep. Yeah.

4 Q. Did you come in contact with Melodi that day?

5 A. Yeah.

6 Q. And what was the plan for you and Melodi on
7 that day?

8 A. June 10th, I think she stayed the night with me
9 that night. That was a Sunday?

10 Q. I want to bring your attention to Tuesday on
11 June 10th.

12 A. June 10th. Okay. Yeah. All right. Well, I
13 picked her up. I talked to her earlier that day and
14 said she had to go to class.

15 Q. Okay.

16 A. So --

17 Q. And where did you pick her up from?

18 A. Heyward's house. That's where she was living.

19 Q. Give me just a second.

20 Now, Tyler, I'm showing you what's been
21 premarked as State's Exhibit 1. Do you recognize
22 that?

23 A. Yes, ma'am.

24 Q. What is that?

25 A. That was Heyward's house at the end of [REDACTED]

1 [REDACTED].

2 Q. And that's his house as you knew it? That's
3 his house as it appeared on the 10th of June?

4 A. Yes, ma'am.

5 MS. HAMMACK: Your Honor, at this time we would
6 move State's Exhibit 1 into evidence.

7 THE COURT: All right. You've agreed on all
8 these exhibits, right?

9 MR. KATONAK: Yes, we've agreed on all of them.

10 THE COURT: You don't have to move them.
11 They're all in.

12 (State's Exhibit Nos. 1 - 19 marked for
13 identification and admitted into evidence.)

14 BY MS. HAMMACK:

15 Q. Now, Tyler, is that where you picked Melodi up
16 from?

17 A. Yes, ma'am.

18 Q. About what time did you pick her up?

19 A. It was about -- she had to be at class at 5:30,
20 so probably around 4:30.

21 Q. Do you know who else was at that house when you
22 picked her up?

23 A. Pretty sure it was just him, Melodi, his two
24 kids. I don't know if his wife had went to work yet
25 or not because she met me outside.

1 Q. Okay. When you say him, who are you talking
2 about?

3 A. Heyward.

4 Q. Was Da-Da at the house?

5 A. Yes.

6 Q. And what was the plan for Da-Da while you took
7 Melodi to class?

8 A. He was just supposed to stay with him. He was
9 watching him until she got home.

10 Q. And when you say he, tell me who you're talking
11 about.

12 A. Heyward. Sorry.

13 Q. Okay. How did you get Melodi to class that
14 day?

15 A. I borrowed my -- it was my best friend's wife.
16 They share a car. And I had just wrecked my car
17 probably about a week before then, so I was using
18 her car to -- I worked for Rainbow at the time, so I
19 was using her car to actually work and do my
20 demonstrations and stuff. So she let me borrow the
21 car that day to take Melodi to her class because she
22 had called me earlier that day and told me that she
23 was trying to get a ride.

24 Q. Okay. And now Heyward's house on [REDACTED]

25 [REDACTED], where is that at?

1 A. It's at the very end, close to the end.

2 Q. If you don't know where [REDACTED] is,
3 what part of Aiken is that in?

4 A. I mean, that's in Jackson. It's the road right
5 across from the Kangaroo off of Atomic Road.

6 Q. And do you know where Melodi's class was that
7 day?

8 A. It was off of Gregg Highway or Gregg Street off
9 Aiken-Augusta highway.

10 Q. Here in Aiken?

11 A. Yeah.

12 Q. Did you take Melodi to class?

13 A. Yes, ma'am.

14 Q. What did you do after you took her to class?

15 A. I went back to Leah's house, which is the
16 person I borrowed the car from. Went back to her
17 house and played video games with my godkids until
18 Melodi called and said that it was time for her to
19 get out of class.

20 Q. Do you remember what time she got out of class
21 that day?

22 A. Yeah, it was about 8:30.

23 Q. And what were you supposed to do when she got
24 out of class?

25 A. I was going to pick her up and take her home.

1 Q. Did you go pick her up?

2 A. Yes.

3 Q. What did y'all do after you picked her up?

4 A. We stopped by the gas station. I think she got
5 a tea, she always drinks them peach teas, and I got
6 a Gatorade, I put some gas in the car. And then I
7 had to by my cousin's house, which is on [REDACTED]
8 [REDACTED], so right down the road from her house, and I
9 had to pick up some scents and some registration
10 cards for Rainbow. We stopped and talked to my
11 cousin for a while, probably maybe 20 or 30 minutes,
12 and then went right straight to Heyward's house to
13 drop Melodi off.

14 Q. [REDACTED] is kind of a long street. How
15 far apart is your cousin's from Heyward's house?

16 A. Walking distance, maybe a minute; driving is
17 probably 30 or 45 seconds.

18 Q. So that's how long it took you to get from your
19 cousin's house to Heyward's house?

20 A. Yeah.

21 Q. Tell me this, and you can use the picture if
22 you need to: When y'all got back to Heyward's
23 house, where did you pull up with the car?

24 A. Right in the driveway.

25 Q. And where is the driveway in relation to the

1 house?

2 A. On the left hand of the house --

3 Q. Okay.

4 A. -- right before the door.

5 Q. What did y'all do after y'all pulled in the
6 driveway?

7 A. As soon as we pulled in the driveway, Heyward's
8 son was actually -- was -- before we even got out
9 the car, Heyward's son came to the door and was
10 like, where have y'all been --

11 MR. KATONAK: Objection; hearsay.

12 THE COURT: Hold on a minute.

13 Heyward's son came to the door --

14 THE WITNESS: Yes, sir.

15 THE COURT: Objection; hearsay. You can't say
16 what the son said.

17 THE WITNESS: Okay.

18 BY MS. HAMMACK:

19 Q. But Heyward's son came to the door?

20 A. Yes.

21 Q. When you got in the house, did you see Heyward?

22 A. Yes.

23 Q. What was Heyward doing?

24 A. He was holding the baby. The baby was wrapped
25 up really tight in a blanket or towel, and he was

1 pale, almost white. He was real -- he was freaking
2 out and we were trying to figure out what was going
3 on. He said that he has been having a seizure.

4 Q. Heyward said that the baby's been having a
5 seizure?

6 A. Yeah, been having a seizure, he hadn't been
7 breathing, and he said it's been for almost an hour.
8 He'd been trying to get him to breathe for almost an
9 hour.

10 Q. What did you and Melodi do when you saw

11 **Minor** ?

12 A. We was trying to figure out why the ambulance
13 wasn't there yet, why the ambulance hadn't been
14 called, just trying to figure out why he wasn't
15 breathing or what was going on because he was
16 really -- he was -- he looked half dead. He was
17 stiff. He was trying to breathe, but you could tell
18 he was struggling. And we were just -- it just
19 didn't look right. It was scary.

20 Q. You mentioned no ambulance. What did y'all do
21 after you found **Minor** that day?

22 A. Melodi took him back to the room and took the
23 towel off and was trying to figure out why he was so
24 cold and touching and just what was wrong with him.
25 We was touching him and rubbing his head, you know,

1 trying to get him to breathe, and I was looking just
2 like -- I said, that ain't right, something ain't
3 right, we got to go, we got to go, let's to the
4 hospital.

5 Q. Did y'all go to the hospital?

6 A. Yeah.

7 Q. How did you get to the hospital?

8 A. In Leah's car.. We put the baby in the car. I
9 wasn't even thinking about a car seat. Then Heyward
10 went in the house, got the car seat, we put the car
11 seat in the car. He said to call us when we got to
12 the hospital. I said, my phone is dead, so he gave
13 us a charger. And then he said, if they ask about
14 bruising, if they say anything about bruising, I
15 have been trying to get him to breathe; I was
16 hitting him on the back trying to get him to
17 breathe. I didn't really say nothing, I was just...

18 Q. Who drove to the hospital?

19 A. I did.

20 Q. How did you drive to the hospital?

21 A. Very, very fast. I put the emergency flashers
22 on and just booked it all the way to the hospital.
23 I was hoping maybe I'd get, you know, a police
24 escort or something, so I wasn't really worried
25 about, you know, speeding or anything like that.

1 But we had green lights all the way there, so there
2 wasn't -- nothing happened. We just got to the
3 hospital.

4 I don't know how long it took to get there, but
5 it felt like forever. And as I was doing it, Melodi
6 was in the backseat trying to get the baby to
7 breathe the whole time. You could finally -- when
8 we was halfway there, you could finally hear him
9 crying a little bit, so he was breathing.

10 Q. When you got to the hospital, where did you
11 pull up in the car?

12 A. Emergency -- right there at the emergency
13 entrance. She ran in and took -- you know, took him
14 to the hospital, and I went to find somewhere to
15 park.

16 Q. Now, after you found somewhere to park, did you
17 go in the hospital?

18 A. Yeah.

19 Q. Did you see Melodi or **Minor** when you got
20 inside?

21 A. They had already took them to the back.

22 Q. What did you do when you got in the hospital?

23 A. I sat in the waiting room because they said --
24 they asked me if I was the father. I said no, so
25 they didn't pull me back there just yet. Then I

1 plugged the phone up so I could charge my phone to
2 tell Heyward what was going on. As soon as I
3 plugged my phone up, a text from Heyward said, did
4 y'all get to the hospital, yet how's he doing?

5 Q. Give me just a second Tyler. I'm showing you
6 what's been admitted as State's Exhibits 2, 3, 4,
7 and 5. I want you to take a minute and look at each
8 of those for me. Tyler, what are those pictures of?

9 A. The texts that -- the conversation we had over
10 the phone.

11 Q. And when you say the conversation that we had,
12 who were you having the conversation with?

13 A. Heyward.

14 Q. Now let's back up for just a second. Do you
15 remember what time you picked Melodi up from her
16 class?

17 A. Around 8:30.

18 Q. And do you remember what time y'all got back to
19 Heyward's house?

20 A. Around 9:45 after stopping by my cousin's and
21 everything. But I pulled up to his house about
22 9:45.

23 Q. And how long did y'all stay in the house?

24 A. It wasn't long at all. Maybe five minutes.

25 Q. Now, when did you receive that first text

1 message from Heyward?

2 A. It says 10:39, but it was as soon as --

3 THE COURT: What exhibit?

4 MS. HAMMACK: Beginning with Exhibit 2.

5 THE COURT: Exhibit 2?

6 MS. HAMMACK: Yes, sir.

7 THE COURT: What time was that?

8 THE WITNESS: 10:39. That's when the text came

9 in. But I'm assuming it's as soon as my phone -- I
10 don't know if that's when it was sent or when the
11 phone cut on.

12 BY MS. HAMMACK:

13 Q. And what did Heyward ask you in that text?

14 A. He said: Y'all make it to the hospital yet?
15 How is he?

16 Q. And can you tell the jury the other things that
17 Heyward said in those text messages on your phone?

18 A. Yes, ma'am. It says -- just what he said?

19 Q. Yes.

20 A. Okay. He said: The thank the above. I've
21 never seen a baby do that. It really bothers me.
22 And I was saying: Yeah, he didn't look right. Then
23 I told him: They're saying he has blood on his
24 brain from trauma, some kind of impact. He said:
25 Is it like an aneurysm? I said is -- then he asks:

1 Is it going to be okay? What do they have to do?

2 I said: Yeah, he's going to be okay. I really

3 didn't -- hadn't seen him yet or talked to the

4 doctors yet. The doctors hadn't really said what

5 was going on. I was just trying to be optimistic.

6 I said: Yeah, he's going to be okay, they're giving

7 him tests right now. And then I said: They said it

8 was from trauma. And then I asked him, I said: Did

9 he fall or get hit or something? I said: They said

10 it's from trauma. Did he fall or get hit?

11 And then he said: Oh, I forgot to tell Melodi

12 and you, he fell off the bed today when he and I

13 were talking a nap. That was three hours before he

14 had symptoms, so I hope he didn't. Ha.

15 Q. What time did he send that text message?

16 A. That was at 11:31 PM June 10th.

17 Q. Is that the first time you had heard --

18 A. Yeah. He didn't say anything about that while

19 we was at it the house. He was just saying he was

20 having a seizure; that's what he kept saying. I

21 don't know what's going on, he just stopped

22 breathing, is what he kept saying.

23 Q. What did he say in the text messages after he

24 told you that **Minor** fell off the bed three hours

25 before he had a seizure?

1 A. He said: I wonder why it took so long to show
2 symptoms. There's a really bad storm going on right
3 now, rain, wind and lightening. So are they letting
4 him come back home?

5 I said: They're keeping him for observation
6 overnight. He said: Damn, that sucks. The power
7 went out here. I feel responsible for this. We
8 were napping so good. I feel like shit now. And
9 that's the last text message in there.

10 Q. What did you do with those text messages when
11 you received them?

12 A. I locked them as soon as he sent them in. I
13 was locking them as he was sending them because I
14 knew --

15 Q. When you say you locked them, what does that
16 mean?

17 A. That way if they didn't -- because that phone,
18 once the memory gets so much, it starts deleting
19 texts. I locked all of them so they would stay in
20 the phone because it was going -- I knew
21 something -- this day would come probably.

22 Q. Tyler, give me just a second.

23 When you and Melodi first got to the house and
24 saw **Minor** for the first time, did you notice any
25 marks or bruises on him?

1 A. I didn't really see him. He was wrapped up in
2 a towel real, real tight. All you saw was his face.
3 I didn't see how stiff he was or anything until
4 Melodi took him to the back room. I followed her to
5 the back room and as soon as she unwrapped the
6 blanket, his arms -- you know, I mean, I've seen
7 people get knocked out and stuff, and that's what it
8 looked like.

9 It looked like he had been knocked out. He was
10 real stiff, his legs were straight, and he was
11 breathing, but you could tell it was reflex
12 breathing, he wasn't doing it consciously. And he
13 was -- you know, his eyes were kind of rolled back
14 in his head.

15 But I didn't see -- I seen, you know, little
16 red marks, but I didn't really see any bruising or
17 anything yet. But I was just worried about trying
18 to get him to the hospital.

19 Q. Tyler, I got just one last question for you.
20 Do you see Heyward Martin in the courtroom here
21 today?

22 A. Yes.

23 Q. Can you identify him for the Court by saying
24 what he's wearing and where he's at?

25 A. Right there with the, I guess, plaid shirt,

1 plaid tan shirt.

2 MS. HAMMACK: Your Honor, let the record
3 reflect the witness has identified the defendant.

4 THE COURT: Yes, ma'am.

5 MS. HAMMACK: Tyler, I don't have any more
6 questions for you. Mr. Katonak is going to ask you
7 some questions. Just answer his questions.

8

9 CROSS-EXAMINATION

10 BY MR. KATONAK:

11 Q. Hey, Mr. Hill. I'm Brian Katonak. How are you
12 doing?

13 A. How you doing?

14 Q. All right. So how long is it that you've known
15 Ms. Tucker?

16 A. Since elementary school.

17 Q. Have y'all remained in close contact for most
18 of your lives?

19 A. Not really close contact. I kind of got out of
20 Jackson when I -- you know, when I started getting
21 older. But we remained in contact, just not as
22 close as we were in the two weeks when we started
23 dating.

24 Q. Okay. And back in June of 2014, I believe you
25 stated that the two of you were a couple at that

1 point.

2 A. Yes.

3 Q. Okay. Are the two of you still together at
4 this time?

5 A. No.

6 Q. Do you remain in contact with Ms. Tucker?

7 A. I've tried. I think right now she don't have a
8 phone, she's staying with her mom, so I talk to her
9 through her mom.

10 Q. All right. Where does her mom live?

11 A. [REDACTED] -- on Green Street.

12 Q. All right. I've never seen her. Is she in the
13 courtroom today?

14 A. No.

15 Q. Do you happen to know if she's coming to court
16 today?

17 A. I don't know. I have no idea.

18 Q. Okay. Now, when this occurred, when law
19 enforcement got involved, you gave a statement to
20 law enforcement; correct?

21 A. (Nods head.)

22 Q. Now, June 10th, the day that the child went to
23 the hospital, I believe you stated that you picked
24 her up about 5:00 or 5:30.

25 A. Yes, sir.

1 Q. Okay. And when you -- you came to the house to
2 pick her up, she came outside?

3 A. Yes, sir.

4 Q. So you didn't go in the house at that time;
5 right?

6 A. No, sir.

7 Q. And I believe, looking at your statement, that
8 the night before, June 9th, she spent the night with
9 you.

10 A. Yes, sir.

11 Q. She being Ms. Tucker; right?

12 A. Yes.

13 Q. And I believe that y'all hooked up about
14 10:00 p.m. that night.

15 A. Yes, sir.

16 Q. All right. And, I guess, did you bring her
17 home the next morning or --

18 A. She walked home. It was right down the street.

19 Q. Okay. It was at your --

20 A. My cousin's house.

21 Q. Your cousin's house down the street. All
22 right. So on that night of -- I guess that would
23 have been June 9th going into June 10th.

24 A. No, that was Sunday. I didn't see her -- I
25 didn't -- the day before -- June 10th when I picked

1 her up for class, the day that I seen her before
2 then was Sunday. We talked on the phone, but I
3 hadn't seen her in person.

4 Q. Okay. So you had seen her on Sunday; correct?

5 A. Yes, sir.

6 Q. So she spent the night Sunday night going into
7 Monday; right?

8 A. Yes, sir.

9 Q. All right. So you didn't see her at all
10 basically for 24 -- over 30 hours, basically from
11 Monday morning til Tuesday night?

12 A. Yes, sir.

13 Q. Okay. On Sunday night when she spent the night
14 with you, how did the child act that night?

15 A. He was healthy, happy --

16 Q. Okay.

17 A. -- playing.

18 Q. So child was with you and Ms. Tucker?

19 A. No. He was -- I seen him when I went to go
20 pick Melodi up.

21 Q. Okay. So --

22 A. I had seen him earlier that day and then she
23 came over to my cousin's that night.

24 Q. So Ms. Tucker spent the night with you but left
25 the child at Heyward's house?

1 A. Yes, sir.

2 Q. Okay.

3 A. They said, you know, go out, have fun, you
4 know, we got the baby, it's fine.

5 Q. And I believe most of that weekend -- isn't it
6 true that Ms. Tucker spent that weekend with you
7 pretty much? Correct?

8 A. Yeah.

9 Q. But not the child?

10 A. I mean, she didn't spend all her time with me.
11 I mean, it was right down the road so -- you know.

12 Q. But she spent the night with you all that
13 weekend; correct?

14 A. No; just that night, just that Sunday.

15 Q. So as far as who kept the child from Monday
16 morning about 10:00 until you pick her up at 5:30 on
17 Tuesday, you don't know who was watching that child
18 during that period; correct?

19 A. No, sir. I know she was at -- she was home.

20 Q. So we assume she was with the child?

21 A. Yes, sir.

22 Q. Okay. And now where is it that you had to take
23 Ms. Tucker to that night?

24 A. Aiken Center.

25 Q. All right. And what's the Aiken Center?

1 A. It's a class -- it's a center -- I think she
2 had to take either -- I don't know if it was drug
3 classes or -- something like that. I think she had
4 to ADSAP or something like that.

5 Q. Okay. So --

6 A. I don't really know what it was.

7 Q. All right. So she wasn't at USC Aiken or Aiken
8 Tech taking classes in English; correct?

9 A. No. She was at Aiken Center.

10 Q. And do you know -- why did she have to take
11 classes at the Aiken Center?

12 A. I honestly don't remember.

13 MS. HAMMACK: Objection.

14 THE COURT: All right. Hold on. He said he
15 didn't know.

16 BY MR. KATONAK:

17 Q. But again, to your knowledge, she was taking
18 classes for either some sort of -- some sort of
19 substance abuse?

20 A. I don't know.

21 THE COURT: He said he didn't know.

22 MR. KATONAK: Well, Judge, I believe he
23 testified that the Aiken Center --

24 THE COURT: Do you know or do you not?

25 THE WITNESS: I don't know.

1 THE COURT: Thank you.

2 Go ahead.

3 BY MR. KATONAK:

4 Q. Then I believe you had testified that you
5 picked her up, you came to the gas station. Was
6 that in Jackson too?

7 A. Yes.

8 Q. Is that the gas station where Heyward's wife
9 Melissa works at?

10 A. We stopped at the middle gas station. It
11 was -- I call it the middle gas station because
12 there's an IGA, a Four Seasons, and then a BP. We
13 stopped by the Four Seasons and I got something to
14 drink and some gas.

15 Q. All right. But is that where Heyward's wife
16 Melissa works?

17 A. No. She works at the Kangaroo.

18 Q. Did y'all stop by the Kangaroo that night?

19 A. No.

20 Q. So you did not?

21 A. No, sir.

22 Q. Okay. Then after that you said you went to
23 your cousin's house.

24 A. Yes, sir.

25 Q. And you spent about 30 minutes there?

1 A. Yes, sir.

2 Q. And Ms. Tucker is with you that entire time?

3 A. Yes, sir.

4 Q. At that point it's, what, 9:30 at night?

5 A. Uh-huh.

6 Q. Okay. So -- and you said one could easily walk
7 from your cousin's house back to the Martin house;
8 correct?

9 A. Yes, sir.

10 Q. So even though that she had had Heyward
11 watching her child all day long, she decided to keep
12 staying with you instead of walking on home?

13 A. (Nods head.)

14 Q. Okay. Now you testified that Heyward mentioned
15 that he had -- what did you say, that he hit the
16 child on the back to try to help him start back
17 breathing?

18 A. That's what he said.

19 Q. Okay. All right. But besides that, he didn't
20 say anything else about any other thing he had done
21 to the child; correct?

22 A. No.

23 Q. And in those texts he doesn't say anything else
24 he'd done to the child; correct?

25 A. He said that the child fell off the bed while

1 he was napping.

2 Q. Right. But again, that's what the child --
3 he's not saying that he pushed the child off the bed
4 or threw the child off the bed; correct?

5 A. Correct.

6 MR. KATONAK: That's all the questions I have.

7 Thank you.

8 THE COURT: Redirect?

9 MS. HAMMACK: No, Your Honor.

10 THE COURT: Sir, you may step down.

11 Any objection to him being released?

12 MR. KATONAK: Judge, we don't need him for
13 anything.

14 THE COURT: Mr. Hill, you are released. You're
15 free to go or you're free to stay. You're welcome
16 to stay or welcome to go.

17 Next witness, please.

18 MR. GRIMES: Investigator Kris Evensen.

19 KRISTOPHER EVENSEN

20 being first duly sworn, testified as follows:

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Have a seat in the witness box.

23 State your full name for the Court and spell your
24 last.

25 THE WITNESS: Kristopher Evensen. First name

1 is spelled with a K, last name is E-V-E-N-S-E-N.

2 DIRECT EXAMINATION

3 BY MR. GRIMES:

4 Q. Investigator Evensen, tell us where you work
5 and a little bit about your background.

6 A. I work at the Aiken County Sheriff's Office,
7 been there since March of 2000. I was a road patrol
8 deputy for two years, school resource officer for
9 seven and a half years, and an investigator since
10 2009, October of 2009.

11 Q. And what division are you currently an
12 investigator in?

13 A. I'm assigned to the juvenile investigation
14 division.

15 Q. Is that where you were working in 2014?

16 A. Yes, sir.

17 Q. What -- as a juvenile investigator, what types
18 of crimes do you generally investigate?

19 A. We investigate any crimes involving a child, be
20 it victim or suspect. That includes child abuse,
21 sexual crimes against children. And we also
22 investigate elder abuse and elder exploitation and
23 any crime that a child may commit, be it larceny all
24 the way up to murder, if that were to happen.

25 Q. And did you get a call on June 10th or June

1 11th to participate in investigating this case?

2 A. Yes, sir.

3 Q. Do you remember specifically if it was June
4 10th or June 11th? What time were you contacted?

5 A. It was just after midnight, early morning hours
6 of June 11th, so probably 0015.

7 Q. And what was that call about?

8 A. I was asked to respond to GRU Hospital in
9 Augusta in reference to a child having some
10 injuries.

11 Q. And I guess this hospital is kind of changing
12 names around. But in 2014 it was GRU?

13 A. I believe, yes, sir.

14 Q. Okay. Well, had you been there before?

15 A. Yes, sir.

16 Q. So you knew where to go and what to do at that
17 point; right?

18 A. Yes, sir.

19 Q. Okay. What specifically were you responding to
20 over there?

21 A. I was responding to a child that had head
22 injuries and unexplained head injuries. And the
23 protocol is any time they have a child, any
24 hospital, with any severe injuries, they call law
25 enforcement.

1 Q. And that's what happened here?

2 A. Yes, sir.

3 Q. And where specifically at the hospital do you
4 respond to?

5 A. To the pediatric ICU.

6 Q. Is it called PICU for short?

7 A. Yes, sir.

8 Q. Just to kind of back up and make sure that
9 we're all on the same page, who is Melodi Tucker?

10 A. Melodi Tucker is **Minor** 's mother.

11 Q. And **Minor** is the child that we're
12 talking about; right?

13 A. Yes, sir.

14 Q. And who is Heyward Martin?

15 A. Heyward Martin is a man that Melodi was staying
16 with at the time of the incident.

17 Q. And Mellisa Martin?

18 A. That's Heyward's wife.

19 Q. And there are two other children staying in
20 that house?

21 A. Yes, sir.

22 Q. Kaitlynn and Jason?

23 A. Yes, sir.

24 Q. And how old are they -- or how old were they
25 then?

1 A. Kaitlynn was 14 and Jason was 12.

2 Q. Okay. And they're Mr. Martin's stepchildren?

3 A. Correct.

4 Q. So they all live in this house?

5 A. Yes, sir.

6 Q. In Jackson?

7 A. Yes, sir.

8 Q. That's three adults and three children; right?

9 A. Yes, sir.

10 Q. Do you know about how long Melodi had been
11 staying there at the time?

12 A. I believe it was a couple months.

13 Q. All right. So when you -- and do you know who
14 Tyler Hill is?

15 A. Sir?

16 Q. Tyler Hill.

17 A. Yes, sir.

18 Q. You met him that early morning of June 11th?

19 A. Yes, sir.

20 Q. And he wasn't living at that house; right?

21 A. No, sir.

22 Q. But you did talk to him at the hospital?

23 A. Yes, sir.

24 Q. All right. Well, when you go to the hospital,
25 what did you learn about the child's condition?

1 A. I learned that the child had severe head
2 injuries and that they most likely were not
3 caused -- or nonaccidental trauma is the definition
4 they use or the term they use, most likely caused by
5 nonaccidental trauma.

6 Q. Nonaccidental trauma. And does that kind of
7 kick-start your investigation?

8 A. Yes, sir.

9 Q. If you have a case where the medical
10 information you have at the time is that there's
11 suspected nonaccidental trauma, what is the point of
12 your investigation?

13 A. To try to learn what could have caused that
14 trauma.

15 Q. And who did you find at the hospital that
16 night?

17 A. Minor , of course, Minor 's mother
18 Melodi, and Mr. Hill.

19 Q. All right. Did you have a chance to interview
20 Mr. Hill at the hospital that night?

21 A. Yes, sir.

22 Q. And did he explain to you what he and Melodi
23 had done that day?

24 A. Yes, sir.

25 Q. And where they had been?

1 A. Yes, sir.

2 Q. Did you get a chance to talk to Melodi that
3 night at the hospital?

4 A. Yes, sir.

5 Q. And did she explain to you where she had been
6 that day and what she had done?

7 A. Yes, sir.

8 Q. All right. You had an opportunity to -- well,
9 after you met with Melodi and after you met with
10 Tyler Hill, did you leave the hospital and continue
11 your investigation?

12 A. Yes, sir.

13 Q. Did you obtain a search warrant?

14 A. Yes, sir.

15 Q. And where was that search warrant -- what was
16 the location of that search warrant?

17 A. [REDACTED], Mr. Heyward's
18 Martin's residence.

19 Q. What was the point of getting the search
20 warrant?

21 A. We were looking for anything that could explain
22 how that child received those injuries.

23 Q. And at that point where did you know the child
24 was when he was injured?

25 A. At that residence.

1 Q. So that was the reason you went and obtained a
2 search warrant for that residence?

3 A. Yes, sir.

4 Q. Did you respond there with other members of law
5 enforcement to execute the search warrant?

6 A. Yes, sir.

7 Q. Does that basically mean you show up and look
8 around and see if there's any evidence of any value?

9 A. Correct.

10 Q. Were you there on June 11th, that same -- later
11 that same day that you started this investigation?

12 A. Yes, sir.

13 Q. Who did you -- well, did you have a chance to
14 talk to Mellisa Martin while you were there?

15 A. Yes, sir.

16 Q. And did you interview her about anything she
17 might know?

18 A. Yes, sir.

19 Q. Did you have an opportunity to -- well, did you
20 have a chance to interview Kaitlynn while you were
21 there?

22 A. Yes, sir.

23 Q. And talk to her about anything she might know?

24 A. Yes, sir.

25 Q. Was Jason Martin interviewed?

1 A. Yes, sir.

2 Q. Okay. By somebody other than you?

3 A. Yes, sir.

4 Q. Who else was there helping you? Do you
5 remember everybody?

6 A. Lieutenant Vickie Gaskins, who was a supervisor
7 over the unit I'm assigned to, John Malcolm, also an
8 investigator, Sage Watts, who is a forensic
9 investigator, and Chief Rushton of the Jackson
10 Police Department.

11 Q. While you were at that house, did the defendant
12 show up?

13 A. Yes, sir.

14 Q. Did you have a chance to discuss this with him?

15 A. Yes, sir.

16 Q. I'm showing you what's been marked as State's
17 Exhibit 15 in evidence. What is that document?

18 A. It's the form we use to advise people of their
19 Miranda warning.

20 Q. Did you indicate to him the rights that he has
21 that's on that form?

22 A. Yes, sir.

23 Q. That he had the right to have an attorney, talk
24 to him, have an attorney before he talked to you?

25 A. Right to remain silent and so forth, yes, sir.

1 Q. So all the rights that are on that form, you
2 informed him before he spoke with you?

3 A. Yes, sir.

4 Q. Was he under arrest?

5 A. No, sir.

6 Q. Was he at his house?

7 A. Yes, sir.

8 Q. And after you got done talking to him, did he
9 stay there?

10 A. Yes, sir.

11 Q. Okay. Did you threaten or coerce him in any
12 way to talk to you?

13 A. No, sir.

14 Q. Did you give him the opportunity to talk to you
15 and explain what was going on?

16 A. Yes, sir.

17 Q. What happened with Minor ?

18 A. Yes, sir.

19 Q. And did he, in fact, take that opportunity and
20 talk to you about that?

21 A. Yes, sir.

22 Q. Did you audio-record that?

23 A. Yes, sir.

24 Q. I'm showing you a disc. Do you know what's on
25 that disc?

1 A. Yes, sir, an audio recording of my interview
2 with Mr. Martin on the 11th of June, 2014.

3 THE COURT: What date was that?

4 THE WITNESS: June 11th, 2014.

5 THE COURT: What number exhibit, please?

6 MR. GRIMES: State's Exhibit 15, Your Honor.

7 THE COURT: I thought 15 was the Miranda
8 Rights?

9 MR. GRIMES: 16. I apologize.

10 BY MR. GRIMES:

11 Q. When you talked to him, did he indicate to you
12 that on the evening of June 10th that he was the
13 person watching Minor ?

14 A. Yes, sir.

15 Q. That Melodi had left Minor with him while
16 she went to a class?

17 A. Yes, sir.

18 Q. Did he indicate to you that that child was
19 sitting in the floor awake when Melodi left?

20 A. Yes, sir.

21 Q. Did he indicate to you that at some point while
22 Minor was there with him that he began to have
23 some symptoms?

24 A. Yes, sir.

25 Q. But that initially that wasn't the case?

1 A. Correct.

2 MR. GRIMES: Your Honor, at this time we'd like
3 to publish the interview with Heyward Martin on
4 State's Exhibit 16.

5 MR. KATONAK: No objection.

6 THE COURT: How long is the interview, please?

7 MR. GRIMES: About 25 minutes.

8 THE COURT: Everybody all right? We'll take a
9 break when it's finished.

10 (State's Exhibit No. 16 published to the jury.)

11 THE COURT: Ladies and gentlemen of the jury
12 panel, we're going to take our morning break for
13 about ten minutes. I'm going to have the Clerk come
14 back there and give y'all some options about what
15 y'all want to order for lunch so we can -- if that
16 suits everybody; or I can let y'all go out. It's
17 probably more efficient to order in. Don't discuss
18 the case, don't deliberate, and select me a jury
19 foreperson, please.

20 (The jury exits the courtroom at 10:57 AM.)

21 THE COURT: Anything for the record before we
22 break for a bathroom break by the State?

23 MS. HAMMACK: Not from the State, Your Honor.

24 MR. KATONAK: Nothing from the Defense, Your
25 Honor.

1 THE COURT: Your client is in custody.

2 Mr. Eversen, we are in the middle of your testimony,
3 please do not discuss it with anybody. Obviously
4 you can take advantage of the break. Thank you.

5 All right. We'll stand at ease about ten
6 minutes.

7 (Short break 10:58 AM to 11:15 AM.)

8 THE COURT: Is the State ready to proceed?

9 MR. GRIMES: Yes, sir.

10 THE COURT: Defense?

11 MR. KATONAK: Yes, sir.

12 THE COURT: Are you my foreman?

13 THE FOREMAN: Yes, sir.

14 THE COURT: Thank you.

15 All right. You may proceed.

16 DIRECT EXAMINATION

17 BY MR. GRIMES:

18 Q. Investigator Evensen, we just listened to the
19 interview with the defendant back on June 11th. Did
20 he at any time tell you in that interview that the
21 child cried incessantly, cried the whole time he was
22 there?

23 A. No.

24 Q. In fact, he did talk a little bit about crying.
25 I know y'all went back and forth about what type of

1 crying it was. Do you recall how long he said that
2 crying lasted?

3 A. Thirty seconds, I believe it was; just a very
4 short period of time.

5 Q. Just in relation to changing a diaper?

6 A. Right.

7 Q. Did -- there was kind of a break between the
8 two audio recordings. What happened in that break?

9 A. I went outside to get a doll that we use
10 sometimes in situations like this so they can
11 visually show us what they're talking about so we
12 can make sure we understand one another.

13 Q. And you brought the doll back inside?

14 A. Yes, sir.

15 Q. And did he -- and what was he demonstrating
16 with the doll?

17 A. How the child was laying on the bed.

18 Q. So y'all are in the bedroom at [REDACTED];
19 right?

20 A. Yes, sir.

21 Q. I'm going to show you State's Exhibits 11
22 through 14. If you could, just tell me what those
23 are.

24 A. They are pictures of the master bedroom inside
25 Mr. Martin's residence.

1 Q. One of the things that he mentioned in that
2 interview was the baby, Minor , falling off the
3 bed; is that correct?

4 A. Yes.

5 Q. So as part of your investigation, did you take
6 those pictures in relation to that story?

7 A. I didn't take the pictures, but I was in the
8 room when the pictures were taken. Yes, sir.

9 Q. Okay. Is that why those pictures were taken?

10 A. Yes, sir.

11 Q. And what do those -- well, let's go ahead and
12 put them up here. State's 11. If you can come
13 down, we'll just talk about them while we display
14 them for the jury.

15 So y'all took pictures at [REDACTED]. Are
16 these some of the pictures that you took there?

17 A. Yes, sir.

18 Q. And is -- well, what room in the house is this?

19 A. That's the master bedroom, Mr. Martin's
20 bedroom.

21 Q. And is that where he indicated he and Minor
22 were the majority of the evening?

23 A. Yes.

24 Q. And is that the bed that he indicated they were
25 laying on?

1 A. Yes.

2 Q. In Picture No. 12, what's going on there?

3 A. Measuring the height of the bed just to show
4 the reference so there's no question of how high the
5 beds are and furniture and such.

6 Q. He indicated the child fell off that bed?

7 A. Yes, sir.

8 Q. I guess he didn't see it, but he saw the child
9 on the floor next to the bed?

10 A. (Nonverbal response.)

11 Q. What is the height?

12 A. Looks like approximately 23 inches.

13 Q. Less than two feet?

14 A. Yes.

15 Q. What is State's Exhibit 13?

16 A. It's a loveseat couch located near the bed in
17 the master bedroom.

18 Q. All right. And the defendant didn't mention
19 anything in his interview about that loveseat, did
20 he?

21 A. No.

22 Q. So let's go to Exhibit 14. Y'all measured it
23 anyway?

24 A. Yes, sir.

25 Q. Just because it was in the room or was there

1 another reason?

2 A. Just because it was in the room close in
3 proximity to where he said the baby was.

4 Q. Okay. Can you tell us what the height is on
5 that?

6 A. 16 to 16 and a half inches.

7 Q. So neither the couch nor the bed is over two
8 feet high; is that correct?

9 A. Correct.

10 Q. Okay. We talked about that being at [REDACTED]

11 [REDACTED] Is that in Aiken County?

12 A. Yes, sir.

13 Q. Okay. I'm going to go ahead and show you
14 State's 6, 7, 8, 9, and 10. After you left -- well,
15 after you left [REDACTED], did you go
16 back to the hospital?

17 A. Yes, sir.

18 Q. And is that when those pictures were taken of

19 Minor ?

20 A. Yes, sir.

21 Q. Okay. Let's put those up.

22 THE COURT: 6 through 10, no objection?

23 MR. KATONAK: No objection.

24 (State's Exhibit Nos. 6 - 10 admitted into
25 evidence and published to the jury.)

1 BY MR. GRIMES:

2 Q. And who -- this is State's 6. Who's in that
3 picture?

4 A. That's Minor .

5 Q. Where was that picture taken?

6 A. GRU Hospital.

7 Q. And is that the way he appeared while y'all
8 were there?

9 A. Yes, sir.

10 Q. Okay. And why was this particular picture
11 taken?

12 A. Just to show his condition. You can see some
13 marks on his face.

14 Q. Can you point to those areas?

15 A. Marks here and a mark here (indicating). Just
16 to show his condition.

17 Q. And number 7?

18 A. There again, there's a mark here above his
19 right eye (indicating).

20 Q. Above his right eye. Let's look at number 8.
21 What were y'all taking a picture -- well, whose
22 hands are those, by the way?

23 A. Those are the nurse's hands.

24 Q. Okay.

25 A. There's a mark here on his neck, also a mark

1 here on his back (indicating).

2 Q. And number 9?

3 A. Mark under his chin (indicating).

4 Q. Number 10?

5 A. Again just showing some marks on his back.

6 Q. And, again, those pictures were taken of

7 **Minor** while he was at the hospital?

8 A. Yes, sir.

9 Q. When you interviewed Mr. Martin, he didn't talk
10 about anybody else being around; is that correct?

11 A. He mentioned his children being there, but no.

12 Q. At the house?

13 A. Right.

14 Q. Did he mention **Minor** being injured or hurt
15 before Melodi left him?

16 A. No.

17 Q. After you talked to the defendant, did you --
18 you went back to the hospital. Ultimately did you
19 meet again with **Minor** 's doctors?

20 A. Yes.

21 Q. And did you talk to them about what type of
22 thing could possibly cause these injuries?

23 A. Yes.

24 Q. Did you talk to them about what type of things
25 could not possibly cause these injuries?

1 A. Yes.

2 Q. We have already looked State's Exhibits 2, 3,
3 4, and 5. These are the texts on Mr. Hill's cell
4 phone?

5 A. Yes, sir.

6 Q. Did you take those pictures?

7 A. Yes, sir.

8 Q. You took those?

9 A. I did.

10 Q. There's a number on the top of that phone in
11 the picture.

12 A. Yes, sir.

13 Q. Do you see it?

14 A. Yes, sir.

15 Q. What number is that?

16 A. [REDACTED]-4656.

17 Q. Were you able to determine who that phone
18 number belonged to?

19 A. Mr. Heyward Martin.

20 Q. Heyward Martin. What is Minor 's
21 birthday?

22 A. [REDACTED] of '13.

23 Q. [REDACTED] of 2013?

24 A. Yes, sir.

25 Q. So that would put him at what age when these

1 injuries occurred?

2 A. Almost six months.

3 Q. Do you see the defendant in the courtroom
4 today?

5 A. Yes, sir.

6 Q. Where is he seated?

7 A. He's seated at this table here wearing a tan
8 shirt with stripes on it (indicating).

9 Q. One moment, please. You identified Mr. Heyward
10 Martin. He lives at [REDACTED] in
11 Aiken County?

12 A. Yes, sir.

13 Q. Please answer any questions Defense counsel has
14 for you.

15 CROSS-EXAMINATION

16 BY MR. KATONAK:

17 Q. How are you doing, Investigator Evensen?

18 A. I got a sore throat, but other than that I'm
19 great.

20 Q. I don't want to kiss you though. Okay?

21 Investigator Evensen, based on your
22 investigation, how long had Ms. Tucker been living
23 at the Martin house?

24 A. Approximately six to eight weeks.

25 Q. All right. And it's my understanding that she

1 and my client, Heyward, had known each other for a
2 long time.

3 A. I think so, yes, sir.

4 Q. Did your investigation ever show why it is that
5 she ended up living in that home?

6 A. I believe she had nowhere else to go and the
7 Martin family allowed her to stay there.

8 Q. And I haven't seen anything to the contrary.
9 But it was not a case where my client and
10 Ms. Tucker, they were not involved romantically at
11 all, it was a friendship; correct?

12 A. Right.

13 Q. And to your knowledge, is Ms. Tucker on the
14 witness list for the State?

15 A. I'm not sure.

16 Q. Is she -- and again, I've never met her. Is
17 she in the courtroom today?

18 A. I don't see her.. I haven't seen her in a
19 couple years, but I don't see anybody that resembles
20 her here.

21 Q. To your knowledge is she --

22 A. No, sir.

23 Q. -- going to be in court today?

24 A. Excuse me?

25 Q. To your knowledge, is she going to be in court

1 today?

2 A. I'm un- -- I don't know.

3 Q. Do you think it would be pertinent to hear from
4 the mother of the case?

5 MR. GRIMES: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. KATONAK:

8 Q. In the course of your investigation it appears,
9 from Mr. Martin's statement, that he began watching
10 the child around 5:30 that day; right?

11 A. I believe it was closer to 4:30, but that
12 afternoon.

13 Q. And I haven't seen anything -- but nothing else
14 to indicate that he watched the child at any other
15 point during that day; correct?

16 A. Not on that day, no.

17 Q. Okay. And at the home when Ms. Tucker was gone
18 was Heyward and the two children. He calls them his
19 kids, but they're actually his step-kids; correct?

20 A. Correct.

21 Q. And I believe at that time they were
22 approximately ages 12 and 14?

23 A. Yes, sir.

24 Q. Does that sound right? Okay. I think the son
25 was the 12-year-old and the daughter was the

1 14-year-old.

2 A. Correct.

3 Q. And based on your investigation, were the two
4 of them at the home the entire time that Heyward was
5 watching the child?

6 A. Yes.

7 Q. Okay. And is it your understanding that prior
8 to Ms. Tucker leaving, she was the one watching the
9 child that day; correct?

10 A. Correct.

11 Q. And do you know where Ms. Tucker went that
12 evening?

13 A. Yes, sir.

14 Q. Where is that?

15 A. Aiken Center.

16 Q. And what is the Aiken Center?

17 A. To the best of my knowledge, it's a rehab
18 center for different types of addictions.

19 Q. And did your investigation show why she was
20 going to the Aiken Center?

21 MR. GRIMES: Objection, Your Honor; this isn't
22 relevant.

23 THE COURT: Sustained.

24 BY MR. KATONAK:

25 Q. So based upon what we've established, my client

1 was only watching the child from the 4:30/5:30
2 period up until the child went to the hospital;
3 correct?

4 A. Correct.

5 Q. Investigator, in the course of your
6 investigation did you learn anything about when the
7 trauma could have occurred?

8 A. Yes.

9 Q. And is that from talking to Dr. Fisher?

10 A. Mostly, yes, sir, medical staff at the
11 hospital.

12 Q. All right. We heard an audiotape of my client.
13 But he also gave a written statement; correct?

14 A. Correct.

15 Q. At any point during that time did he
16 acknowledge assaulting the child in any way?

17 A. No.

18 Q. From your investigation is there any other
19 direct evidence that Heyward assaulted the child?

20 A. No.

21 Q. Thank you. No more questions.

22 MR. GRIMES: Nothing from the State, Your
23 Honor.

24 THE COURT: All right. You may step down.
25 Thank you.

1 Next witness, please.

2 MS. HAMMACK: The State calls Dr. Gene Fisher.

3 THE COURT: Dr. Fisher, come around, please,
4 and they'll swear you in.

5 LYLE EUGENE FISHER, JR.

6 being first duly sworn, testified as follows:

7 THE WITNESS: Yes.

8 THE CLERK: Have a seat in the witness box.
9 State your full name for the Court spelling your
10 last.

11 THE WITNESS: My name is Lyle Eugene Fisher,
12 Jr., F-I-S-H-E-R.

13 DIRECT EXAMINATION

14 BY MS. HAMMACK:

15 Q. Good morning, Dr. Fisher.

16 A. Good morning.

17 Q. Can you tell the jury, what do you do for a
18 living?

19 A. I'm a children's intensive care specialist at
20 the Children's Hospital of Georgia.

21 Q. And how long have you been doing that?

22 A. More than 20 years.

23 Q. Did you have to have any particularized
24 education or degrees in order to be qualified to do
25 that?

1 A. Yes. After medical school I did three years of
2 pediatric training and then three years of pediatric
3 critical care fellowship. I finished my fellowship
4 in 1994 and I've been practicing pediatric critical
5 care ever since.

6 Q. Do you have any particular certifications that
7 you carry?

8 A. Yes. I'm board certified in pediatric critical
9 care.

10 Q. And as part of your position, do you have to do
11 any ongoing education or training to stay up to
12 date?

13 A. Absolutely. It's part of our medical licensure
14 as well as for maintaining credentials at the
15 hospital.

16 Q. Now, since the early '90s, do you have any idea
17 how many children with trauma that you have treated?

18 A. Hundreds. We admit 11- or 1,200 a year -- 11-
19 or 1,200 critically ill children per year, and about
20 ten percent of those are trauma. So I've
21 participated in the care of hundreds of critically
22 ill trauma patients.

23 Q. Now, as your position with the Children's
24 Hospital of Georgia, have you ever testified in
25 court before?

1 A. Yes.

2 Q. Have you ever been qualified as an expert
3 before?

4 A. Yes.

5 MS. HAMMACK: Your Honor, at this time we would
6 offer Dr. Gene Fisher as an expert in pediatric
7 critical care medicine.

8 THE COURT: Any cross-examination as to his
9 qualifications?

10 MR. KATONAK: No, sir.

11 THE COURT: All right. I will so qualify him.

12 What that means, Mr. Foreman, ladies and
13 gentlemen of the jury, normally our rules of
14 evidence does not allow a witness to give opinions.

15 There's an exception to that rule; someone who
16 by way of training, education, and experience has
17 gained specific knowledge in a field that's normally
18 outside the knowledge of ordinary people, such as
19 pediatric trauma, he or she can be qualified and the
20 rules of evidence will allow them to give opinion
21 testimony. And at the conclusion of the case when I
22 charge you, I will charge you a charge or an
23 instruction on expert witnesses.

24 So you, Dr. Fisher will be allowed to render
25 opinions and state the reasons therefor.

1 MS. HAMMACK: Thank you, Your Honor.

2 BY MS. HAMMACK:

3 Q. Dr. Fisher, just for some clarification,
4 there's been some name changes over at the hospital
5 in Georgia. Where were you working in June of 2014?

6 A. At the Children's Hospital of Georgia. It's
7 MCG then Georgia Health Sciences University then
8 Georgia Regents University and it's currently
9 Augusta University. And I can't really remember
10 when the names all changed.

11 Q. But that's where you were working in June of
12 2014?

13 A. Yes, same building. We moved into the
14 children's intensive care unit in 1999.

15 Q. And you were working in your position as a
16 pediatric intensive care specialist at that time?

17 A. Correct.

18 Q. In June of 2014, did you have the chance to
19 become involved with the treatment of Minor

20 ?

21 A. Yes, I did.

22 Q. And as part of your treatment of Minor ,
23 were you able to observe him in the hospital?

24 A. Absolutely. I was -- although I was not the
25 admitting physician, I was responsible for the team

1 through part of his stay in the intensive care unit.

2 Q. And, Dr. Fisher, I'm going to ask you to step
3 down as we look at some pictures.

4 A. (Witness complies.)

5 Q. It's a bit dark on this screen, so if you would
6 feel better about using -- well, it's lightening up.

7 I apologize.

8 A. Okay. Yes.

9 Q. I'm drawing your attention to what's been
10 entered as State's Exhibit 6. Is that **Minor**

11 ?

12 A. Yes, ma'am.

13 Q. Is that how you saw him when you saw him in the
14 hospital?

15 A. Yes, ma'am.

16 Q. Were there any injuries or anything that you
17 observed as demonstrated in this picture that were
18 significant to you?

19 A. Well, yes. I mean, first of all, I want to
20 point out this breathing tube here. So he was on
21 life support to maintain breathing and his airway.
22 He also had -- this smaller tube going in the other
23 side of his mouth was to provide drainage for his
24 stomach and potentially to provide nutrition during
25 part of his critical illness.

1 Looking at the child here on the right
2 forehead, there's a dark red shot. There's also a
3 spot here over the left eyelid that can be seen in
4 this picture.

5 Q. Dr. Fisher, you indicated that that tube was
6 having **Minor** on life support. When **Minor**
7 was at the hospital under doctors' care, was he at a
8 substantial risk of death because of his injuries?

9 A. Absolutely. The -- when he presented to the
10 hospital, when I reviewed the emergency room records
11 and his -- immediately after his scanning, it was
12 appreciated that his breathing and his ability to
13 protect his airway was compromised. He was -- the
14 breathing tube was placed emergently to support him
15 to provide for proper oxygenation of him.

16 Q. Let's look at State's 7. And again, was there
17 anything significant in this picture in your
18 treatment and diagnosis of **Minor** ?

19 A. Yes; this red circular mark with abrasions
20 consistent with a bruise.

21 Q. Let's look at State's Exhibit 8. Anything in
22 that picture, Doctor?

23 A. Yes. There's also bruising and abrasion here
24 behind the right ear.

25 Q. State's Exhibit 9.

1 A. There's bruising here underneath the left side
2 of the chin.

3 Q. And, lastly, State's Exhibit 10.

4 A. There's some -- there's two lines of bruising
5 with a clear pattern in between.

6 Q. And what do you mean by a clear pattern?

7 A. We can see a purple line here and a lighter
8 purple line here beside it with a clear spot in
9 between.

10 Q. You can return to your seat, Dr. Fisher. Thank
11 you.

12 A. (Witness complies.)

13 Q. Now, Dr. Fisher, as we're talking about those
14 bruises, was there anything consistent about those
15 bruises that was significant to you?

16 A. Well, the consistency, they were all
17 approximately the same color which suggests that
18 they all occurred at about the same time.

19 Q. And with regards to the color of those bruises,
20 can the color of a bruise give us any indication of
21 how old or how new a bruise is?

22 A. Well, certainly. A bruise is bleeding
23 underneath the skin, and as that blood breaks down
24 and is reabsorbed, it goes through color changes.
25 We've all had bruises. So a dark purple bruise,

1 because it's more blood-colored, indicates fresher
2 bleeding rather than an old green or yellow bruise
3 that will appear before it -- right before it
4 disappears.

5 Q. And a dark purple fresh bruise, is that what
6 you observed on Minor ?

7 A. Yes.

8 Q. Was there anything significant to you about the
9 locations of the bruises on Minor ?

10 A. Yes. I -- if we look -- and there was one here
11 and here and behind the -- I couldn't come up with a
12 single impact that would have led to all those
13 different bruises.

14 Q. Now, as part of treating Minor , was it
15 important to you to look at his lab levels to
16 determine his condition when he was in the hospital?

17 A. Absolutely.

18 Q. Was there anything significant about his lab
19 levels?

20 A. Well, on initial presentation, and I don't have
21 all the numbers in front of me, but his lactic acid
22 level was elevated. And an elevated lactic acid
23 shows low oxygen, low tissue perfusion.

24 Q. So if Minor presented to the hospital with
25 high lactic acid levels, that would be indicative

1 that he had low oxygen at that time?

2 A. Correct, low. Yes.

3 Q. And would that be consistent with the need to
4 put him on life support because he could not breathe
5 on his own?

6 A. That's part of the support for that, yes.

7 Q. Did you notice anything significant about his
8 pH levels?

9 A. Along with that, his initial -- on
10 presentation, his initial pH or acid level was low.

11 Q. And what does that mean?

12 A. That goes along with the buildup of lactic
13 acid. It's also a general marker of critical
14 illness.

15 Q. And lastly, did you check any levels as far as
16 his Glasgow Coma Scale?

17 A. So the Glasgow Coma Score is a quick sort of
18 numeric checklist to assess how responsive and how
19 interactive a person is. A normal is 15 and low
20 is -- and the lowest it can be is 3. I think his,
21 on presentation, was 7. And pediatric trauma
22 guidelines suggest that anything below 8 needs
23 urgent life support with the breathing tube to try
24 to prevent ongoing injury.

25 Q. Now, Dr. Fisher, when a child presents to the

1 hospital with these types of lab levels and a child
2 that has to be put on life support, do y'all have
3 tests you conduct in order to determine the extent
4 of the child's injuries?

5 A. Yes.

6 Q. And did you conduct any tests on Minor to
7 determine the extent of his injuries?

8 A. Yes.

9 Q. Can you tell the jury what types of tests were
10 performed?

11 A. During the course of his time, he had multiple
12 tests. He had CT scans, which are ray to X-ray to
13 look at the inside of the brain, he had EEGs to look
14 at brain wave activity, he had an MRI of the brain,
15 another way to look at the tissue of the brain; he
16 had multiple other types of X-rays done to support
17 him, and he had many blood work looking at his
18 chemistries and his blood levels as well.

19 Q. Now, after CT scans were performed and EEGs
20 were performed, MRIs were performed, and all of
21 these tests were performed on Minor, were you
22 able to determine what types of injuries Minor
23 had?

24 A. Yes, from the reports, especially with the
25 imaging studies.

1 Q. Did Minor have significant injuries?

2 A. Yes.

3 Q. Specifically with regards to the CT scan, what
4 types of injuries do you recall that Minor
5 displayed?

6 A. So on his initial CT exam, it showed evidence
7 of subdural bleeding; that's bleeding between the
8 lining of the brain and the brain itself.

9 Q. Are there different levels of potential
10 bleeding in a person's head?

11 A. Yes. There's a lining that covers the brain,
12 and depending on where bleeding occurs in relation
13 to that lining, we may see different types of
14 symptoms and different types of clinical
15 presentations. And that also will help surgeons
16 sort out whether surgery may be needed or not.

17 Q. So when you said that he had subdural bleeding,
18 where would that be?

19 A. That's -- the dura is the -- one of the linings
20 that covers the brain, it's one very close to the
21 brain's surface. And bleeding below that, between
22 the dura and the brain, typically occurs from veins
23 that have been torn.

24 Q. And do you know if Minor had one set of
25 subdural bleeding or more than one?

1 A. As I recall, there were more than one.

2 Q. Do you recall the locations of that bleeding on
3 Minor 's brain?

4 A. I would have to look at the report to -- there
5 were multiple locations, but I don't recall.

6 Q. Would it help you to look at the report?

7 A. Sure.

8 Q. Okay.

9 A. So this is from the CT scan of the head on June
10 10th, 2014 that had had a small right parietal
11 hematoma, which -- and parietal is back in here --
12 that then tracked up with blood that tracked up into
13 the middle part of the interhemispheric fissure and
14 it also tracked down. So there's blood that --
15 there was enough bleeding in those layers that it's
16 starting to track and expand and move along
17 different parts of the brain.

18 Q. So when you're referring to subdural and you
19 said right parietal, is that the back right side --

20 A. It's --

21 Q. -- of his head?

22 A. -- the right side.

23 Q. The right side.

24 A. Yes.

25 Q. And you said the bleeding was spreading both

1 upward and downward?

2 A. Uh-huh.

3 Q. Okay.

4 A. Also had a small subarachnoid. And the
5 arachnoid layer is another one of the layers in the
6 brain. And that was over the -- on both sides, the
7 high is frontoparietal, which is over the top here,
8 with right greater than left.

9 Q. So it would be correct to say that he had
10 bleeding on the right side of his brain going up and
11 down and on the front of his brain?

12 A. Yes.

13 Q. Okay.

14 A. And then number 3 was a hairline, nondepressed
15 skull fracture with a small amount of bleeding on
16 the outside of the skull, subgaleal.

17 Q. So that bleeding is in a different layer than
18 the subdural bleeding?

19 A. Yes. So subdural is inside the skull,
20 subgaleal is outside the skull.

21 Q. So, Dr. Fisher, is it correct to say that
22 **Minor** was bleeding both beneath his skull on top
23 of his brain and over his skull?

24 A. Yes.

25 Q. On different areas of his head?

1 A. Yes.

2 Q. Do you know if an ophthal- -- and I'm going to
3 mess this up a hundred times, so I'm not even going
4 to try. Do you know if an eye exam was performed on
5 Minor ?

6 A. Yes.

7 Q. Okay.

8 A. So as part of our trauma evaluations,
9 especially with this degree of brain bleeding, we
10 asked our pediatric eye specialist to take a look at
11 the insides of the eyes to look for evidence of
12 bleeding.

13 Q. And can you tell the jury when this type of eye
14 exam is performed, how does a doctor look inside of
15 a person's eye?

16 A. So the doctor will give medicine to make the
17 pupils bigger and then they look in both with a
18 scope and -- our children's eye specialists even
19 have cameras that they can take pictures inside the
20 eye in very high detail to evaluate for bleeding or
21 pressure or signs of trauma.

22 Q. And was an eye exam performed on Minor in
23 this case?

24 A. Yes.

25 Q. Were you able to review the results of that eye

1 exam?

2 A. Yes.

3 Q. And were there any significant findings in that
4 eye exam?

5 A. Yes. There was significant and severe -- and
6 I'm using that grading based on the eye
7 specialist -- bleeding in both eyes with development
8 of schisis cavities, which is a big word that means
9 that the soft back lining part of the eye, the
10 bleeding was actually forming pockets and separating
11 the layers.

12 Q. And these schisis cavities, do you know if they
13 were located in both eyes?

14 A. I believe they were. That would be in their
15 report.

16 Q. Would it help you to look at that report?

17 A. Yes.

18 Q. Okay.

19 A. Thank you. So there -- you want me to go ahead
20 and read it or describe it?

21 Q. Yes, details of the various significant
22 findings.

23 A. Absolutely. The left -- the right eye, which
24 is abbreviated OD, the disc at the back of the eye
25 is partially obscured by hemorrhage.

1 Q. And, Doctor, let me stop you. I apologize.
2 This may be a silly question, but can you explain to
3 the jury what you mean by hemorrhage?

4 A. So there bleeding in the back of the eye. The
5 inside part of our eye is clear so light can pass
6 through it back to the censor cells on the back.
7 There was bleeding that was partially obscuring the
8 back of the eye by their exam. There were multiple
9 little bleeding -- amounts of bleeding with
10 hemorrhage in front of and within the retina and the
11 schisis cavities, and they point out that the
12 hemorrhage involved all four parts of the right eye.

13 The left eye was also -- the internal part was
14 obscured by hemorrhage with the same type of
15 preretinal and intraretinal hemorrhages; the schisis
16 cavities, that is where the blood is separating the
17 lining of the eye, was visible, and there was
18 hemorrhage in all four portions of the left eye as
19 well.

20 Q. So is it correct to say that there was bleeding
21 within multiple layers of the eye in both of

22 Minor 's eyes?

23 A. Yes.

24 Q. And you mentioned that there was bleeding in
25 all four quadrants. Explain how an eye is divided

1 into quadrants.

2 A. So the ophthalmologist draws, basically, an
3 imaginary line to divide the back of the eye into
4 four equal pieces so that they can further specify
5 where a specific spot is. And every spot in the
6 back of the eye showed hemorrhage in both eyes for
7 this child.

8 Q. Were there any other findings in the
9 ophthalmological report?

10 A. I think that really summarizes the key
11 findings.

12 Q. I'm going to show you what's been marked and
13 entered as State's Exhibits 17, 18, and 19.

14 A. Okay.

15 Q. Would you look at each of those for me. Are
16 you familiar with those pictures?

17 A. Yes.

18 Q. Okay. Beginning with State's 17, what is that
19 a picture of?

20 THE COURT: Any objection, Mr. Katonak?

21 MR. KATONAK: Judge, it's fine.

22 THE COURT: Sir? I asked if there was any
23 objection to these three photos.

24 MR. KATONAK: No, sir. We have no objection to
25 any of the photos at all.

1 THE COURT: Thank you.

2 MS. HALL: And, Your Honor, if I may, I'll go
3 ahead and publish these to the jury.

4 THE COURT: Certainly.

5 (States' Exhibit Nos. 17 - 19 admitted into
6 evidence and published to the jury.)

7 BY MS. HAMMACK:

8 Q. Dr. Fisher, I'll have you step down so you can
9 demonstrate these.

10 A. (Witness complies.)

11 Q. Now, Dr. Fisher, can you tell the jury what
12 they're looking at in State's Exhibit 17?

13 A. Certainly. This is a picture of a normal left
14 eye. So looking, the picture was shot through the
15 opening of the front of the eye looking at the back.
16 The big circle here that immediately grabs your
17 attention is the optic disc, and this is where the
18 nerves all gather to flow to the back of the brain
19 to deliver the information to the back of the brain.

20 The vessels, the red lines that are coming out
21 of the center and then spreading out all over the
22 circle, are the optic artery and vein which is
23 delivering blood to the eye and then draining it
24 from the eye.

25 And the rest of this sort of light pink circle

1 is where the organs of sight actually are. So
2 that's where the rods and cones are that light hits,
3 signals are generated, sent back to the optic nerve,
4 and then back to the back of the brain where it
5 registers and we interpret it.

6 Q. So -- I apologize, Doctor.

7 A. So you can see this is -- the coloration is
8 equal; you've got a good clear sharp disc margin
9 with little bit of pink, and then central whiteness.
10 And if you were looking in these eyes, you could
11 actually -- if this were a live picture, you could
12 see the pulsations of the arteries in the back.

13 Q. So would it be correct to say this is a picture
14 of -- if you took a picture through the pupil of a
15 hole in an eye that this would be picture of the
16 back side of an eye of a normal healthy eye?

17 A. Correct.

18 Q. Let's look at State's Exhibit 18. What's that,
19 Dr. Fisher?

20 A. So -- and this is a picture of the child's eye.
21 And I honestly -- Im not sure, without labeling, if
22 I would know if this were left or right. But there
23 are -- this circle here, I believe, is the disc that
24 we looked at earlier on the normal picture. You can
25 see that there's no clear pink. There is so much

1 red in between that we can't even really see blood
2 vessels that are coming out of this.

3 This dark purple over here is blood that is
4 collected between the layers of the eye. And, in
5 fact, there's blood here, and this general redness
6 is blood within the eye itself. And there's so much
7 blood in all four quadrants that the normal anatomy
8 and architecture of the eye is -- can't be
9 distinguished.

10 Q. You're talking about the normal anatomy of the
11 eye. Can you show the jury or anyone, from this
12 picture, where the different parts of Minor 's
13 eye are?

14 A. No..

15 Q. Can you show the jury or anyone looking at this
16 picture where the specific schisis cavities are in
17 this eye?

18 A. This purple thumb-like thing that comes out is
19 the bleeding that has occurred between the layers.

20 Q. Let's look at State's Exhibit 19. What is
21 State's Exhibit 19?

22 A. This is another picture of one of Minor 's
23 eyes. And again, there -- and this is the back of
24 his eye. This was taken by our children's eye
25 specialist who knew right where to look. And

1 there's no normal anatomy that can be seen in this
2 picture.

3 Q. Why is it so difficult or impossible to see any
4 normal anatomy in **Minor** 's eyes?

5 A. Because of all the bleeding and disruption of
6 the tissue, blood gets in the way of what we're
7 trying to take a picture of.

8 Q. Thank you, Dr. Fisher. You can go back to your
9 seat.

10 A. (Witness complies.)

11 Q. Dr. Fisher, in examining this child, you just
12 mentioned the quantity and the extent of the
13 bleeding both on **Minor** 's brain and in his eyes.

14 Is there any type of pre-existing condition or
15 bleeding disorder that could cause these types of
16 injuries to **Minor** ?

17 A. No.

18 Q. You mentioned performing CT scans. With regard
19 to the CT scans, was there any indication on that CT
20 scan about the freshness or the age of any of these
21 injuries?

22 A. The -- again, quoting from this, the scan done
23 on June 10th, 2014, the X-ray specialist reported a
24 hyperdense subdural hemorrhage. And bone is white
25 on a CT scan, air is black, tissue has in-between

1 colors. Fresh blood is closer to bone color on a
2 scan. And so if there is a lot of bright signal in
3 the blood, the hyperdense, then that goes along with
4 fresher blood that has not yet had a chance to break
5 down.

6 Q. And was that the case in Minor 's CT scan?

7 A. Yes, as they reported. Yes.

8 Q. Now, Dr. Fisher, were you familiar with the
9 patient history given in this case?

10 A. Yes.

11 Q. And can you tell the jury, what do we mean by a
12 patient history?

13 A. Well, any time somebody presents with a medical
14 complaint, we need to take a history. We need to
15 know what was going on that led to the complaint,
16 what the symptoms were. And as clinicians, our goal
17 is always to take the history and make it fit with
18 the problem so we can better provide care for the
19 patient. And that starts with whether it's a simple
20 cold or an earache or something more serious.

21 Q. And what was the patient history that you were
22 given in this case?

23 A. I was given the history that he had fallen off
24 of the bed.

25 Q. Dr. Fisher, I want to show you State's Exhibits

1 that have already been entered into evidence,
2 specifically State's Exhibits 12 and 14. And in
3 State's Exhibit 12, can you tell me what the
4 measurement is from the top of that bed to the
5 floor?

6 A. From the top of the mattress it's 23 inches.

7 Q. And in State's Exhibit 14, can you tell me the
8 distance from the top of that sofa cushion to the
9 floor?

10 A. Seventeen inches.

11 Q. Dr. Fisher, in examining this child you noted
12 the bruises, you noted bleeding on the blain in
13 multiple locations and multiple layers, you noted
14 bleeding in the eyes in all four quadrants of both
15 eyes in multiple layers. In your opinion, can a
16 fall from 23 inches off a bed cause all of those
17 injuries?

18 A. No, ma'am.

19 Q. In your opinion, could a fall from 17 inches
20 off of sofa cause all of those injuries?

21 A. No, ma'am.

22 Q. You mentioned that there were no pre-existing
23 conditions or bleeding disorders that could have
24 caused these injuries. What types of scenarios do
25 you typically see as a doctor that cause this

1 significant of bleeding on a child's brain and in a
2 child's eyes?

3 A. The injury on the brain is typically a major
4 impact such as being in a motor vehicle accident
5 unrestrained, falling, having a television set fall
6 on -- you know, falling off of a roof, really --

7 Q. Not falling two feet, but falling off the top
8 of a house?

9 A. Off the top of a house, yes, ma'am.

10 Q. Could performing CPR cause all of these
11 injuries?

12 A. No, ma'am. The injuries were not in the spots
13 where CPR pressure -- it's true that CPR can cause
14 bruising on the chest where the force is being
15 exerted. But...

16 Q. Could a five-month-old cause these injuries
17 upon himself?

18 A. No, ma'am.

19 Q. How about patting a child on the back? Could
20 that cause these injuries?

21 A. Not normal patting on the back.

22 Q. What type of patting on the back could cause
23 these injuries?

24 A. Again, it's the severe impact that would --
25 it -- again, these are car vehicle -- these are

1 motor-vehicle-crash type injuries. So this would be
2 a huge amount of force being exerted on a child's
3 back.

4 Q. Would that be the type of force that you would
5 ever characterize as patting?

6 A. No, ma'am.

7 Q. Okay. What about seizures? If a child had a
8 seizure, could that cause the bleeding in the
9 multiple layers of the brain, the bleeding in the
10 multiple layers of the eyes, and the bruising on all
11 different parts of child's face, head, and neck?

12 A. No. Brain injury can cause seizures, but the
13 seizures are not going to cause bleeding on the
14 brain.

15 Q. The patient history that you were given of this
16 child falling off of a bed, does that history
17 explain the injuries that you observed on Minor ?

18 A. No. Especially the -- with a fall off of a
19 bed, I would expect a single impact. And I can't
20 make all of the bruises here, here, here, and on the
21 back equal a single impact point (indicating).

22 Q. I want to talk to you a little bit more about
23 the timeline of the injuries. You mentioned that
24 the bruises were of the same color and that that was
25 a color that indicated, A, because they look the

1 same, that they happened at the same time and that
2 these were fresh bruises. And you mentioned the
3 hyperdensity of the CT scan indicated that that was
4 fresh blood on the child's brain.

5 When a child suffers the amount of trauma with
6 the amount of force that you indicated to cause this
7 bleeding on the brain and in the eyes and to cause
8 this bruising to cause a child to have to be put on
9 life support, when would a child start exhibiting
10 symptoms of this type of trauma?

11 A. Well, if the child weren't knocked unconscious,
12 then they should be immediately demonstrating pain.
13 Just the bruises themselves, whatever caused the
14 bruises, would hurt.

15 Q. Doctor, could a child have suffered the type of
16 trauma that would cause these injuries hours earlier
17 and no one notice any symptoms?

18 A. Only if they were in -- if they had gone
19 unconscious and were laid down and not checked on.

20 Q. Could a child have suffered the type of trauma
21 that caused these injuries hours earlier and then
22 played normally in the floor?

23 A. I don't see how.

24 Q. Could a child have suffered the type of trauma
25 that caused these brain and eye injuries and these

1 bruises hours earlier in the day and then eat
2 normally?

3 A. I don't see how.

4 Q. Dr. Fisher, in your examination of **Minor**
5 and your examination of the tests that were
6 performed on him, to a reasonable degree of medical
7 certainty, do you have an opinion as to the source
8 of the trauma on **Minor** ?

9 A. Yes. This was not accidental trauma. This was
10 not a fall from a bed. These types of injuries are
11 what we see with repeated severe shaking back and
12 forth or with a -- severe impacts.

13 Q. When you say a repeated severe shaking back and
14 forth, how does the shaking of a child cause these
15 injuries in the brain and in the eyes?

16 A. Well, you know, the brain is the consistency of
17 toothpaste and it moves around with rapid movements
18 back and forth. And a child has a little bit more
19 room; their brains -- the bridging veins that go
20 from the skull to the brain, and with shaking back
21 and forth, those bridging veins can shear and tear.

22 Q. And what happens when those veins shear and
23 tear?

24 A. It leads to subdural hemorrhages and bleeding
25 that can surround the brain. Also, as the brain

1 bounces back and forth with these back-and-forth
2 movements that can occur, there can be direct
3 impact, and on the opposite side of the brain, spots
4 that occur.

5 Q. And is it correct to say that would occur from
6 the brain hitting the inside of the skull as it's
7 sloshing back and forth?

8 A. Yes.

9 Q. Now, that internal impact with the skull, does
10 that cause bruising on the outside of the child's
11 face?

12 A. No.

13 Q. Where does the force have to come from to cause
14 bruising on a child's face?

15 A. It has to come from the outside.

16 Q. So this child had injuries that were from an
17 outside impact as well as an inside impact of the
18 brain actually striking the skull from being shaken?

19 A. Yes.

20 Q. The skull fracture that **Minor** had, is that
21 an injury that would have occurred from the brain,
22 for lack of a better word, sloshing inside the
23 skull, or would that have to be an outside impact?

24 A. That would have to be an outside impact as
25 well.

1 Q. Now, the injuries to the eyes and the bleeding
2 between the different layers of the eyes, what type
3 of mechanism would have to be acted upon Minor
4 to cause those injuries?

5 A. The same types of forces that we just talked
6 about. We admit many children after car wrecks with
7 brain injuries who don't have eye injuries. And
8 certainly the back-and-forth motions within the head
9 can also lead to back-and-forth tearing of the very
10 fragile lining of the eye that leads to the bleeding
11 and schisis cavities that were described by our eye
12 specialist.

13 Q. You indicated that it was your opinion today
14 that Minor 's injuries were the result of
15 nonaccidental trauma. When we talk about
16 nonaccidental trauma and you talked about the amount
17 of force that cause this, either a car wreck or a
18 fall off a roof, what type of force would another
19 person have to act on a five-month-old child to
20 cause these injuries?

21 A. I -- I --

22 Q. Could -- all right. Let me ask that a
23 different way. Could someone cause these injuries
24 on a child and not know that they were doing that?

25 A. For these types of injuries to occur, it would

1 be very uncomfortable for the child. Again, the
2 bruises themselves, whatever led to the bruises
3 hurt. The moving back and forth would hurt. So I
4 think that unless Minor became unconscious
5 quickly, it would be very evident that pain -- that
6 this was an uncomfortable situation for him.

7 Q. And as you indicated, this trauma, in your
8 words, was nonaccidental?

9 A. Right. And that's actually one of the comments
10 that one of the brain specialists who saw Minor
11 in the emergency room immediately noted, that the
12 history and the pattern of bleeding in the head did
13 not match up, and that was one of the concerns he
14 wanted to make sure we looked into.

15 Q. Give me just a second, Dr. Fisher.

16 Just a couple more questions for you. We
17 talked a lot about the extent of the injuries that
18 Minor had to his head and to his eyes. Did you
19 notice any neck injuries to Minor ?

20 A. His scans did not show any neck injuries.

21 Q. And is that weird for a child to have head
22 injuries and not have neck injuries?

23 A. Not necessarily. I mean, fortunately children
24 are pretty tough. And even with back-and-forth
25 motion and severe impacts, neck injuries are

1 relatively uncommon. It's a minority of severe
2 brain injuries that also have associated neck
3 injuries for children.

4 Q. And when we're talking about the nonaccidental
5 trauma that would cause these injuries to Minor ,
6 would the shaking that's typical of trying to wake a
7 baby or to console a baby, is that the type of
8 shaking that would cause all of these injuries?

9 A. No. It takes a lot of force. And also, in
10 waking a baby -- I mean, this would cause pain. And
11 this would, you know -- excuse me. In waking a
12 baby, you wake them up and they shouldn't continue
13 to be -- then they settle back down. So this is
14 much more than normal childcare.

15 Q. Would this be violent force?

16 A. Yes.

17 Q. Dr. Fisher, what would the typical prognosis be
18 for a child's future quality of life with these
19 types of injuries?

20 A. With all the bleeding in his eyes, I'd be very
21 worried that he would not be able to see correctly,
22 especially at this age if the eyes are damaged in
23 the back of the brain where the images are formed
24 doesn't develop correctly. So I'd be worried about
25 his ability to have independent vision. And with

1 with the severe hemorrhage and injury to the brain,
2 I'd be very worried that he would not be able to be
3 an independent adult.

4 Q. Thank you, Dr. Fisher. Please answer any
5 questions Mr. Katonak has for you.

6 THE COURT: Any questions?

7 MR. KATONAK: Yes, sir.

8

9 CROSS-EXAMINATION

10 BY MR. KATONAK:

11 Q. Hey, Dr. Fisher. I'm Brian Katonak.

12 A. Hi.

13 Q. You've been at the -- well, I'm just going to
14 say the hospital because I don't know today what the
15 name is. But you've been at the hospital
16 approximately 22 years?

17 A. I've practiced critical care for over 20 years.
18 I've actually had two ten-year stints at the
19 children's hospital. So most recently, 12 years.

20 Q. Okay. And in your time have you had other
21 cases with trauma to a child such as this?

22 A. Yes. We take care of -- all of the severe
23 children's trauma comes to the Children's Hospital
24 of Georgia.

25 Q. Okay. And this is typically called a

1 shaken-baby syndrome or SBS?

2 A. Well, I think there's evidence that this baby
3 was shaken.

4 Q. Okay. Right. But is that the term that lay
5 people like myself call it?

6 A. It could be. I think that's a popular term.
7 We -- medically it's sort of -- it's better
8 clinically for us to describe the injuries and the
9 therapies that are needed rather than to assign it a
10 specific name like that.

11 Q. Okay. In regards to this field, have you read
12 any studies in regards to this area?

13 A. Yes, sir.

14 Q. Okay.

15 A. As part of the continuing education that was
16 brought up.

17 Q. Sure, sure. So you've been to continuing
18 education or conferences where they discuss trauma
19 like this to a child?

20 A. Yes, sir.

21 Q. Are you aware of any indicators that may make a
22 home a higher risk for this to occur?

23 A. Such as?

24 Q. Well, such as is it a higher risk that a child
25 may be injured in this way if it's, say, a single

1 parent, lower educational parent, unstable family
2 dynamic, anything like this?

3 MS. HAMMACK: Objection, Your Honor.

4 THE COURT: Hold on a second.

5 Where are you going with this?

6 MS. HAMMACK: And, Your Honor, if we need to
7 sidebar, we can.

8 MR. KATONAK: Judge, I'm just trying to figure
9 out the background.

10 THE COURT: I'll let him answer that. You're
11 just talking generally; right?

12 MR. KATONAK: Yes, sir.

13 BY MR. KATONAK:

14 Q. So have any conferences or any studies you've
15 read shown that a particular background is a higher
16 risk of this occurring than others?

17 THE COURT: Higher risk of the trauma or higher
18 risk of the injuries?

19 MR. KATONAK: Higher risk of a child being hurt
20 such as this.

21 THE WITNESS: So --

22 MS. HAMMACK: Your Honor, I'm --

23 THE WITNESS: Yeah.

24 MS. HAMMACK: The State --

25 THE COURT: Hold on a second. Y'all look over

1 here.

2 (Side bar conference.)

3 THE COURT: All right. I'm going to sustain
4 the objection. Move on. That is, in my opinion,
5 not relevant in this case. Ask him anything about
6 this case, but not in general.

7 BY MR. KATONAK:

8 Q. Dr. Fisher, in regards to serious trauma, is it
9 fair to say that that symptom would vary among the
10 children?

11 A. Different types of trama will lead to different
12 symptoms. Yes, sir.

13 Q. Can it be based on a variety of things, such as
14 the age of the child?

15 A. Certainly different developmental ages have
16 different responses.

17 Q. Okay. And is it a case where a -- there's been
18 a serious trauma in one event versus, say, there's
19 multiple events, could that change the severity of
20 the injuries?

21 MS. HAMMACK: Objection, Your Honor.

22 THE COURT: If you want to ask his opinion
23 about something, ask him in the way you're supposed
24 to ask him; within a reasonable degree of medical
25 certainty, given the facts. Your question is so

1 general and vague. I'll sustain the objection. Ask
2 it right.

3 BY MR. KATONAK:

4 Q. Sir, is it fair to say in the medical community
5 that in these kinds of cases it's hard, to a
6 reasonable degree of medical certainty, to establish
7 when the trauma actually occurred?

8 A. Exact timing of trauma can be difficult to
9 determine.

10 Q. And is it fair to say there's been some debate
11 in the medical community about this topic?

12 A. Yes, sir. There's always debate in the medical
13 community.

14 Q. Yes, sir. In this case did you have an
15 occasion to meet with law enforcement to discuss the
16 child and the injuries the child suffered?

17 A. Yes, sir.

18 Q. And do you recall at that time informing the
19 officer of when the trauma could have occurred?

20 A. I believe I gave a range.

21 Q. Okay. And is that -- does that range not
22 include that it could have occurred any time within
23 a day?

24 A. Within a day, yes.

25 Q. Okay. I have no other questions for you.

1 THE COURT: Anything on redirect?

2 MS. HAMMACK: Just one question.

3 REDIRECT EXAMINATION

4 BY MS. HAMMACK:

5 Q. Dr. Fisher, he was just asking you about the
6 statement you gave to law enforcement. For
7 completeness purposes, when law enforcement was
8 asking you about the onset of symptoms, did you also
9 tell them, "If the victim was conscious when the
10 brain and eye injuries occurred, they would cause
11 the victim to be in extreme pain and inconsolable"?

12 A. Yes. That's consistent. I don't remember
13 every word of that, but that's absolutely consistent
14 with my medical knowledge.

15 MS. HAMMACK: Thank you, Dr. Fisher.

16 THE COURT: Dr. Fisher, you're through. I
17 thank you for coming.

18 May he be excused from his subpoena?

19 MS. HAMMACK: Yes, Your Honor.

20 MR. KATONAK: Yes, sir.

21 MS. HAMMACK: And, Your Honor, if I could
22 collect the reports he used. Thank you.

23 THE COURT: What else you got?

24 MS. HAMMACK: We have one very brief witness.

25 Cc all right. Call them.

1 Everybody okay? Your food isn't here quite
2 yet.

3 MS. HAMMACK: The State calls Branden Griffis.

4 BRANDEN GRIFFIS

5 being first duly sworn, testified as follows:

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Have a seat in the witness box.
8 State your full name for the Court spelling your
9 last.

10 THE WITNESS: My name is Branden Griffis. Last
11 name is G-R-I-F-F-I-S.

12 DIRECT EXAMINATION

13 BY MS. HAMMACK:

14 Q. Branden, I'm going to stand back here so that
15 everybody can hear you, so you got to talk loud for
16 me. Okay?

17 A. Yes, ma'am.

18 Q. Where are you from, Branden?

19 A. Jackson.

20 Q. Jackson, South Carolina?

21 A. Yes, ma'am.

22 Q. And are you related to anybody in this case?

23 A. I'm Minor 's father.

24 Q. And were you in the house on [REDACTED]
25 back in 2014 when all this happened?

1 A. No, ma'am.

2 Q. Do you have custody of Minor now?

3 A. Yes, ma'am.

4 Q. How old is Minor now?

5 A. He is three.

6 Q. And can you tell the jury, what's a normal day
7 for Minor ?

8 A. Normally we wake up, he has his antiseizure
9 medications. In the morning we do breakfast.
10 Typically a normal child's day; breakfast, he plays
11 for a little while, takes a nap, lunch, then he's
12 up. But throughout the day on a good day, he
13 generally has three to five seizures.

14 THE COURT: Three what?

15 THE WITNESS: Three to five seizures. And
16 that's on a good day.

17 BY MS. HAMMACK:

18 Q. Does Minor go to school?

19 A. No, he doesn't.

20 Q. Does Minor walk unaided?

21 A. No, he doesn't.

22 Q. Does Minor talk in full sentences?

23 A. No, he doesn't.

24 Q. Does Minor see?

25 A. No, ma'am.

1 THE COURT: I'm sorry. Does Minor what?

2 MS. HAMMACK: See.

3 BY MS. HAMMACK:

4 Q. How often does Minor go to the doctor?

5 A. It varies depending on the type of doctor we go
6 see. We go see several different specialists. We
7 generally do a check up with ophthalmology twice a
8 year. He was going to a neurologist once a month,
9 but now we're down to a quarterly basis, so four
10 times a year. He also is in several different types
11 of therapies; speech, occupation and physical
12 therapies, as well as specialized training from the
13 school for the deaf and blind as well as the Aiken
14 County Board of Disability and Special Needs.

15 Q. You mentioned the different types of therapy
16 that Minor has. How often does Minor have
17 therapy?

18 A. Minor has physical and occupational therapy
19 once a week. We have to travel quite a distance to
20 a center that's qualified to treat him. And he has
21 speech therapy in our home twice a week.

22 Q. Branden, give me just a second. Okay? I don't
23 have any other questions for you. Mr. Katonak is
24 going to ask you some questions. Answer any
25 questions that he may have. Okay?

1 A. Yes, ma'am.

2 MR. KATONAK: Judge, could we have a sidebar?

3 THE COURT: Yes, sir.

4 (Sidebar conference.)

5 THE COURT: Any questions, ma'am?

6 MS. HAMMACK: The State has no further
7 questions.

8 THE COURT: I'm going to let him remain with
9 us. And if you want to call him in your case in
10 chief, you certainly may.

11 All right. You may step down, but you're still
12 under subpoena, so please don't leave.

13 Next witness, please.

14 MS. HAMMACK: Your Honor, at this time, the
15 State rests.

16 THE COURT: All right. Mr. Foreman, ladies and
17 gentlemen of the jury, we've reached the stage of
18 the trial where all of the testimony from the State
19 is in. I have some matters I have to take up with
20 the Defense. The food should be here shortly. I
21 don't know what it's doing outside. I know we're
22 having some terrible weather all over, particularly
23 down where I live.

24 But why don't we go ahead and take the lunch
25 break? When the food gets here, you're welcome to

1 eat it in here. If you want to take it outside, you
2 can take it outside. Let's plan to start back about
3 quarter to 2:00. So if you finish eating and you
4 want to go out and take a break, walk around,
5 whatever, just be back and ready to go quarter to
6 2:00. Don't talk about the case, don't deliberate,
7 and don't let anybody discuss it with you. Thank
8 you.

9 (The jury exits the courtroom at 12:35 PM.)

10 THE COURT: Let's take a short break, come
11 back, and I'll take any motions you may have and
12 I'll take the proffer from Mr. Griffis if you want
13 to put it up now. If you want to wait and do it
14 later on, we can do it however you want to do it.

15 MR. KATONAK: We can do it now.

16 THE COURT: All right. Let's take about ten so
17 everybody can stretch their legs.

18 (Short break 12:35 PM - 12:52 PM.)

19 THE COURT: All right. Yesterday during the
20 pretrial conference we discussed the possibility
21 or that there might be a third-party guilt question
22 raised. And yesterday we talked about the necessity
23 of doing a proffer before any of it is before the
24 jury.

25 I know the State has rested and I know normally

1 we'd do some motions right now to do things
2 expediently, but let's do the proffer on -- I think
3 you wanted to do it on Mr. Griffis.

4 MR. KATONAK: Yes, sir.

5 THE COURT: And then you can come back and do
6 your motions nunc pro tunc as if they were now. Is
7 that fair?

8 MR. KATONAK: Yes, sir.

9 THE COURT: I'll do it however you want to do
10 it.

11 MR. KATONAK: We'll do Mr. Griffis first. I'll
12 have -- I mean, proffering from my client, his son,
13 and then Dr. Gaskins who is here. So if you want to
14 do Mr. Griffis first and then make my motions and --

15 THE COURT: I'll do it however you want to do
16 it.

17 MR. KATONAK: Okay. Mr. Griffis.

18 THE COURT: Mr. Griffis, come back up here.
19 I'll just remind you that you're still under oath.

20 But, you know, don't do a full
21 cross-examination, just limit it to the third party.

22 MR. KATONAK: Yes, sir. Ms. Hammack and I were
23 just discussing all the proffers. I'm just going to
24 ask the third-party questions and not go through the
25 whole spiel.

1 THE COURT: That's exactly right. Then,
2 obviously, if you want to call anybody to your
3 defense, depending on how I rule, then it's full
4 game for them. Fair enough?

5 MR. KATONAK: Yes, sir.

6 THE COURT: All right, sir.

7

8

9

IN-CAMERA EXAMINATION

10 BY MR. KATONAK:

11 Q. Mr. Griffis, you have custody of the child now?

12 A. Yes.

13 Q. And how long have you had custody of him?

14 A. Since August 11th of 2015.

15 Q. And how is it that you came to get custody of
16 him?

17 A. Through a private action in family court.

18 Q. Was that in Aiken County?

19 A. Yes.

20 Q. All right. And did you have a lawyer in that
21 case?

22 A. Yes, I did.

23 Q. Who was that?

24 A. Jennifer Mook.

25 THE COURT: Who?

1 THE WITNESS: Jennifer Mook.

2 MR. KATONAK: She does family law.

3 BY MR. KATONAK:

4 Q. And what did you allege in your case as to your
5 reason to seek custody of the child?

6 A. That I could provide better care for the child.

7 Q. Okay. In that case did you raise anything
8 about Ms. Tucker's mental capacity?

9 A. I believe there was --

10 Q. Okay.

11 A. -- some question.

12 Q. Do you know specifically what was raised?

13 A. No, sir.

14 Q. All right.

15 THE COURT: Were the two of y'all married or
16 y'all just had the child together?

17 THE WITNESS: No. We had the child out of
18 wedlock.

19 BY MR. KATONAK:

20 Q. Did you raise in your case anything about
21 substance abuse by Ms. Tucker?

22 A. No.

23 Q. Okay.

24 A. I don't believe so. I may have. I'm unsure.

25 Q. All right.

1 MR. KATONAK: Judge, since I was unaware he had
2 custody of the child. I didn't know who had the
3 child. That's all the questions I have, but I'd
4 like the right to recall him. I'm going to have to
5 go pull the family court file. He -- he's told me
6 he's unsure of what he's alleged or not. I mean, he
7 got custody, but --

8 THE COURT: I don't see how who's got custody
9 subsequent to all this happening has got anything to
10 do with anything in this case --

11 MR. KATONAK: Well --

12 THE COURT: -- but I'm not cutting you off.
13 You can do it however you want to. Just stay with
14 us, Mr. Griffis, you're still under subpoena.
15 However, it's 1:00; if you want to go get you a
16 quick bite to eat, just be back here by 2:00.

17 THE WITNESS: Yes, sir. Thank you.

18 MR. KATONAK: Again, Judge, I may look at that
19 and not need him whatsoever.

20 THE COURT: We'll let you know something.

21 Anyone else you want to put up now while we're
22 doing it?

23 MR. KATONAK: Judge, I'd rather wait until
24 after lunch.

25 THE COURT: Sir?

1 MR. KATONAK: I'd rather wait until after
2 lunch.

3 THE COURT: I know you'd rather, but I'm trying
4 to move along. You feel like you need to eat is
5 what you're telling me?

6 MR. KATONAK: I do. I'm not diabetic or
7 anything, but I kind of break down. As you can see,
8 I'm not the slimmest person in the world.

9 THE COURT: Which means you ought to have a lot
10 of reserve.

11 MR. KATONAK: That's true. My wife would agree
12 with you.

13 THE COURT: All right. Let's do this. And I
14 understand. Tell me how you want to do it. How
15 long do you want and, I mean, are you just going to
16 go back and get you a quick crackers or -- tell me
17 when you want to start back.

18 MR. KATONAK: I can be back by 1:30.

19 THE COURT: That's fair.

20 MR. KATONAK: And I think I'll proffer
21 Dr. Gaskins first. He'll be the longest. And then
22 I'll proffer my client and his son. Both of those
23 will pretty quick proffers.

24 THE COURT: This is all going to the
25 third-party guilt now?

1 MR. KATONAK: Yes, sir. And I think Your Honor
2 has to hear each of those to make the decision
3 whether --

4 THE COURT: I understand.

5 MR. KATONAK: -- that comes out.

6 THE COURT: I'm ready to go now. You tell your
7 doctor that I'm ready to go but you need to get you
8 a cracker.

9 MR. KATONAK: I'm sorry, Dr. Gaskins.

10 THE COURT: All right. We'll stand at ease
11 till -- I got something at 1:30. But we'll do it
12 all at the same time.

13 MR. KATONAK: Yes, sir.

14 (Luncheon recess 12:58 PM - 1:59 PM.)

15 THE COURT: I am going to tell the jury -- do
16 either of you have any objection that I told them to
17 be back at 2:00 and that we're probably, because of
18 all the things I had, going to need another 30
19 minutes? Any objection?

20 MR. KATONAK: No, sir.

21 MS. HAMMACK: No, Your Honor.

22 THE COURT: All right. You may call your first
23 witness on the proffer.

24 MR. KATONAK: Yes, sir. We'd call Dr. Matthew
25 Gaskins.

1 THE COURT: Ome around, Doctor, please.

2 MATTHEW GASKINS

3 being first duly sworn, testified as follows:

4 THE WITNESS: I do affirm.

5 THE CLERK: Have a seat in the witness box and
6 state your full name for the court, spelling your
7 last.

8 THE WITNESS: My name is Matthew English
9 Gaskins, G-A-S-K-I-N-S.

10 THE COURT: Dr. Gaskins, you are what type of
11 physician?

12 THE WITNESS: I'm a forensic psychiatrist.

13 THE COURT: All right. Can we stipulate he is
14 a forensic psychiatrist for the purposes of the
15 proffer?

16 MR. GRIMES: Yes, sir.

17 THE COURT: And when we go before the jury,
18 obviously you can put up his qualifications, et
19 cetera.

20 MR. KATONAK: Yes, sir.

21 THE COURT: Al right, sir. Go straight into
22 your proffer.

23 MR. KATONAK: Yes, sir.

24 IN-CAMERA EXAMINATION

25 BY MR. KATONAK:

1 Q. Dr. Gaskins, I believe you performed an
2 evaluation on Melodi Tucker on March 17th, 2016?

3 A. There's actually two problems I have before I
4 can answer that question.

5 THE COURT: What are your problems?

6 THE WITNESS: There are two; there's an ethics
7 question -- the answer is that I did do an
8 evaluation on Ms. Tucker. But when I did the
9 evaluation, we do something called, basically,
10 informed consent where you tell her what the purpose
11 of the evaluation is. And specifically I told her
12 that the only purpose of the evaluation was for
13 determination of competency to stand trial and not
14 for any other hearing. And then the second issue
15 is --

16 THE COURT: Do you have a physician-patient
17 relationship with her?

18 THE WITNESS: No, there's no doctor-patient
19 relationship. It's just the professionalism of
20 disclosing what the purpose was.

21 THE COURT: The purpose was whether or not she
22 was competent to stand trial?

23 THE WITNESS: Yes, sir.

24 THE COURT: I don't know what he's going to ask
25 you. So let's just see what he's going to ask you.

1 He may just ask you that. I don't know.

2 THE WITNESS: Okay.

3 THE COURT: But I can understand your dilemma.
4 I'm not going to make you violate anything that
5 would be confidential.

6 BY MR. KATONAK:

7 Q. And, Doctor, that evaluation was done pursuant
8 to a prior order in the case where her lawyer
9 requested an evaluation; correct?

10 A. Yes; for competency to stand trial.

11 Q. Okay. And in regards to --

12 THE COURT: Well, let me ask you this: As a
13 result of the order ordering the competency hearing,
14 did you do an examination and did you do a report?

15 THE WITNESS: Yes.

16 THE COURT: And is that report -- it's been
17 represented to me that that report has been filed
18 with the Court and it is part of the public domain;
19 is that correct?

20 MR. KATONAK: Yes, sir, it is. It's filed in
21 the --

22 THE COURT: Well, I don't want to call it the
23 public domain. It's part of the court records on
24 file in the clerk's office. Is it under seal?

25 MR. KATONAK: It is not under seal, no, sir.

1 MR. GRIMES: Your Honor, the copy Mr. Katonak
2 just gave us doesn't appear to be under seal.

3 THE COURT: All right. Go ahead with your
4 questions, but we're going to tread lightly on this.

5 BY MR. KATONAK:

6 Q. Dr. Gaskins, in doing your evaluation did you
7 review her clinical and psychiatric history?

8 A. Getting back to my second concern with
9 providing this type of testimony, if we could, the
10 court order itself for that evaluation specifically
11 says that information from that report cannot be
12 used for any other purpose than establishing
13 competency.

14 THE COURT: Let me see it, please, sir.

15 THE WITNESS: Yes, sir.

16 MR. GRIMES: Your Honor, if I may, it looks
17 like we're getting into kind of murky water, but I'm
18 not certain that we're going to have a relevant --
19 there's going to be any relevant information coming
20 out of this. So maybe Mr. Katonak can explain where
21 he's trying to go, and if it looks like we can get
22 there, then may be cross this bridge; if it looks
23 like we're not going to get there any way, maybe we
24 don't.

25 THE COURT: I think that might be a more proper

1 way to do it, particularly with the doctor's
2 concerns, and I can understand that.

3 Mr. Katonak, tell me what you're trying to
4 establish through the doctor.

5 MR. KATONAK: Your Honor, what I'm trying to
6 establish is in that report she was first classified
7 as having PTSD in September of 2014.

8 THE COURT: Okay.

9 MR. KATONAK: That's three months before this
10 trauma on this child.

11 THE COURT: Okay.

12 MR. KATONAK: The testimony has come in before
13 the Court that she was living in the house with the
14 child.

15 THE COURT: That's correct.

16 MR. KATONAK: And as the investigator stated,
17 that she was the one watching the child up to the
18 point of my client watching the child at
19 approximately 5:00 that day.

20 THE COURT: That's correct.

21 MR. KATONAK: So in regards to the third-party
22 guilt, it's our theory that somebody who suffered
23 from PTSD and has been shown in the court order not
24 to be competent to stand trial, that there's the
25 likelihood that she could have caused the injuries

1 to this child.

2 THE COURT: All right. If that's where you're
3 going, I -- go ahead.

4 MR. GRIMES: Judge, I don't want to interrupt
5 your order, I just want to correct one statement.
6 The report indicates that she was first evaluated on
7 September 17th, 2014, which is three months and
8 seven days after this incident occurred, not three
9 months before it occurred. So I just -- for
10 clarity's sake, I just wanted to make that point.
11 This would have been three months after the incident
12 date.

13 MR. KATONAK: I'm sorry. That's correct.

14 THE COURT: Well, assume where he's going, what
15 would your position be on that?

16 MR. GRIMES: That's entirely irrelevant, Judge.
17 It doesn't begin to bridge the length between
18 somebody who wasn't at the home any time these
19 injuries occurred and somebody that was diagnosed
20 with PTSD three months and seven days later.

21 The testimony in this trial so far has bee
22 definitive and uncontroverted that this child was
23 not injured when Melodi Tucker left the child with
24 the defendant.

25 THE COURT: Quite the contrary; the testimony

1 that's uncontradicted at this point in the game is
2 that the child was healthy, doing well, and had
3 showed no signs of any type of injury, untoward
4 behavior, or anything.

5 MR. GRIMES: Correct, before he was in the sole
6 custody of the defendant. And the defendant's
7 statement corroborates that story entirely and
8 doesn't negate any of it. So there hasn't been any
9 testimony that this child was ever injured at any
10 point in time prior to that evening when the
11 defendant had custody of him.

12 And the fact that the victim's mother was
13 diagnosed with PTSD over three months later, and any
14 of these other psychological issues that she may
15 have had, they don't do any more than raise some
16 speculation that possibly some other person could
17 have committed this crime.

18 And the problem with that is that that doesn't
19 bridge the gap between the facts that are on the
20 record and Melodi Tucker, or any other person for
21 that matter. So this testimony is not going to get
22 to where they need to put in third-party guilt.

23 THE COURT: Well, and as stated in the 1941
24 case I think everybody looks at, State vs. Gregory,
25 where originally the Court addressed third-party

1 guilt, I find that if the doctor were allowed to
2 testify, it certainly would be no more than trying
3 to cast suspicion on another, at least or at best,
4 just a conjectural inference as to the commission of
5 the crime by a third party.

6 And the fact she's got posttraumatic stress
7 disorder and she kept her baby for five months,
8 it's -- you're just not connecting the dots under
9 the third-party-guilt scenario. And based on what
10 you're telling me, I'm not going to allow this
11 testimony.

12 MR. KATONAK: Judge, let me point out
13 something. When the doctor from the State
14 testified, one thing -- all I wanted him to say was
15 one thing, which was my last question. I asked him
16 if he had stated to the officer that these symptoms
17 could have occurred sometime within the day of the
18 trauma happening. His answer was yes.

19 My client watched the child from 5:30 to
20 approximately 9:30, three hours. He did not watch
21 the child for 24 hours, there's no evidence of that.
22 And so the key witness at that point of the time of
23 trauma himself says it could have happened within
24 that day.

25 THE COURT: I understand that. But then you

1 got to connect some dot between somebody hurting the
2 child other than your client, other than just the
3 fact that the child's mama has PTSD.

4 MR. KATONAK: Well, Judge, the other witnesses
5 are going to testify that Ms. Tucker, who had the
6 child with her prior to my client beginning to watch
7 the child, so if the injuries occurred at some point
8 during it the day and there's no testimony that --
9 at all that it happened those last three hours, and
10 she was the one that watched the child, there's no
11 other rational conclusion that she's the one who
12 caused the injuries.

13 THE COURT: I respectfully disagree. The
14 doctor is unequivocally as he can testify about the
15 horrible injuries that this child sustained; i.e.,
16 the subdural hematoma, subarachnoid hematoma, the
17 hemorrhaging -- the diffuse hemorrhaging from both
18 eyes, the skull fracture, would have immediately
19 caused the child to be symptomatic and/or either
20 unconscious to the point where it couldn't be
21 symptomatic.

22 And there's no evidence in the record that the
23 child exhibited any signs of the trauma or any signs
24 of being unconscious at the time the mother had
25 turned the child over to the defendant. And to try

1 to suggest the fact that she's got PTSD and connect
2 those dots, that's pure speculation and conjecture.

3 And my ruling is that it is not a proper
4 third-party -- evidence of third party wrongdoing
5 that meets the requirements of law as set out in the
6 various cases; i.e., State vs. Gregory and State vs.
7 Swafford. But you're welcome to put up the other
8 people if you want to put up your proffer. I've
9 ruled, so if you want to put them up, put them up to
10 protect the record.

11 MR. KATONAK: Judge, at this point we don't
12 have any more needed from Dr. Gaskins.

13 THE COURT: All right, Doctor. Thank you.

14 MR. KATONAK: We'd call Mr. Martin.

15 HEYWARD MARTIN, III

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Have a seat in the witness box.
19 State your full name for the Court spelling your
20 last.

21 THE COURT: Sir, before you testify, let me
22 explain some of your constitutional rights. Have a
23 seat right there for me.

24 Mr. Martin, obviously the State has completed
25 its case and we're now at the point where you can

1 present your side of the case, tell your defense,
2 tell your story. You have absolutely no burden in
3 this case to prove or disprove anything. The burden
4 is on the State to prove your guilt to the jury
5 beyond a reasonable doubt.

6 Now, in saying that, under the Constitution of
7 the United States and under the constitution of our
8 state, you have the absolute right to remain silent.
9 You don't have to explain anything, you don't have
10 to prove anything, you have no burden of proof. If
11 you exercise that right, I will tell the jury
12 exactly what I'm telling you; that you have no
13 burden of proof, you have the absolute
14 constitutional right to remain silent, that if you
15 exercise that right, they cannot -- they being the
16 jury -- hold that against you in any manner
17 whatsoever, they cannot discuss the fact that you
18 did not testify when they deliberate your guilt or
19 innocence, they cannot infer anything from the fact
20 that you did not testify, it's something they cannot
21 consider at all when they deliberate your guilt or
22 innocence. So you have that absolute innocence.

23 You also have the right to testify, to tell
24 whatever you want to tell. If you do that,
25 obviously you're subjected to the same rules of any

1 other witness on cross-examination; you can be
2 cross-examined on any relevant testimony or evidence
3 in the case.

4 Does he have a prior record that he can be --

5 MS. HAMMACK: Your Honor, the only conviction
6 that he has that could be used for impeachment is a
7 breach of trust with fraudulent intent from 2007.

8 THE COURT: Do you intend to use that? 2007?

9 MS. HAMMACK: Yes, sir.

10 MR. KATONAK: And it was a magistrate's court
11 stuff.

12 THE COURT: Do you intend to use it, going to
13 try to use it, want to use it?

14 MS. HAMMACK: Well, it's a crime involving
15 dishonesty --

16 THE COURT: I understand.

17 MS. HAMMACK: -- and it's within the ten years.
18 We would intend on using it if he testified.

19 THE COURT: There's a possibility that the
20 State could introduce your prior record, as outlined
21 by Ms. Hammack to me just a minute ago, if I make a
22 determination after deciding whether or not it's
23 more prejudicial than probative and so forth and so
24 on, but it can only be used for impeachment; in
25 other words, to attack your credibility.

1 And I would tell the jury that the fact that
2 you have a prior record cannot be used against you
3 in determining whether or not you're not guilty or
4 guilty, it can simply be used when they judge your
5 credibility. That make sense?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, do you understand your right
8 to remain silent?

9 THE DEFENDANT: I do.

10 THE COURT: Do you want it to exercise it?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you want to discuss it with your
13 lawyer before you make that decision?

14 THE DEFENDANT: Huh-uh.

15 THE COURT: You're satisfied?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, sir.

18 Anything else you want me to ask him,

19 Mr. Katonak?

20 MR. KATONAK: No, sir.

21 THE COURT: You think I covered it?

22 MR. KATONAK: Yes, sir.

23 THE COURT: Thank you.

24

25

IN-CAMERA EXAMINATION

1 BY MR. KATONAK:

2 Q. State your name for the record.

3 A. Heyward Martin. M-A-R-T-I-N is my last name.

4 Q. All right. And, Mr. Martin, I told you I'm not
5 going to go through your full testimony, we'll do
6 that in front of the jury, but I want to kind of
7 focus on one area; correct?

8 A. (Nods head.)

9 Q. You need to say yes.

10 A. Yes.

11 THE COURT: In other words, this is something
12 we're doing outside the presence of the jury to
13 determine the applicability or whether you have
14 available a defense called perhaps someone else did
15 it, the vernacular. If we continue on with the
16 trial, obviously when the jury comes back in, you'll
17 have an opportunity to express all other matters in
18 the case.

19 BY MR. KATONAK:

20 Q. And, Mr. Martin, on June 10th of 2014, what
21 time did you begin watching this child?

22 A. I thought it was about around 5:00.

23 Q. Okay. Prior to that, who was watching the
24 child?

25 A. Melodi Tucker.

1 Q. Okay. And at your house, where does Ms. Tucker
2 and the child stay?

3 A. Guest bedroom in the very back right across
4 from my daughter.

5 Q. And on that day can you recall how long they
6 stayed in the back there?

7 A. All day.

8 Q. Did Ms. Tucker ever bring the child out for any
9 reason?

10 A. Negative. I went back there and, matter of
11 fact, went and got bottles that were dirty and came
12 up and cleaned them all so they were so clean so
13 when the baby -- when it was time for the baby to
14 eat, he'd have clean bottles.

15 Q. Okay. And on that day, June 10th, did you hear
16 any particular crying or screaming of the child back
17 there?

18 A. On -- that was on, I would say, the 9th. The
19 9th, I heard that.

20 Q. Let's back up. On the 10th had you heard
21 anything?

22 A. As far as the crying and stuff like that?

23 Q. Right.

24 A. No, sir.

25 Q. Okay. The day before on the 9th, who watched

1 the child on that day?

2 A. Ms. Tucker. When she got home at 10:00 -- I
3 think it was about 10:00, 10:30, something like
4 that.

5 THE COURT: Daytime or nighttime?

6 THE DEFENDANT: Daytime, sir.

7 BY MR. KATONAK:

8 Q. And is that from -- Mr. Hill, I think it was,
9 testified that she had spent the night at his house
10 the night before; correct?

11 A. Yes, sir.

12 Q. So she got home approximately 10:00 AM?

13 A. 10:00, 10:30, something like that.

14 Q. All right. And did she immediately take the
15 child back to her room?

16 A. That's correct.

17 Q. At some point on the 9th did you hear any
18 particular crying or other such noises coming from
19 that room?

20 A. I heard a bunch of screaming. I mean, the baby
21 was crying really, really loud. And then we
22 heard -- not only I, but my son and a friend of
23 mine, Danny Young, Jr., heard a loud bang, wham,
24 everything went silent instantaneously.

25 I stated this to the investigator. I don't

1 know why it was never investigated. That's why I
2 want to get this out in the light because I feel
3 like there's a bunch of stuff that's been swept
4 under the rug, and if I'm going to go down, they're
5 going to hear my side of the story.

6 Q. And, do you recall, what time of day or night
7 was that that you heard those noises?

8 A. It was close to 4:00 in the afternoon.

9 Q. Okay. All right. And did the child remain
10 with Ms. Tucker that entire time afterwards?

11 A. That's correct.

12 Q. So, again, the only time you watched the child
13 was between 5:00 and approximately 9:30 or 10:00 on
14 the 10th?

15 A. That's correct.

16 MR. KATONAK: That's all the questions I have
17 in regards to proffer.

18 IN-CAMERA EXAMINATION

19 BY MR. GRIMES:

20 Q. You didn't mention any crying on June 10th;
21 correct?

22 A. Say that again.

23 Q. No crying on June 10th?

24 A. No crying on June 10th.

25 MR. GRIMES: No other questions.

1 THE COURT: All right. You may step down.

2 MR. KATONAK: I call Jason T. .

3 Jason T.

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 THE COURT: I can't hear you. Yes or no?

7 THE WITNESS: Yes.

8 THE COURT: I can't hear you and I'm sitting
9 right here.

10 THE WITNESS: I said yes.

11 THE COURT: Thank you.

12 THE CLERK: Have a seat in the witness box.
13 State your full name for the Court spelling your
14 last.

15 THE WITNESS: My name is Jason T.

16 and --

17 THE COURT: No, sir. You got to speak up now.
18 Come on.

19 THE WITNESS: My name is Jason T.

20 , and my last name is [REDACTED].

21 THE COURT: Speak into the mic, please.

22 THE WITNESS: My name is Jason T.

23 , and my last name is spelled [REDACTED].

24 IN-CAMERA EXAMINATION

25 BY MR. KATONAK:

1 Q. And, Jason, Heyward Martin here is your
2 stepfather?

3 A. Yes, sir.

4 Q. You need to speak up. I can't hear you if the
5 Judge can't.

6 A. Yes, sir.

7 Q. How old are you, Jason?

8 A. Fourteen.

9 Q. And where do you go to school?

10 A. Jackson Middle School.

11 Q. And what grade are you in?

12 A. 8th grade.

13 Q. And what do you refer to Mr. Martin as?

14 A. As my father.

15 Q. But he's not biologically your father; correct?

16 A. No, sir.

17 Q. On -- do you remember June 10th of 2014?

18 A. Yes, sir.

19 Q. And how old were you then?

20 A. I was 12.

21 Q. All right. And when is your birthday?

22 A. [REDACTED].

23 Q. So had you turned 12 or were you about to turn
24 12?

25 A. I had already turned 12. I was about to turn

1 13.

2 THE COURT: Sir, I can't understand a word
3 you're saying.

4 THE WITNESS: I was already 12.

5 BY MR. KATONAK:

6 Q. And at that time in June of 2014, was Melodi
7 Tucker and her son Minor living at home?

8 A. Yes, sir.

9 Q. And in what room did they stay in?

10 A. In the guest room. It was at the back of the
11 house.

12 Q. All right. And on June 10th, do you remember
13 who kept the child during the day?

14 A. Melodi had her for most of the day until she
15 went to her whatever it was.

16 Q. State that again. You got to speak up some.

17 A. Melodi had the baby for the beginning of the
18 day.

19 Q. All right. What time was it that your father
20 started watching Minor ?

21 A. I think around 5:30 or something.

22 Q. During that day, the 10th, did you hear any
23 unusual crying or screaming by the child?

24 A. No, sir.

25 Q. Where were you most of that day?

1 A. I was in the living room playing with my Xbox.

2 Q. On the day before that, June 9th, who kept the
3 child during that day?

4 A. Melodi.

5 Q. And, again, where was she that day?

6 A. She was at our house in the guest room just
7 staying back there.

8 Q. Her normal room?

9 A. Yeah.

10 Q. At some point during that day did you hear any
11 crying from the child?

12 A. Yes. She was crying -- he was excessively and
13 then all of a sudden there was a thud and it
14 stopped.

15 Q. And who was present that heard this, to your
16 knowledge?

17 A. It was me, my dad, and my dad's friend Danny.

18 Q. And can you recall approximately what time of
19 day or night this was?

20 A. No, sir.

21 Q. After this thud, did you hear any other crying
22 after this point?

23 A. Not that I can recall.

24 Q. Now, do you understand you and I have talked
25 about coming to court and you have to testify to

1 tell the truth?

2 A. Yes, sir.

3 Q. Do you understand that?

4 A. Yes, sir.

5 Q. Okay. Is what you just testified to today the
6 truth?

7 A. Yes, sir.

8 MR. KATONAK: That's all the questions I
9 have --

10 THE COURT: What time did you hear it on the
11 day that he's talking about?

12 MR. KATONAK: What time of day?

13 THE COURT: What time did he hear the alleged
14 thud and crying?

15 MR. KATONAK: I think I -- he said --

16 THE WITNESS: I can't quite recall.

17 THE COURT: Can't recall. Thank you.

18 Any questions?

19 IN-CAMERA EXAMINATION

20 BY MR. GRIMES:

21 Q. No crying on June 10th; right?

22 A. No, sir.

23 MR. GRIMES: No more questions.

24 THE COURT: Next witness.

25 MR. KATONAK: Judge, I saw -- I was going to

1 call the DSS caseworker to bring in a copy of a drug
2 test that Ms. Tucker took --

3 THE COURT: A what kind of test?

4 MR. KATONAK: Eight days after the child had
5 this trauma, DSS -- right after it happened, DSS got
6 involved in the case.

7 THE COURT: I would think so.

8 MR. KATONAK: They had Ms. Tucker take a hair
9 follicle drug test --

10 THE COURT: Okay.

11 MR. KATONAK: -- which came back positive for
12 methamphetamines and amphetamines.

13 THE COURT: Eight days after?

14 MR. KATONAK: Eight days after, yes, sir.

15 THE COURT: Okay. How is that relevant?

16 MR. KATONAK: Judge, our theory that Ms. Tucker
17 injured this child and was not in a proper state of
18 mind. No one in their right state of mind would do
19 this to this child.

20 THE COURT: I agree with that.

21 MR. KATONAK: So if she had drugs in her
22 system --

23 THE COURT: Well, did she smoke it that day?
24 How long had it been in there? I mean, you just got
25 a drug test eight days after the fact. How can that

1 possibly be relevant?

2 MR. KATONAK: Well, Judge, I think that's a
3 question for the trier of fact, for the jury to
4 determine.

5 THE COURT: No. She can't give opinions about
6 drug tests. She can testify that it tested
7 positive, but we can't do anything other than that.

8 MR. KATONAK: Yes, sir. That's what we're
9 trying to get in.

10 THE COURT: Well, that's not relevant. I
11 assume y'all object.

12 MR. GRIMES: Yes, Your Honor, for those reasons
13 exactly; it has no bearing on whether or not
14 Ms. Tucker injured a child or -- even aside from
15 third-party guilt, it doesn't make it any more or
16 less likely that anybody injured the child whether
17 or not they had a drug test eight days before or
18 after this incident.

19 THE COURT: I'll sustained your objection.

20 MR. KATONAK: Judge, that would be all the
21 proffer testimony we have.

22 THE COURT: All right. Thank you. Do you want
23 to make any motions now as if we were at the end of
24 the State's case?

25 MR. KATONAK: Judge, we'd make a motion for

1 directed verdict. As I just argued a few minutes
2 ago, the evidence presented by the State is that my
3 client watched the child from 5:00 PM to
4 approximately 10:00 PM.

5 The symptoms certainly occurred during that
6 time, but the sole witness the State called to try
7 to pinpoint that time was Dr. Fisher. As I stated
8 before, Dr. Fisher's question of when these -- how
9 long after could these symptoms have arisen was
10 within a day.

11 As the proffered testimony and the State's own
12 evidence shows, that my client did not watch the
13 child all that and did not watch my child all during
14 that day, only for that approximately four or five
15 hours time period.

16 THE COURT: Which was within that day.

17 MR. KATONAK: Which was within that day. So
18 we'd move for the directed verdict.

19 MR. GRIMES: Your Honor, I'd want to point out,
20 first of all, the doctor testified that this child's
21 symptoms happened or were visible immediately after
22 these injuries occurred. There is testimony on the
23 record about when the child became symptomatic, and
24 it's from the defendant himself who indicated that
25 it was 10 to 12 minutes before Melodi Tucker got to

1 his house. That's the testimony as to the first
2 time the child started displaying symptoms.

3 Your Honor, there is plenty of testimony that
4 the child didn't display symptoms before that time
5 period, including from the defendant and also
6 Mr. Hill. Your Honor, the testimony in this case is
7 definitive and it's uncontradicted that this child's
8 symptoms would have been immediate, they would have
9 been noticeable, they would have been visible.

10 If by some chance this child managed to be
11 conscious after these injuries were sustained, the
12 child would have been inconsolable. And the
13 testimony that the child was awake and in the floor
14 and behaving normally came from the defendant
15 himself in his statement. So Mr. Katonak's argument
16 that these injuries occurred at some unknown time
17 during the time span of the day is inaccurate and it
18 doesn't reflect the testimony and evidence in this
19 case, Your Honor.

20 The -- all of the elements of this charge have
21 been met with the testimony that's been introduced
22 so far, including the age of the child, the fact
23 that he sustained life-threatening injuries,
24 injuries that caused loss of procurement, and
25 further, that the injuries occurred while the

1 defendant was the sole person taking care of the
2 child.

3 And even from the defendant's statement, as he
4 indicated, he was alone in the bedroom with the
5 child during the time period the child sustained
6 these injuries. So for that reason, there is both
7 direct and circumstantial evidence in this case.
8 The direct evidence being the statement of the
9 defendant essentially admitting that he's the only
10 person that was with the child and that the child
11 was healthy when he took custody of the child, and
12 substantial circumstantial evidence based on the
13 injuries that the child sustained is the medical
14 expert opinion from Dr. Fisher that it wasn't
15 possible that it occurred prior to when the
16 defendant took custody of the child based on the
17 child's demeanor and ability to move around prior to
18 the defendant taking custody.

19 THE COURT: All right. I'm going to
20 respectfully deny your motion. There's ample
21 evidence in the record, if the jury finds it to be
22 credible, to support a verdict. And without
23 reiterating what I've already said, obviously with
24 these types of injuries -- I mean, these are
25 significant, significant head injuries to the brain,

1 to the eyes, as I described them earlier -- there's
2 no way, as the doctor said, he could have been
3 asymptomatic, without symptoms, until it happened.

4 And, obviously, the child was asymptomatic,
5 without symptoms, up until the child was in the
6 exclusive care and custody of the defendant. I'm
7 going to respectfully deny the motion based on the
8 testimony as presented.

9 All right. Are y'all ready to bring the jury
10 in?

11 MR. KATONAK: Well, Your Honor, have you made a
12 ruling yet as far as third-party guilt?

13 THE COURT: Based on your proffer, I find that
14 it is pure speculative conjectural, and there's no
15 logical connection between attempt to show the fact
16 that she may have PTSD and/or being positive for
17 drugs eight days later is connected in any way at
18 all with the injuries that this child sustained, so
19 I will not allow it.

20 MR. KATONAK: Well, Your Honor, as far as my
21 client and his son's testimony in regards to her
22 watching the child that day and the day before
23 hearing the baby screaming and hearing a loud
24 thump --

25 MR. GRIMES: Your Honor, that testimony is

1 directly to the guilt of a third party.. And that
2 was the only thing that was proffered. I don't know
3 exactly what else they intend to say about this
4 incident, but those statements that they made were
5 direct to the fact that a third party might be
6 responsible for this child's injuries. So we'd
7 object to all of the testimony that they gave in
8 their proffer. If they had something else relevant
9 to add --

10 THE COURT: I deem that all to be within the
11 third-party guilt umbrella and, I will not allow it.
12 Without any further connection -- I mean, you've
13 made no further connection whatsoever, particularly
14 with the enormity of these injuries, and if that
15 happened -- the fact that you got a crying baby and
16 a thump and then you got 24, perhaps even longer,
17 passing and the child had these types of injuries,
18 if that happened that far in advance, you'd have to
19 have some testimony -- the child would be dead by
20 the time she turned it over to the defendant.

21 If it hadn't been for the intubation and
22 immediate attention, the child's life was threatened
23 any way by the time he got to the hospital. You
24 just have not made any causal connection between
25 crying and a thump and somebody else being

1 responsible for this horrible injury. Respectfully
2 denied.

3 MR. KATONAK: Your Honor --

4 THE COURT: I've ruled. You know the rules.

5 MR. KATONAK: Yes, sir. My other question
6 is -- I don't want a mistrial in this case. I just
7 want to know, with my witnesses, how far I can go.
8 I understand they can't testify about the thump, but
9 as far as the testimony that my client didn't watch
10 the child until 5:00, that she watched the child --

11 THE COURT: That's a known fact, and I don't
12 think anybody is disputing that.

13 MR. KATONAK: All right. Again, Judge, I just
14 wanted to make sure.

15 THE COURT: I didn't have anything to do with
16 the child until 4:30 or 5:00, that's certainly
17 proper.

18 MR. KATONAK: Judge, with the denial of our
19 motions, may I have a moment to talk to my client?

20 THE COURT: Yes, sir.

21 MR. KATONAK: I just need about three minutes.

22 THE COURT: Yes, sir. You can have as much
23 time as you need.

24 (Brief pause in the proceedings.)

25 THE COURT: Mr. Katonak, are you ready?

1 MR. KATONAK: Yes, sir, we're ready.

2 THE COURT: All right. Are y'all going to
3 present any testimony or save it and get the last
4 argument?

5 MR. KATONAK: Judge, we're going to present
6 testimony.

7 (The jury enters the courtroom at 2:41 PM.)

8 THE COURT: You'd think after practicing law
9 for 30 years and being a judge for 12 years I'd
10 learn my time better. I'm sorry. We have not
11 stopped. I took about ten minutes to eat a sandwich
12 and I had some civil matters and then we started
13 this back up about -- I forgot what time we started
14 back. Whatever it was, we've been going for the
15 last hour. It lasted a little longer than I
16 thought, so I apologize. I hope you enjoyed your
17 lunch.

18 We're now going to open up with the defendant
19 presenting their witnesses and then we'll see where
20 we are. When we conclude all of the testimony, I'll
21 talk to you about whether we want to try to go
22 farther this afternoon or come back early in the
23 morning. We'll let y'all be involved in that
24 decision. Fair enough? Lunch was okay?

25 THE JURY: Yes, sir.

1 THE COURT: Mr. Katonak, you may call your
2 first witness.

3 MR. KATONAK: Yes, sir. We'd call Mellisa
4 Martin.

5 MELLISA MARTIN

6 being first duly sworn, testified as follows:

7 THE WITNESS: Yes, sir.

8 THE CLERK: Have a seat and state your full
9 name spelling your last name.

10 THE WITNESS: Mellisa Dawn Martin, M-A-R-T-I-N.

11 DIRECT EXAMINATION

12 BY MR. KATONAK:

13 Q. You okay, Mellisa?

14 A. Yes, sir.

15 Q. If you need a water or tissue or anything, let
16 us know. Okay?

17 A. (Nods head.)

18 Q. I need you to speak up so everyone can hear
19 you. Okay?

20 A. Yes, sir.

21 Q. Give me your full name.

22 A. Mellisa Dawn Martin.

23 Q. And how old are you?

24 A. I'm 37.

25 Q. All right. And are you married?

1 A. Yes.

2 Q. And who are you married to?

3 A. Heyward Martin.

4 Q. How long have you Heyward been married?

5 A. Six years.

6 Q. Do you and Heyward have any children together?

7 A. (Shakes head.)

8 Q. Do you have any children?

9 A. I have two.

10 Q. What are their names and ages?

11 A. Jason and Kaitlynn T. , 14 and 16.

12 Q. Do they live with you and Heyward?

13 A. Yes.

14 Q. How would you describe the relationship between
15 Heyward and your children?

16 A. It's unbreakable almost. They've missed him
17 the 21 months he was gone.

18 THE COURT: Ma'am, please speak up loud so we
19 can hear you.

20 BY MR. KATONAK:

21 Q. What do they call Heyward?

22 A. Dad.

23 Q. Is he basically the father figure in their
24 lives?

25 A. He's been the only one.

1 Q. Okay. Where were you living back in June of
2 2014?

3 A. [REDACTED], Jackson.

4 Q. Okay. And at that time who was living at the
5 home?

6 A. Myself, my husband, my two children, Melodi,
7 and Minor .

8 Q. And when you say Melodi, that would be Tucker?

9 A. Yes.

10 Q. And Minor --

11 A. Minor --

12 Q. -- Minor ?

13 A. -- as well. Yes, sir.

14 Q. How was it that they came to live with your
15 family?

16 A. They first showed up with a friend of my
17 husband's, Robert Dann, that came and dropped her
18 off at the house, said he needed to go take a shower
19 real quick and he'd come back and get her. Well, he
20 never came back and got her.

21 Q. Okay.

22 A. Two weeks later, after a discussion between my
23 husband and I, we found out she had nowhere to go.
24 She had a baby, so we let her stay.

25 Q. All right. And so prior to June 10th,

1 approximately how long had she been living with you?

2 A. About five or six weeks.

3 Q. Okay. Was she working?

4 A. No. She never worked. I paid for all the
5 diapers and all the formula. I was taking her to
6 classes and working myself.

7 Q. And where were you working?

8 A. I was working currently back then at Kangaroo
9 as food manager -- assistant food manager.

10 Q. And what were the hours that you worked?

11 A. It was first, second, or third. It was all
12 over the board.

13 Q. Okay. Let me state this: - Who normally took
14 care of Minor ?

15 A. I did unless -- until the last few weeks. My
16 schedule started clashing with hers. My boss quit
17 letting -- giving me time off the three days she
18 needed for her classes to be able to go til whatever
19 time it was, so I had to start making different
20 arrangements.

21 Q. If she was at the home, who would keep the
22 child?

23 A. She kept the child any time she was home.

24 Q. All right. And this State's Exhibit 1, that is
25 the home?

1 A. Yes.

2 Q. Okay. And where did she stay in the home?

3 A. The far right-hand --

4 Q. Why don't you step down here and show the jury?

5 I'm not privy to the high tech stuff.

6 A. Back on this end of the trailer in the back
7 part is where the spare bedroom was. This front
8 room was my daughter's room, and my husband and I's
9 was right here. (Indicating)

10 Q. Okay. And where did **Minor** stay?

11 A. With her.

12 Q. Okay. When she was there at the house, did he
13 interact greatly with the family or did she stay to
14 herself?

15 A. Pretty much stayed to herself until maybe
16 evening time when it was time to cook or when she
17 was hungry and she'd cook for her and go back to the
18 back again.

19 Q. Okay. Taking you to June 10th of 2014, do you
20 recall that day?

21 A. Like it was yesterday.

22 Q. Okay. Who kept the child during that entire
23 day?

24 A. She did.

25 Q. And where did she keep the child?

1 A. In the back part.

2 Q. All right. In the room you pointed out?

3 A. Yes, in the room I pointed out.

4 Q. Can you recall, did she come out to interact
5 with the family at all that day?

6 A. She came out once and said something about her
7 class and I told her I couldn't take her. And
8 that's when she started making, I think,
9 arrangements with Mr. Hill, because I had to go into
10 work at, like, 2:00 or 3:00 that afternoon.

11 Q. And do you know what type of classes she had to
12 go to?

13 A. She had to go to the Aiken Center for her
14 classes -- drug classes.

15 Q. Was this something she had to do once a week,
16 twice a week? How --

17 A. She did it three times a week. And I had been
18 taking her for almost four weeks before I was
19 finally not able to -- I had to depend on somebody
20 else. I told her I had to depend -- I needed the
21 sleep. My schedule was meshing and all that good
22 stuff.

23 Q. And when she went to class, were any
24 arrangements made about who was going to watch the
25 child?

1 A. I usually did. And what I would do was --
2 because Jackson was so far away from Aiken, I'd
3 usually go to my mother's house and sit until she
4 was done with her class or whatever and then come
5 back and get her.

6 Q. But on this particular night, you had to work?

7 A. I had to work.

8 Q. So what arrangements were made for who was
9 going to watch **Minor** ?

10 A. I told her she might want to have to skip that
11 class because she could skip a few without failing
12 or try to figure out something because I had to be
13 at to work and my boss was being pretty much a butt
14 at the time and said she'd fire me if I didn't show
15 up.

16 Q. To your knowledge, did she eventually make
17 arrangements to have your husband watch the child?

18 A. I was informed after I went to work, because I
19 was under the impression -- she never had problems
20 with skipping class before, but she just had to go
21 this night.

22 Q. Okay. So you had gone to work before other
23 arrangements were made?

24 A. Yeah.

25 Q. Is it your understanding though that your

1 husband did watch the child?

2 A. Yes, I was informed of that.

3 Q. Had Heyward ever watched Minor before?

4 A. Once or twice prior, yeah, two or three times,
5 but not really alone. I was always in another part
6 of the house. That was the first time me away from
7 the house that he watched Minor.

8 Q. Okay. Did you have any concerns or issues
9 about your husband watching the child?

10 A. No.

11 Q. At some point that night did you receive a
12 phone call from Heyward?

13 A. I received a phone call. I'd say -- I really
14 couldn't quote the time right now. I know I was
15 closing. So I would have been closing around 10:00
16 or 11:00. I'd say around 8:00 or 8:30-ish he called
17 and told me the baby was having a seizure. I
18 couldn't believe what I was hearing because I just,
19 like two or three weeks, told him what my mother had
20 told me about --

21 MR. GRIMES: Objection, Your Honor; that's
22 hearsay.

23 THE COURT: You can't testify about what other
24 people say, ma'am.

25 BY MR. KATONAK:

1 Q. You can say what Heyward said, but you can't
2 say what your mother or anyone else said?

3 A. Okay. My bad.

4 Q. So he called you and said the baby is having
5 seizures?

6 A. Yes.

7 Q. And was he asking for your advice?

8 A. Yes. But then I told him I wanted to talk to
9 my daughter to see -- because he was panicking over
10 the phone, to see more specifically what was going
11 on. So he put Kaitlynn on the phone.

12 THE COURT: I'm sorry. I didn't understand
13 you. He was what over the phone?

14 THE WITNESS: He was panicking.

15 THE COURT: Panicking.

16 THE WITNESS: So I was -- specifically asked to
17 speak to my daughter.

18 BY MR. KATONAK:

19 Q. Did he seem very stressed out?

20 A. Yes.

21 Q. And did you speak to your daughter?

22 A. Yes.

23 Q. After that, what did you tell Heyward to do?

24 A. I told him that he had two options; 15 minutes
25 prior I had seen Melodi come to the store, borrow

1 some cigarettes from me, walk out the door and tell
2 me I love you MiMi. So I thought she was close
3 by --

4 Q. And let the jury know, how far is the store
5 where you were working to your home?

6 A. Two blocks, if that.

7 Q. Okay. So what was your assumption after Melodi
8 left the store?

9 A. I thought she was heading home. So I was like,
10 she's not there? And Kait was like, no. And I
11 said, well, she should be there any time, I swear
12 she just left here 15 or 20 minutes ago bumming
13 cigarettes from me. And I said you have two
14 options; call the law -- or call the ambulance or
15 call the mother. As a mom, I would personally want
16 to know that my kid was going to the hospital.

17 Q. When you got home -- did you go home straight
18 from work?

19 A. I went home straight from work, but it was much
20 later but much later because the power went out and
21 I had to stay at the store until, like, 1:30 or 2:00
22 before I could come home.

23 Q. While you were still at the store, did Heyward
24 ever call you back and tell you what the situation
25 was?

1 A. Several times.

2 THE COURT: I'm sorry. What?

3 THE WITNESS: Several times.

4 BY MR. KATONAK:

5 Q. And was it your understanding that the child
6 had been taken to the hospital?

7 A. Yes.

8 Q. After you got home, did you and Heyward discuss
9 this whole situation?

10 A. Yes.

11 Q. How was he acting?

12 A. He was distraught. We didn't know because we
13 couldn't get no response from Mr. Hill or anybody
14 about how the baby was. We were upset.

15 Q. Mellisa, did Heyward ever tell you that he did
16 anything to this child?

17 A. Not once, other than CPR he said. He said
18 there was some snot that came out that, like, kind
19 of wrapped his face because he -- he said the baby
20 was not breathing very well. It was like he was
21 really congested. And he had been acting that way.
22 And he was teething too. So he mentioned that small
23 fact to me. Kaitlynn and Bubba, they were just so
24 awed about the situation. But, I mean, we didn't,
25 like, discuss the whole --

1 THE COURT: I'm sorry. What was that last -- I
2 can't hear you.

3 THE WITNESS: My kids were distressed about the
4 whole situation.

5 THE COURT: And he didn't like to what? You
6 said something. Didn't like discussing it?

7 THE WITNESS: We didn't really discuss
8 everything about the aspect of the situation.

9 BY MR. KATONAK:

10 Q. But Heyward never told you that he did anything
11 to assault this child?

12 A. No.

13 Q. Do you believe him?

14 THE COURT: Whoa, whoa. That's not -- that's
15 for the jury to determine who they believe. That's
16 not a proper question.

17 BY MR. KATONAK:

18 Q. And, Mrs. Martin, we assume you love your
19 husband.

20 A. Yes.

21 Q. And while you love your husband, do you
22 understand the significance of telling the truth in
23 court today?

24 A. Yes.

25 Q. Is what you just testified to the truth?

1 A. Yes.

2 MS. HAMMACK: Your Honor, objection.

3 THE COURT: That's -- the jury is to determine
4 the credibility of the witnesses.

5 BY MR. KATONAK:

6 Q. All right. Mellisa, that's all the questions I
7 have. Answer anything the State has.

8 A. Yes, sir.

9 THE COURT: Ms. Hammack?

10 MS. HAMMACK: Your Honor, I don't have any
11 questions for this witness.

12 THE COURT: No questions. You may step down.
13 Next witness.

14 MR. KATONAK: I'd call Kaitlynn T.

15 Kaitlynn T.

16 being first duly sworn, testified as follows:

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Have a seat in the witness box.
19 State your full name for the Court spelling your
20 last.

21 THE WITNESS: My name is Kaitlynn T.

22 [REDACTED]

23 DIRECT EXAMINATION

24 BY MR. KATONAK:

25 Q. Kait, do you need some water or tissue or

1 anything?

2 A. (Shakes head.)

3 Q. If you do, let us know. Okay?

4 A. (Nods head.)

5 Q. And, Kaitlynn, how old are you?

6 A. Sixteen.

7 THE COURT: How old?

8 THE WITNESS: Sixteen.

9 THE COURT: Take a deep breath for us, ma'am.

10 BY MR. KATONAK:

11 Q. When is your date of birth?

12 A. [REDACTED]/2000, [REDACTED].

13 Q. And what grade are you in?

14 A. 11th -- yeah, 11th.

15 Q. Where do you go to school?

16 A. Silver Bluff High School.

17 Q. All right. Is school going okay?

18 A. Uh-huh.

19 Q. Okay. Heyward Martin, what is -- how is he
20 related to you?

21 A. He's my dad.

22 Q. Now biologically -- he's not your biological
23 dad; right?

24 A. Yes, sir.

25 Q. Yes, he is your biological --

1 A. No, he's not.

2 Q. Okay. But is he who -- he --

3 A. He's the only father that I've had.

4 Q. Thank you. And do you two have a close
5 relationship?

6 A. Yes, sir.

7 Q. Love him very much?

8 A. Yes, sir.

9 Q. All right. Kaitlynn, I want to ask you the
10 same questions I asked your mother. Where were you
11 living back in June of 2014?

12 A. [REDACTED] in Jackson.

13 Q. And who all was staying at the house at that
14 time?

15 A. My mother, my dad, my brother, me, Melodi, and
16 her baby Minor

17 Q. And I think it's been established, but
18 Ms. Tucker and Minor had been there about five
19 or six weeks?

20 A. Yes, sir.

21 Q. Now, Kaitlynn, where did Ms. Tucker and the
22 baby usually stay?

23 A. In the room right cross from mine in the back
24 of the house.

25 Q. Okay. And who normally took care of the baby?

1 A. It was between my dad and my mom, but if she
2 was there, she'd take care of him.

3 Q. Okay. All right. Now, can you remember back
4 to June 10th, 2014?

5 A. Yes, sir.

6 Q. And on that day, who watched the child during
7 that day?

8 A. That day --

9 THE COURT: Ma'am, you're going to have to
10 speak up.

11 A. On that day Melodi did.

12 Q. Okay. And where did she and the child stay
13 during that day?

14 A. In the back in the room right across from mine.

15 Q. Okay. How was it that your dad came to watch
16 the child?

17 A. She had to go to her classes. I don't know
18 what, like -- but she went to classes during the
19 week. And she didn't have anybody else to watch
20 him, so it was thrown at my dad like a surprise.

21 Q. Okay. And do you know approximately what time
22 it was that she left for class?

23 A. I believe she was running late and her class
24 started around 5:30, so maybe around 5:00. She was
25 leaving around 5:00.

1 Q. Okay. From 5:00 to about 8:00 or 8:30, what
2 were you doing during that time?

3 A. I was in the living room until I got sent to my
4 room and I went to sleep.

5 Q. Why did you sent to your room?

6 A. I wasn't exactly a nice --

7 THE COURT: Ma'am, I can't understand you.
8 Please speak distinctly.

9 THE WITNESS: Yes, sir.

10 THE COURT: Why were you sent to your room?

11 THE WITNESS: Because I got in trouble because
12 I was rude.

13 THE COURT: You got in trouble because why?

14 THE WITNESS: I was rude to my brother.

15 THE COURT: Rude to your brother.

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. And what time was that?

18 THE WITNESS: I'm not quite sure.

19 BY MR. KATONAK:

20 Q. Had Melodi already left?

21 A. Yes, sir.

22 Q. Okay. So, basically, you did or said something
23 to your brother and your dad sent you to your room?

24 A. Yes, sir.

25 Q. Okay. That happens to teenage girls.

1 Do you know where the child was staying while
2 you were in your room?

3 A. He was in the room with my dad in their
4 bedroom.

5 Q. Okay. And what did you do when you were in
6 your room?

7 A. I just went to sleep.

8 Q. Okay. At some point were you awoken by your
9 father?

10 A. Yes, sir.

11 Q. Okay. And what happened or what was said when
12 you were awoken?

13 A. They -- my brother and my dad, they woke me up
14 in a panic. They said the baby was having a
15 seizure. I didn't really understand. I thought
16 they were messing with me or something. And then
17 when I went in there, the baby was kind of like --
18 it wasn't really responding to anything.

19 THE COURT: The baby was what?

20 THE WITNESS: Wasn't responding.

21 BY MR. KATONAK:

22 Q. Okay. Do you know approximately what time this
23 was?

24 A. No, sir.

25 Q. Okay. At that time it was in the evening

1 though?

2 A. It was -- it just started getting dark.

3 Q. All right. And what steps did your father
4 take?

5 A. After -- I don't know what he did while I was
6 asleep. But when he woke me up, he sat him on the
7 ground and, like, tried to talk to him. He was
8 talking to him and I remember him -- he kept -- from
9 him swallowing his tongue or whatever. And then he
10 started freaking out, so he picked him up and
11 started patting him on the back. And then he put
12 him in some cold water and he started responding
13 suddenly after that and started crying. And then
14 maybe five minutes later, he went stiff again and
15 stopped responding.

16 Q. After that, did your father call your mother?

17 A. Uh-huh. Yes, sir.

18 Q. Okay. Approximately how long after that call
19 did Ms. Tucker show up at the house?

20 A. I would say maybe 15 or 20 minutes, because we
21 called my mom and my mom was like, she just left, so
22 we tried to call Melodi two times. And after that,
23 she maybe came five, ten minutes after we tried to
24 call her.

25 Q. Okay. Did you see anything that night of your

1 father assaulting the child?

2 A. No, sir.

3 Q. Okay. All right. That's all the questions I
4 have. Answer anything the State may have.

5 CROSS-EXAMINATION

6 BY MS. HAMMACK:

7 Q. Hey, Kaitlynn. I just have a couple questions
8 for you. I'm not going to ask you a ton of
9 questions. When all of this happened, did the
10 police come to your house?

11 A. No, ma'am.

12 Q. Well, did you ever eventually have to talk to
13 the police about this case?

14 A. Yes, ma'am.

15 Q. And they came and talked to you for a little
16 bit at the house, but then they came and talked to
17 you at your school, didn't they?

18 A. Yes, ma'am.

19 Q. When the police officer came and talked to you
20 at your school, he got you to write a statement
21 about what happened; right?

22 A. Yes, ma'am.

23 Q. And, Kaitlynn, tell me, isn't it true in your
24 statement you said that when Melodi put the baby
25 down, he started laughing and acting normal?

1 A. I cannot remember, like --

2 Q. It's been a while.

3 A. It's too -- yeah.

4 Q. Would it help you to look at your statement and
5 see what you wrote?

6 A. Yes, ma'am.

7 Q. Okay. Take a moment and read that for me and
8 then we'll do this again.

9 A. (Witness perusing document.)

10 Q. Did reading that help you remember what you
11 wrote?

12 A. (Nods head.)

13 Q. Now, Kaitlynn, when you wrote this for the
14 police officer, now do you remember writing that
15 when Melodi put Minor down that he was laughing
16 and acting normal?

17 A. Yes, ma'am.

18 Q. And do you remember writing that Minor was
19 awake when your dad took him to his room?

20 A. (Nods head.)

21 Q. Okay.

22 THE COURT: You have to answer yes or no.

23 A. Yes, ma'am.

24 Q. I don't have any other questions for you.

25 THE COURT: Redirect?

1 MR. KATONAK: No questions, Your Honor.

2 THE COURT: All right. You may step down,
3 ma'am.

4 Next witness.

5 MR. KATONAK: I call Jason T.

6 Jason T.

7 being first duly sworn, testified as follows:

8 THE WITNESS: Yes.

9 THE CLERK: Have a seat in the witness box.
10 State your full name for the Court, spelling your
11 last.

12 THE WITNESS: My name is Jason T.

13 My last name is spelled [REDACTED].

14 THE COURT: All right. You're going to have to
15 speak up, please. I've asked you that. Okay?

16 THE WITNESS: My name is Jason T.

17 My last name is spelled [REDACTED].

18 DIRECT EXAMINATION

19 BY MR. KATONAK:

20 Q. All right. Jason, you're going to have to
21 talk -- I can't hear very well and I'm all the way
22 over here. Okay?

23 All right. Jason, hold are you?

24 A. I am 14.

25 Q. What's your date of birth?

1 A. [REDACTED], 2002.

2 Q. And what grade are you in?

3 A. 8th grade.

4 Q. Where do you go to school?

5 A. Jackson Middle School.

6 Q. And who do you live with?

7 A. My mother, my father, and my sister.

8 Q. And when you say your father, is that Heyward
9 Martin?

10 A. Yes, sir.

11 Q. And Heyward is not actually your biological
12 father, is he?

13 A. No, sir.

14 Q. But you consider him Dad; right?

15 A. Yes, sir.

16 Q. He's the one who's raised you?

17 A. Yes, sir.

18 Q. Jason, on June 10th of 2014, at that time
19 Melodi Tucker and Minor were living at the house
20 with your family; correct?

21 A. Yes, sir.

22 Q. On that day, who watched the baby most of the
23 day?

24 A. Melodi. Melodi.

25 Q. Were you at the house that day?

1 A. Yes, sir.

2 Q. And where was Melodi and the baby at most of
3 the day?

4 A. In the back in the guest room.

5 Q. Okay. And at some point did your father have
6 to watch the baby?

7 A. Yes, sir.

8 Q. And why was that?

9 A. Because she had to go to her Aiken thing. I
10 can't remember what it is.

11 Q. Okay. She had to go to her class?

12 A. Yeah, her class.

13 Q. All right. And at that point your father began
14 watching the child?

15 A. Yes, sir.

16 Q. And do you know approximately what time that
17 was?

18 A. Around 5:00 or 5:30.

19 Q. Okay. Now, I understand from Kaitlynn at some
20 point she got in trouble and got sent to her room;
21 right?

22 A. Yes, sir.

23 Q. And where did you continue to be?

24 A. I was in the living room on my Xbox.

25 THE COURT: I'm sorry. I can't hear you, son.

1 You were in the living room where?

2 THE WITNESS: I was in the living room on my
3 Xbox.

4 THE COURT: In the living room doing what?

5 THE WITNESS: Playing my Xbox.

6 MR. KATONAK: Xbox.

7 THE COURT: Xbox. Okay.

8

9 BY MR. KATONAK:

10 Q. After Ms. Tucker left, what did your father do
11 with the child?

12 A. They took the baby to his room and they stayed
13 in there for a while.

14 Q. Okay. Now, did your father stay in the room
15 the entire time or at some point did he leave the
16 room?

17 A. He left and went out -- he went on the back
18 porch and he was smoking a cigarette and working on
19 the lawnmower.

20 Q. Okay. And did he ask you anything when he went
21 out on the porch?

22 A. Not that I can recall.

23 Q. Okay. At some point did he ask you to be just
24 on the lookout --

25 A. Oh, yeah. He asked me, yeah, to make sure

1 everything went okay with the baby and be on the
2 lookout. Yeah.

3 Q. Okay. And how long was he out on the porch?

4 A. I can't really remember.

5 Q. You said he went out on the porch to smoke and
6 work on a lawnmower. So did he go out in the yard
7 or was he on the porch?

8 A. He was on the back porch.

9 Q. Okay. And at some point did you hear something
10 from the room where the baby was in?

11 A. I heard a thump. And when I heard that, I
12 walked outside and asked my dad if that was him. He
13 said it wasn't and I just went back to doing what I
14 was doing.

15 Q. Did your father go in at some point to check on
16 the baby?

17 A. Yes, sir.

18 Q. And, do you know, did he find the baby was on
19 the floor at that time?

20 A. Yes, sir.

21 Q. Do you know what time of day or night that was?

22 A. No, sir. I can't remember.

23 Q. At some point, Jason, did Minor start
24 showing some serious medical symptoms?

25 A. Yes, sir. My dad walked out with the baby. He

1 was freaking out because the baby wasn't responding
2 to anything and he was making a weird wheezing sound
3 like he was congested.

4 Q. Okay. And what did your father do at that
5 time?

6 A. He was starting to pat him on the back and
7 that's when I walked back to the room to go get my
8 sister up. And we got my sister up and we were all
9 doing everything trying to help the baby.

10 Q. Okay. Did the baby seem to be in a pretty
11 serious situation at that point?

12 A. Yeah. He was having seizures and stuff like
13 that and still having issues breathing.

14 THE COURT: What?

15 THE WITNESS: Yes. He was having seizures and
16 stuff still and he was still having issues
17 breathing.

18 BY MR. KATONAK:

19 Q. What steps did your father take to try to help
20 the baby?

21 A. Well, he was patting him on the back, I guess
22 to help the congestion, and he was trying to get the
23 baby breathing again. And at one point he put the
24 baby in ice cold water trying -- I don't know if he
25 was trying to make him responsive or something.

1 Q. Okay. Did the baby at some point seem to get a
2 little better briefly?

3 A. Yeah. He started to just act better, kind of.

4 Q. Okay. But then did the baby's condition then
5 worsen?

6 A. It went back to the way it was before.

7 Q. Who did your father call at this point?

8 A. First, he called my mother and they had their
9 conversation. And then we tried to call Melodi and
10 stuff like that, I think, twice.

11 Q. All right. Do you know if your father was able
12 to reach Melodi on the phone?

13 A. No, sir.

14 Q. At this point were your father, you, your
15 sister all kind of freaking out at that point?

16 A. We were in a bit of a panic, yes.

17 Q. How soon was it after your father talked to
18 your mother that Ms. Tucker showed up?

19 A. Once again, I have no clue on any time, so I'm
20 not very specific on that.

21 Q. All right.

22 A. But not too long after that, Melodi finally
23 showed up.

24 Q. Okay. Let me ask you this, Jason: Once your
25 father started watching the child, was the child

1 ever crying out or screaming or anything such as
2 that?

3 A. Not that I can recall.

4 Q. All right. Now, you gave a statement to the
5 police. I think it was the day after it the
6 incident.

7 A. Yes, sir.

8 Q. All right. And in that statement did you
9 also -- in that statement did you state, as you did
10 today, that your father went outside at one point on
11 the porch?

12 A. I said he was smoking a cigarette. I didn't
13 say anything about the lawnmower though. That's it.

14 Q. Okay. The whole time that your father watched
15 the child, you were awake; correct?

16 A. Yes, sir.

17 Q. And where the living room is compared to your
18 parents' room where the baby was, how far a distance
19 is that?

20 A. Just a couple steps away, because the kitchen
21 and there's another room and the living room, they
22 all kind of connect and you can just walk that way
23 into the room. It's not that far.

24 Q. Did you ever see your father assault the baby?

25 A. No, sir.

1 Q. Did you ever hear anything else that would lead
2 you to believe your father assaulted the baby?

3 A. No, sir.

4 Q. Okay. That's all the questions I have, Jason.
5 Answer any questions the State has.

6 MR. GRIMES: No questions, Your Honor.

7 THE COURT: All right. You may step down.

8 MR. KATONAK: We'd call Heyward Martin.

9 THE COURT: Hold on a second.
10 Everyone okay? This may be the last witness.
11 Y'all need a bathroom break before we start?

12 THE FOREMAN: (Shakes head.)

13 HEYWARD MARTIN, III
14 being first duly sworn, testified as follows:

15 THE DEFENDANT: I do.

16 THE CLERK: Have a seat in the witness box.
17 State your full name for the Court, spelling your
18 last.

19 THE DEFENDANT: Heyward Martin, M-A-R-T-I-N.

20 DIRECT EXAMINATION

21 BY MR. KATONAK:

22 Q. And, Mr. Martin, how old are you?

23 A. I'm 34 years old.

24 Q. Are you married?

25 A. I am.

1 Q. To Mellisa?

2 A. Yes, sir.

3 Q. And do you have any biological children of your
4 own?

5 A. No, sir, I don't.

6 Q. But you have two individuals that you consider
7 your children; correct?

8 A. Correct.

9 Q. And how far did you go in school?

10 A. I graduated.

11 Q. And what have you done for a living most of
12 your adult life?

13 A. Construction.

14 Q. Are you currently working at this time?

15 A. I got two jobs at this time.

16 THE COURT: Sir, you're going to have to speak
17 up.

18 THE DEFENDANT: I got two jobs at this time.

19 BY MR. KATONAK:

20 Q. All right. And who are you working for?

21 A. One is Full Detail Lawn Service and then the
22 other one is, you know, brick mason work and stuff
23 like that, side jobs.

24 Q. Okay. Heyward, how long have you known Melodi
25 Tucker?

1 A. Probably about 26 years.

2 Q. Kind of grew up together?

3 A. Her -- one of my best friends is her older
4 brother Scott.

5 Q. And so have you kind of kept up with her over
6 the years?

7 A. Not really. Well, these last couple years that
8 I've been back in South Carolina, yes, sir.

9 Q. Okay. So where were you living at most
10 recently?

11 A. When I was in the military, I was in Michigan.

12 Q. What branch of the military were you in?

13 A. U.S. Army.

14 Q. How long were in the Army?

15 A. Five years.

16 Q. And what was your rank when you got out of the
17 Army?

18 A. E4.

19 Q. And what was your job in the Army?

20 A. I was 19 Kilo, M1A1 tank driver, 11 Bravo,
21 Lightfoot Infantryman, 92 Foxtrot Sierra, security
22 force policeman.

23 Q. All right. Well, thank you for your service,
24 sir. How was it that Ms. Tucker came to reside with
25 you and your family?

1 A. Her brother Brenden, unfortunately, was killed.
2 He was stabbed in Jackson. And I was throwing kind
3 of like a little party for remembering Brenden and
4 we had a big bonfire and everything. Probably about
5 50 or 60 people came over to the house. Robert Gand
6 dropped her off over there and was like, I'm going
7 to take a shower, I'll be right back, never came
8 back. Like two weeks went by.

9 Me and my wife talked. She was like, you know,
10 the baby ain't got nowhere to go, she ain't got
11 nowhere to go, you want to help them out? And I
12 said, you know, it's up to you, you know, because I
13 might be the man of the house, but she runs the
14 house.

15 Q. Sure. So you-all decided to take her and the
16 child in?

17 A. Correct.

18 Q. Was Melodi working at all?

19 A. No, sir.

20 Q. So who provided for her food and diapers and
21 all that kind of stuff?

22 A. We did.

23 Q. At that time, June of 2014, were you employed?

24 A. I was laid off from MB Kahn out of Columbia.

25 Q. Is that a construction company?

1 A. Yes, sir.

2 Q. Okay. So who was the breadwinner in June of
3 2014?

4 A. That would be my wife, sir.

5 Q. Who normally took care of the child at the
6 house?

7 A. When Melodi was there, she took care of him.
8 You know, they stayed in the back room most of the
9 time. And Mellisa, she'd help out, you know, and
10 I'd help out now and then, like if they needed a
11 break or something and watch him so they could go,
12 you know, to the store or whatever..

13 Q. On the weekend preceding June 10th -- I believe
14 June 10th was a Tuesday. The weekend preceding,
15 Melodi home that weekend?

16 A. You said June 10th, sir?

17 Q. The weekend preceding June 10th.

18 A. Okay.

19 Q. Was she home during the weekend?

20 A. Most of the week she was, but I think she was
21 gone the day before the 10th.

22 Q. I believe Mr. Hill testified they had spent the
23 night together on the night of the 9th. Is that
24 correct?

25 A. Correct.

1 Q. Who had watched the child on that night?

2 A. I watched the child till about 10:00 or 10:15
3 the next morning, then Melodi watched him all day
4 from there.

5 Q. So on the 9th and on the 10th, Melodi is
6 watching the child?

7 A. Correct.

8 Q. Where did she stay with the child most of the
9 time?

10 A. In the back bedroom.

11 Q. How is it then that you came to watch the child
12 on June 10th?

13 A. She was about to go to class, she was running a
14 couple minutes late. And, like I said, my wife, she
15 had to work and everything, so she couldn't watch
16 him. She tried to give the baby to my 14-year-old
17 daughter and was like, will you watch him? And I
18 was like, my 14-year-old daughter can't watch a
19 baby, so I watched him.

20 I put him down in his little -- on the floor.

21 I put him in his little swing till he fell asleep,
22 picked him up, took him to my room so he could lay
23 down on the bed because I didn't want my dog or
24 anything to knock him out of the swing or anything,
25 you know, because I got a pit bull and everything.

1 And --

2 Q. So you put the baby in the bed. Did you stay
3 and lay down with the baby or did you go out on the
4 porch?

5 A. Went out on the porch.

6 Q. Okay. Now, with the statement you gave the
7 police that the jury heard earlier, that's not what
8 you said; is that correct?

9 A. Correct.

10 Q. All right. I believe you told the police that
11 you stayed in the room the whole when the child fell
12 asleep?

13 A. Correct.

14 Q. Well, Heyward, why did you tell the police that
15 on that day and today you're stating that you went
16 out on the porch?

17 A. Because I was -- at that time, I was scared to
18 admit that I left a baby in the room by himself..

19 THE COURT: Please speak up.

20 THE DEFENDANT: I said at the time I was scared
21 to admit to the police that I left a baby by himself
22 in the bedroom for, like, 30 minutes.

23 BY MR. KATONAK:

24 Q. Okay. After you spoke to the police, then your
25 son spoke to the police afterwards; correct?

1 A. Correct.

2 Q. Is it your understanding he told the police
3 that, no, you weren't in the room the whole time,
4 you were out on the porch?

5 A. Correct.

6 Q. And what were you doing out on the porch?

7 A. I was smoking a cigarette. That's when I
8 smoked cigarettes. I don't smoke anymore. I was
9 smoking a cigarette and I was fixing the -- I was
10 working on the carburetor on a lawnmower and
11 everything trying to get it -- because it was firing
12 off wrong. So I was trying to tune it up.

13 Q. And where was your son during this time?

14 A. In the living room.

15 Q. And how far is the living room from your room?

16 A. Thirty, thirty-two foot, something like that.

17 Q. And did you ask him anything as far as the
18 baby?

19 A. Just to keep an ear out.

20 Q. At some point did your son come outside and ask
21 you something?

22 A. He asked me did I -- was I the reason for,
23 like, a loud thud, boom. I said, no, it wasn't me,
24 could you check on the baby? So I went inside and
25 checked on the baby and that's when I found him on

1 the floor.

2 Q. And was he face-down, face-up?

3 A. He was face-down.

4 Q. Okay.

5 A. And he had a little cut right here on his chin.

6 Q. Was he crying at all?

7 A. No. He was just looking around at me.

8 Q. He was just what?

9 A. Looking around at me.

10 Q. All right.

11 A. When I come in the room.

12 Q. And what did you do with him?

13 A. Picked him up, checked him out, made sure his
14 eyes wasn't spacing and all that. And I checked the
15 little cut right there. It wasn't bleeding bad or
16 anything, it was just a tiny little cut.

17 Q. So what happened after this?

18 A. It was probably, I want to say, an hour or so
19 like that, I had to change his diaper, and I fed
20 him. Usually he eats probably -- usually he eats a
21 full bottle. I think Melodi was feeding him a full
22 bottle and another quarter of a bottle.

23 But he only ate half a -- I mean, a quarter of
24 a bottle this time. It was only, you know, two and
25 a half or three ounces maybe. And I guess 30

1 minutes after that, I changed him again. That's
2 when he started stiffening up. I noticed when I
3 went out the room to get the wipes and everything, I
4 came back in and he was stiffening up, his arms and
5 everything.

6 Q. What was your reaction when you found the baby
7 in that condition?

8 A. I didn't know what to do. I seen grown men go
9 through seizures and everything in the military --

10 THE COURT: Speak up, please.

11 THE DEFENDANT: I said I've seen grown men go
12 through seizures and stuff in the military, but it's
13 a different story when you see a baby go through it.

14 BY MR. KATONAK:

15 Q. In the military did you receive any sort of
16 training in regards to helping someone who has a
17 seizure?

18 A. We did.

19 Q. What sort of training did you receive?

20 A. It's called -- basically what we do -- what we
21 did in the military. It's called shock where you
22 shock somebody back into the -- you can bring them
23 out of a seizure by extreme cold -- extremely cold
24 water or something like that. And that's what I
25 did.

1 All I had around was a sink and a couple ice
2 cubes. I filled the sink up maybe five inches, five
3 inches of water, I sat him in the sink. I was
4 holding him like this and I was running -- cupping
5 my hand and running it over on his head and on his
6 back. And that's when he started responding about
7 20 or 30 seconds later. (Demonstrating)

8 Q. Okay. And when you say he responded, what did
9 he do?

10 A. He started crying and started moving around a
11 little bit.

12 Q. At that point did you think he was out of the
13 woods?

14 A. I did.

15 Q. How long was it though before he started
16 showing other symptoms?

17 A. Three or four minutes.

18 Q. And what did he do at that time?

19 A. Started getting -- he was platonic again.

20 Q. And did you try the cool bath again?

21 A. No.

22 Q. What did you do at that point?

23 A. I wrapped him in a -- I had him wrapped in a
24 towel.

25 Q. Did you make any attempt to call Ms. Tucker?

1 A. Twice.

2 Q. And were you able to reach her?

3 A. No, sir.

4 Q. At some point did you call your wife?

5 A. I did, before I started calling Ms. Tucker.

6 Q. And in speaking with your wife, were you under
7 the assumption that Ms. Tucker would soon be home?

8 A. Yes, sir.

9 Q. Why did you not call 911 at any point?

10 A. I -- I should have, you know. I regret that
11 now. But because my -- like my wife said, you being
12 a mother, you'd want to know. And I thought she --
13 she was right down the road... She just left my
14 wife's store, and I can walk there in five minutes.
15 So...

16 Q. Okay. So is it fair to say that you wanted to
17 wait for Ms. Tucker because you thought she'd be
18 there the next few minutes?

19 A. Correct.

20 Q. After talking to your wife, how long was it
21 before Ms. Tucker showed up?

22 A. About 12, 13 minutes -- 10, 12 minutes,
23 something like that.

24 Q. Was the child's condition kind of the same at
25 that point?

1 A. It was.

2 Q. Heyward, at some point had you patted or
3 slapped him hard on the back to help his breathing?

4 A. Correct.

5 Q. How many times do you think you did that?

6 A. Four or five times.

7 Q. Was that after he was experiencing the
8 seizures?

9 A. That was the breathing; the raspy lungs, the
10 real -- it was a bunch of gurgling and it sounded
11 like a bunch of mucus was in his lungs. Because he
12 was running -- like, I guess the last week he
13 sounded like he was running a chest cold. He had a
14 bunch of mucus and everything. And we always had to
15 keep sucking little -- I don't know what it's
16 called, but it's the little rubber thing you squeeze
17 and it sucks. We had to constantly use that all the
18 time.

19 Q. Okay. So you ended up watching the baby that
20 day until approximately 5:00 that day; correct?

21 A. Correct.

22 Q. And then when you watched the baby, the baby
23 was in your room which is right off the living room;
24 correct?

25 A. Yes, sir.

1 Q. Your son was in the living room?

2 A. Correct.

3 Q. And you were in the room for a bit, but then
4 you were out on the porch for a bit?

5 A. Yes, sir.

6 Q. Heyward, did you assault this child?

7 A. No, sir.

8 Q. Do you believe that your actions caused the
9 serious medical conditions he has now?

10 A. No, sir.

11 Q. Is this whole experience the worst thing you've
12 ever gone through?

13 A. Got ripped away from my family 21 months in
14 that county jail, it was pretty excruciating, and
15 now having to go through this four months later.

16 Q. All right. Heyward, that's all the questions I
17 have. Answer any questions the State has.

18 CROSS-EXAMINATION

19 BY MR. GRIMES:

20 Q. I don't think we've ever talked before. My
21 name is Sam Grimes.

22 A. Yes, sir.

23 Q. You've seen me sitting at that table in this
24 trial; right?

25 A. Yes, sir, I have.

1 Q. So you have a pretty good idea of what my
2 responsibility is, don't you?

3 A. Correct, sir.

4 Q. Well, let me say this: We know you didn't wake
5 up that morning intending to hurt this child. What
6 did you intend to do that afternoon?

7 A. What did you say, sir?

8 Q. What were your plans? What did you intend --
9 you didn't plan for any of this to happen, you
10 planned to something else; right?

11 A. Supposed to play baseball with the kids.

12 Q. You were going to play baseball with the kids?

13 A. Yes, sir. We was playing baseball a lot back
14 then. We'd go play home run derby and stuff at the
15 baseball park and all that.

16 Q. And you were planning to do that with your
17 children that evening; right?

18 A. Correct.

19 Q. And at the last minute, Melodi came in and
20 basically dumped Minor on you; right?

21 A. I guess if you want to say that, yeah.

22 Q. Well, I don't want to characterize your
23 statement, but it kind of sounded like that when you
24 described it; right?

25 A. Well, I said that we was going to play baseball

1 and she was trying to put him off on my daughter, so
2 I said my 14-year-old daughter can't watch a baby,
3 so I'll watch the baby.

4 Q. On a scale of 1 to 10, how happy were you about
5 that?

6 A. It didn't bother me like that.

7 Q. All right.

8 A. Responsibilities.

9 Q. Responsibilities?

10 A. Right.

11 Q. Not your responsibility.

12 A. It is my responsibility. It's my house.

13 Q. All right. Well, you said just a few minutes
14 ago that when Melodi left the child with you, you
15 put him in the swing. I don't know how -- you said
16 you had five or six weeks' experience with Minor
17 at that point; right?

18 A. Right.

19 Q. So you put the child in the swing, hopefully
20 he'll go to sleep; right?

21 A. It wasn't hopefully. He usually went to sleep
22 pretty much every time.

23 Q. I'm familiar with it. It's a good --

24 A. Right. You put them in front of the TV.

25 Q. So Minor was awake when he was dropped off

1 with you, wasn't crying, wasn't unhappy, clearly he
2 wasn't hungry because all he wanted --

3 A. He just woke up.

4 Q. -- was to get in the swing.

5 A. She had just woke him up and she handed him --
6 she was handing him to Kaitlynn, and that's when I
7 took him. I was like, I'll take him.

8 Q. He just woke up?

9 A. Right.

10 Q. And the first thing to do was to head back to
11 sleep; right?

12 A. I put him back in the swing, yeah, because
13 usually when he woke up, he was kind of cranky, you
14 know, for a little while. So I put him back in the
15 swing. That was the option. He could have stayed
16 awake, but went back to sleep like he usually does.

17 Q. And as soon as he -- about how long did that
18 take, I wonder?

19 A. Five minutes.

20 Q. So after he got good and sleepy, you took him
21 and put him back in the bedroom?

22 A. Right, because my dog was running around.

23 Q. When Investigator Evensen came to your house on
24 June 11th, that was the morning, the middle of the
25 day, after all this happened; right?

1 A. Correct.

2 Q. He came and they were taking pictures in the
3 house, talking to everybody; right?

4 A. Correct.

5 Q. I don't think you were there initially, but you
6 came home at some point; right?

7 A. I was at Dollar General shopping, getting a
8 little groceries and stuff like that, snack cakes
9 and cereal and stuff like that.

10 Q. Did somebody tell you he was there or did you
11 just?

12 A. My wife. She was like, baby, come on home. I
13 said, I'm on my way right now.

14 Q. So at that point everybody was concerned at
15 what happened to Minor ; right?

16 A. Correct.

17 Q. And, of course, law enforcement wasn't there
18 when all these injuries happened; right?

19 A. No.

20 Q. And your wife wasn't there when all these
21 injuries happened?

22 A. Correct.

23 Q. But they were interested to know what happened;
24 right?

25 A. Right.

1 Q. And this was going to be your first opportunity
2 to explain to them what happened to Minor ;
3 correct?

4 A. Correct.

5 Q. And you chose to lie to them?

6 A. I did.

7 Q. Because you didn't tell them that you were --
8 well, today you say you were outside on the back
9 porch smoking.

10 A. Right.

11 Q. That's not what you said in your statement.

12 A. I know it's not.

13 Q. Okay.

14 A. That was established like a couple months after
15 all this happened.

16 Q. What was established?

17 A. The investigators knew that I wasn't in the
18 bedroom because it came out.

19 Q. Because you called them up and told them you
20 lied?

21 A. No.

22 Q. Oh, so it came out some other way?

23 A. Right.

24 Q. Okay. Okay. But today you're saying you lied?

25 A. I did lie.

1 Q. Okay. Well, let me ask you this: You said
2 that you saw **Minor** face-down on the ground;
3 right?

4 A. Correct.

5 Q. And that you checked him all out and he had a
6 scratch under his chin, but otherwise he was pretty
7 okay; right?

8 A. (Nonverbal response.)

9 Q. And he didn't cry?

10 A. (Nonverbal response.)

11 THE COURT: Answer, please.

12 THE DEFENDANT: No. Correct.

13 BY MR. GRIMES:

14 Q. And he didn't act upset?

15 A. Nope.

16 Q. And then about an hour later, you change his
17 diaper; right?

18 A. Right.

19 Q. And then he was fine, happy?

20 A. For a little while.

21 Q. I think you talked with Investigator Evensen in
22 your interview about the fact that he cried for 30
23 seconds. I don't know if that part was truthful or
24 not.

25 A. Yes.

1 Q. That part was truthful?

2 A. Yes; on the second diaper.

3 Q. So the only time he cried that night was 30
4 seconds, is what you want us to believe?

5 A. Thirty seconds. He wasn't much of a crying
6 baby at all. He don't -- he didn't -- he's not a
7 crying little baby like that.

8 Q. Okay.

9 A. He was always usually, you know, crawling
10 around on the ground. But he was teething, so he
11 was a little ornery.

12 Q. I don't know -- I assume you can see these
13 pictures from where you were sitting over there.

14 A. I see them.

15 Q. You saw them?

16 A. I see them.

17 Q. All of these pictures?

18 A. I can see them, sir. I see them. Uh-huh.

19 Q. This child wasn't breathing well, right, wasn't
20 breathing at all?

21 A. He was breathing.

22 Q. You said in your statement that these symptoms
23 all happened 10 to 12 minutes before Melodi Tucker
24 showed up, yes?

25 A. I said I called Melodi.

1 Q. You called Melodi?

2 A. After these symptoms and, you know, everything
3 was going on, the bath, calling her, she showed up
4 10 to 12 minutes after that.

5 Q. Ten to 12 minutes after you called her?

6 A. After I called my wife.

7 Q. How many people did you call before you tried
8 to call Melodi Tucker?

9 A. One.

10 Q. Who?

11 A. My wife.

12 Q. And then you tried to call Melodi Tucker?

13 A. Twice.

14 Q. And then 10 to 12 minutes went by; right?

15 A. Right.

16 Q. Before anybody showed up. Have you ever held
17 your breath for 12 minutes?

18 A. No, I haven't.

19 Q. Why wasn't an ambulance there?

20 A. I should have called the ambulance. I should
21 have, looking back now.

22 Q. You were afraid of what they would find?

23 A. No. I was just --

24 Q. You were afraid of what they would find?

25 A. No. No, sir.

1 THE COURT: Redirect?

2 MR. KATONAK: No questions.

3 THE COURT: You may step down.

4 THE DEFENDANT: Thank you, sir.

5 THE COURT: Next witness.

6 MR. KATONAK: That's the Defense's case.

7 THE COURT: Anything in reply by the State?

8 MS. HAMMACK: No, Your Honor.

9 THE COURT: Let me see y'all one second right
10 here at sidebar.

11 (Sidebar conference.)

12 THE COURT: Mr. Foreman, ladies and gentlemen
13 of the jury, obviously you can tell time as good as
14 I can, it's 20 minutes to 4:00. What we have left
15 is this: I've got to spend 20 minutes with the
16 lawyers to go over the instructions that's required
17 by law. They have an opportunity to make certain
18 motions which is under the rules, so that takes us a
19 little after 4:00.

20 I got to give all the lawyers, clerks, and
21 court reporter bathroom breaks, so that will take us
22 somewhere after 4:00, 4:15. Then by the time we
23 argue, 45 minutes to an hour, that's 5:00 or 5:15.
24 My charge is about 15 or 20 minutes, that's 5:30.
25 I'd like to finish it today, I sort of told y'all we

1 would, but that's putting us late.

2 And I also have to be cognizant of court
3 personnel and security and all that for the
4 courthouse. So I think that I'll get all that done
5 this afternoon and we'll start at 9:30 in the
6 morning. When we come in in the morning, all that
7 will have been done, we'll go straight into the
8 final arguments.

9 Once the arguments are made, I'll give you the
10 charge, and then you'll start your deliberation. If
11 we need to, we can order some pizza or something
12 that you can have during your deliberations. Is
13 that fair enough? Is that an imposition on anybody?
14 And then we should be through by lunchtime tomorrow,
15 or close thereabouts, and that will conclude
16 everything for you. That's probably not the plan I
17 wanted, but I want you to have a pleasant evening.

18 I think someone from the newspaper was here
19 today. There will probably be a little article in
20 the newspaper tomorrow. I ask that you do not read
21 it. I want you to decide this case based solely on
22 what you've heard here in the courtroom and only on
23 what you've heard here in the courtroom.

24 Please do not discuss the case with anyone
25 tonight, don't start deliberating amongst

1 yourselves, don't do any research. Have a very
2 pleasant post-Valentine's Day. Anybody need a ride?
3 9:30 in the morning we'll start. We had fruit and
4 biscuits this morning, but the king is back.
5 Mr. Whittle is my chief, chief, chief bailiff and
6 he's in charge of food, so I'll take a special
7 request. What would you like?

8 THE FOREMAN: Biscuits again and fruit.

9 THE BAILIFF: Well, that's simple.

10 THE COURT: All right. Everyone else, please
11 remain seated. Y'all have a very pleasant evening.
12 I look forward to seeing you at 9:30 in the morning.
13 Thank y'all very much.

14 (The jury exits the courtroom at 3:42 PM.)

15 THE COURT: All right. Any motions by the
16 State?

17 MS. HAMMACK: Not from the State, Your Honor.

18 THE COURT: Mr. Katonak, you going to renew
19 some -- let's do this: Let's take five minutes to
20 stretch our legs, use the restroom, and then we'll
21 come back and do any post-trial motions or
22 post-testimony motions, and then we'll talk about
23 the charge and we'll break for the evening. He's in
24 custody.

25 (Short break 3:42 PM - 3:57 PM.)

1 THE COURT: Any motions by the State?

2 MS. HAMMACK: No, Your Honor.

3 THE COURT: Mr. Katonak, anything?

4 MR. KATONAK: Your Honor, I renew our motion
5 for directed verdict along the same lines that we
6 made our first motion on.

7 THE COURT: Well, obviously it's a
8 circumstantial evidence case.

9 Anything y'all want to reply on that?

10 MR. GRIMES: Your Honor, I'd just say there's
11 more evidence to support the State's case than there
12 was at the close of the State's case, based on the
13 testimony of --

14 THE COURT: Well, obviously the Supreme
15 Court -- there's been a number of opinions recently
16 on the analysis that the Court has to perform at the
17 conclusion of a case where a motion for directed
18 verdict is made, particularly dealing with
19 circumstantial evidence and citing the 2016 case of
20 State vs. Phillips.

21 It says: The trial court must view the light
22 most favorable to the State when ruling on a motion
23 for directed verdict and must submit the case to the
24 jury if there is any substantial evidence which
25 reasonably tends to prove the guilt of the accused

1 or from which his guilt may be fairly and logically
2 deduced. The Court must concern itself solely with
3 the existence or nonexistence of evidence from which
4 a jury could reasonably infer guilt.

5 And, obviously, I stated at the conclusion of
6 the State's case, there is ample evidence, if the
7 jury finds it to be credible, that they could --
8 from which they could infer guilt. And there is,
9 further, substantial evidence when taking the
10 evidence in the light most favorable to the State
11 which reasonably tends to prove the guilt of the
12 accused.

13 So without reciting all the evidence that we
14 talked about at the conclusion of the case, it's --
15 there is no evidence in the record that the baby
16 exhibited any untoward behavior or any symptoms of
17 any type of injury when the child was put in the
18 exclusive care of the defendant. And it wasn't
19 until he had sole custody and care of the child that
20 these symptoms manifested themselves, and the
21 symptoms were basically described by the doctor
22 which were immediately onset, in his opinion, after
23 the injury.

24 And the injuries are so significant, head
25 injury, that I find that there is the existence of

1 evidence from which the jury could infer guilt, and
2 I respectfully deny the motion.

3 Anything else by either party as far as motions
4 go?

5 MS. HAMMACK: No, Your Honor.

6 MR. KATONAK: No.

7 THE COURT: All right. The Court tomorrow will
8 charge my normal, regular charge dealing with
9 general propositions of law; can't infer anything
10 from the indictment, presumption of innocence,
11 burden of proof, reasonable doubt, duty of judge and
12 jury, credibility of witnesses, direct evidence and
13 circumstantial evidence.

14 We talked about prior record of the defendant,
15 but you never brought that out, so that's not in.
16 And then I guess I'll give the voluntary statement
17 charge, and then I'm going to charge the statute in
18 the indictment. And I don't know that I'll charge
19 anything else unless the State wishes me to do so.

20 MS. HAMMACK: Expert witness.

21 THE COURT: Expert witness, you're right.

22 Mr. Katonak?

23 MR. KATONAK: I think that covers it all.

24 THE COURT: There have been, obviously, some
25 cases recently dealing with circumstantial evidence,

1 so if y'all want to look and see if y'all agree on a
2 circumstantial evidence charge, I will look at what
3 you ask me to do. But normally I'll charge right
4 out of State vs. Bennett which says that basically
5 every circumstances rely on the State to prove
6 beyond a reasonable doubt and that all the
7 circumstance has to be consistent with each other
8 and taken together and point conclusively to the
9 guilt of the accused to the exclusion of every other
10 reasonable hypothesis. I think that's what I
11 normally charge.

12 MR. GRIMES: Yes, Your Honor. I know there's
13 been some cases about the substantial circumstantial
14 evidence charge -- or not charge, but burden to get
15 to the jury, but I don't think that's a
16 determination for them to make.

17 THE COURT: Well, no. The case I just cited a
18 while ago talks about the -- what the jury's focus
19 is on and what the trial court has to do in the
20 directed verdict stage, so it's a little bit
21 different focus. So both of you look at
22 circumstantial evidence tonight and we'll look at
23 that in the morning when I get here about 9:00.

24 And, of course, the verdict form is: We find
25 the defendant not guilty; we find him guilty of the

1 offenses outlined in the indictment.

2 Anything else I can do for either one of you?

3 MS. HAMMACK: No, sir.

4 MR. KATONAK: No, sir. Thank you.

5 THE COURT: I'll be here at 9:00 to answer any
6 questions you may have or concerns you may have,
7 we'll talk about the circumstantial evidence and
8 look at the verdict form. All right. The defendant
9 is in custody and we'll see you bright and early in
10 the morning.

11 MS. HAMMACK: Would Your Honor be inclined to
12 do other business tomorrow while the jury is
13 deliberating?

14 THE COURT: I will be so inclined.

15 (Trial in recess for the evening at 4:05 PM.)

16 (The following proceedings were held February
17 16, 2017.)

18 THE COURT: Bring the defendant out, please.

19 (The defendant enters the courtroom at 9:26
20 AM.)

21 THE COURT: All right. Last night when we left
22 I told y'all to get me a circumstantial evidence
23 charge. And on my own, State vs. Logan, which is a
24 2013 case, gives the trial court guidance in the
25 language they suggest in a circumstantial evidence

1 case. Is that what y'all are requesting?

2 MR. KATONAK: Yes, sir. That's the case I
3 found as well. It appears to be the most recent
4 case.

5 THE COURT: Ma'am? Sir?

6 MR. GRIMES: Your Honor, there's more than one
7 charge in that case. But --

8 THE COURT: Which one are you requesting? The
9 second one?

10 MR. KATONAK: Yes, sir.

11 THE COURT: All right. It simply says: There
12 are two types of evidence -- y'all know what it
13 says -- direct and circumstantial. It goes on:
14 Cases may be proven by circumstantial...and so on
15 the last page of the decision, footnotes 12, 13, 14,
16 15, and 16. Any other particular charge other than
17 this --

18 MR. KATONAK: Not from the defendant.

19 THE COURT: -- that we went over yesterday?

20 MR. KATONAK: Not from the defendant, no, sir.

21 THE COURT: All right. Any other situations I
22 need to consider before I bring the jury in?

23 MR. KATONAK: No, sir.

24 THE COURT: Are you aware of the case of State
25 vs. Beaty, Mr. Katonak?

1 MR. KATONAK: No, sir, I'm not.

2 THE COURT: Then I suggest you take a few
3 minutes to look at that so we won't have any
4 problems on appeal. State vs. Beaty deals with the
5 final argument decision. Are you not familiar with
6 it?

7 MR. KATONAK: No, sir.

8 THE COURT: I'm sure the State is familiar with
9 it. It says: When requested by the party with the
10 right to the second argument, the party with the
11 right to open and close will be required to open in
12 full on the law and the facts and be limited in
13 reply to addressing the other party's argument and
14 not permitted to raise new matters.

15 You want me to request -- you going to request
16 that or not?

17 MR. KATONAK: No, sir, we're not.

18 THE COURT: Thank you.

19 All right. Then what's the State's position on
20 the argument?

21 MS. HAMMACK: If Mr. Katonak is not requesting
22 that, then we're going to waive opening on the law
23 and close last.

24 THE COURT: Anything else?

25 MS. HAMMACK: Not from the State.

1 MR. KATONAK: Not from the Defendant.

2 THE COURT: All right. Bring the jury in,
3 please.

4 THE BAILIFF: We're still missing one juror.

5 THE COURT: We're waiting on one juror
6 gentlemen, ladies.

7 (Brief pause in the proceedings.)

8 (The jury enters the courtroom at 9:31 AM.)

9 THE COURT: Good morning.

10 THE JURY (collectively): Good morning.

11 THE COURT: We're now at the stage of the trial
12 where the lawyers will present their final
13 arguments. Once we conclude -- the final arguments
14 are made, I'll instruct you on the law and you'll be
15 in a position to start your deliberation.

16 Please bear in mind that you've heard all the
17 evidence you're going to hear in which to make your
18 decision. Final arguments is not evidence in this
19 case. Obviously these parties represent their
20 respective sides and they will be arguing the
21 evidence as they see it in the light most favorable
22 to their position or client. Bear in mind, that's
23 simply argument, that's not evidence. You've
24 already heard the evidence from which you'll make
25 your decision.

1 Please pay close attention to the arguments,
2 and once they conclude their arguments, I'll charge
3 you on the law. The State is waiving opening
4 argument; therefore, Mr. Katonak, you go first.

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

7 THE COURT: Yes, sir.

8 MR. KATONAK: Good morning. I hope y'all had a
9 good evening. I appreciate y'all being here this
10 week. I appreciate y'all listening intently
11 yesterday. As the Judge said, this is the last time
12 you'll hear from me. I'll go and then the State
13 will go. After the Judge charges y'all, you'll go
14 back and make a decision on this.

15 So, as the Judge said, this is my closing
16 argument. I want to kind of recap. What did we
17 learn yesterday? Can everybody see this okay from
18 right here? Please excuse my bad handwriting. I
19 always made Cs in handwriting.

20 As you know, I represent Heyward Martin. Who
21 is Heyward Martin? We learned he's 34 years of age,
22 we learned that he's married to Mellisa. We also
23 learned that he's raised two kids, Jason and
24 Kaitlynn. They're not his biological kids, but he's
25 Dad, he's raised them.

1 We also learned that in May of 2014 he took in
2 Melodi Tucker and **Minor** . Now, basically, they
3 were abandoned at his house with nowhere else to go.
4 We also learned that he financially provided for
5 Ms. Tucker and the child. She didn't work. Heyward
6 and his wife bought the diapers, bought the formula,
7 bought her food, bought everything. Okay? We also
8 learned that he's the one who agreed to watch the
9 child for Ms. Tucker when she went to the Aiken
10 Center on June 10th. We know all that about Heyward
11 Martin.

12 As you know, Heyward is charged with causing
13 great bodily harm to this child. It's terrible,
14 terrible injuries this child had. So last night I
15 was thinking, why would he do this? Why would he do
16 this trauma to this child? What would be his motive
17 in doing this?

18 As we heard from Dr. Fisher, for these injuries
19 to be sustained, this had to be some sort of violent
20 trauma going on. Falling off that bed didn't cause
21 the severity of these injuries. We've never said
22 that, I'm not saying that right now. Okay? So what
23 went on in Heyward for him to do this?

24 All right. We heard from during
25 cross-examination yesterday Mr. Grimes asked

1 Heyward, he said, well, isn't it true that day that
2 you had plans to go outside across the street and
3 play baseball with your kids -- yes, that was
4 true -- and that when you learned you had to watch
5 Minor , this really made you angry that you had
6 to miss play baseball. He said, well, it was an
7 inconvenience, but it didn't make me angry. I don't
8 think it's rational that because you couldn't play
9 ball with your kids that it would make you so angry
10 that you go and cause violent trauma to a child.

11 So what does the evidence show us about
12 Heyward? Was there anything that he has -- that
13 Heyward has any mental issues? You'd think someone
14 would have some -- possibly have some mental issues
15 to do this. No, we didn't hear anything of that.
16 Did we hear anything about anger issues or he's
17 prone to anger, flies off the handle, sudden
18 outbursts? We didn't hear anything of that. We
19 didn't hear anything of any past violence, he abuses
20 his wife, abuses the kids, past abuse of some sort.
21 No, we didn't hear anything of that.

22 Was the child screaming or crying when he was
23 watching the child? A lot of times there's cases
24 where we hear someone who -- the child won't calm
25 down; you be quiet, calm down. Just the contrary.

1 Both he and the kids that were at the house said,
2 no, the baby wasn't crying or fussing at all. The
3 State is telling you he did it, that he caused this
4 violence. Does it add up? You see, one plus one
5 does not equal three. It doesn't add up that
6 Heyward Martin would do this.

7 Heyward did make one bad mistake that night.
8 What did he do? When this child **Minor** is going
9 into seizures and is unresponsive, what did he do?
10 He panicked. He did. He told you he did. As we
11 look at this, he's entrusted with watching a
12 five-month-old child. He's entrusted with that.
13 Okay.

14 During his time with the child, the child
15 starts being unresponsive, starts having seizures.
16 Okay. He panics so much that when he calls his wife
17 at work, she testified, I had to get my daughter on
18 the phone because I didn't know what he was saying.
19 Okay. The State will probably tell you that even
20 with all this panic, okay, even with all this going
21 on, he should have called 911.

22 Would I react the same way Heyward did? I did,
23 I panicked. I'm going to tell you a story that I
24 don't really share that often. But several years
25 ago I was going to a Clemson football game and I met

1 a friend, a very good friend of mine his family, at
2 Hardee's, they were going up too. And the friend
3 said, I'll ride with you, Brian, we'll follow my
4 parents. Well, they took off a few minutes before
5 we took off.

6 We were between Aiken and Edgefield, came
7 around a curve, and saw a little car upsidedown in
8 the road and another car had been knocked off the
9 side and had been collided into. And you know what
10 I did? I drove right past it. I went about a mile
11 and finally my friend turned to me and said, that's
12 my dad's car. We turned around and came back and
13 stopped. We were the first ones there. And he
14 couldn't do it, so I went up to the car, and I saw
15 his parents both unconscious both barely breathing.

16 I went back to my friend. You know what we
17 did? We didn't do anything. We were too in shock.
18 Luckily someone else came soon and they called 911.
19 And I just stayed there. About 30 minutes later my
20 parents showed up. And I didn't even know how they
21 were even there. And they said at some point I had
22 called them. And they didn't know what happened,
23 but somehow they got out where I was and they had
24 come out there. They didn't know anything about the
25 accident.

1 So the State tells you he should have called
2 911. I'm telling you, I didn't. One thing that he
3 was cognizant of when he talked to his wife was
4 Mellisa said Melodi was just at the store and left.
5 And we heard the store is just down the road. Okay.
6 They live in Jackson. And if you know about how far
7 Jackson is from either Aiken or Augusta Hospital,
8 it's a good way. So Heyward said, she's going to be
9 here in a minute or two, I'd rather wait for the
10 mother to be here to make that decision. Is that
11 reasonable for him to do that? Yes, it is
12 reasonable. Did he panic? He did. Does that mean
13 that he caused the trauma to the child?

14 The State is going to say that he didn't call
15 911 because he didn't want 911 to find that he did
16 this to the child. That's not why he didn't call.
17 He called because he was entrusted to care for this
18 child and the child started having these symptoms
19 during his watch.

20 This case, as all cases are, is about the
21 evidence. You guys sat here all day yesterday and
22 heard evidence. We didn't put up that many
23 witnesses. The State had Mr. Hill who was
24 Ms. Tucker's boyfriend at the time. Basically,
25 yeah, I dropped her off the morning of the night,

1 picked her up, took her to her drug class and took
2 her back home and saw the child. Okay.

3 We had Investigator Evensen. Well, I know
4 Chris; he's an excellent investigator, he does a
5 good job. He wasn't at the scene when everything
6 happened, but he got all the statements afterwards.
7 We heard Dr. Fisher and then we heard from the
8 child's father who has custody of him and talked
9 about the terrible life the child has. Then, of
10 course, we presented Heyward, Mellisa, and the kids.

11 What's uncontradicted here? Well, it's
12 uncontradicted that this child, June 9th, about
13 10:00 AM til about 5:00 PM on the 10th was not with
14 Heyward; he was back in his room with his mother.
15 Okay. It's also uncontradicted from about 5:00 PM
16 to about 9:30 or so, Heyward was at the house with
17 Kaitlynn and Jason. Jason wasn't even a teenager at
18 that time; he was playing video games in the living
19 room. Kaitlynn was there for a while, but then she
20 got in trouble and got sent to her room. Also, the
21 child began having problems approximately 8:30 PM.

22 I told you before this is a case of
23 circumstantial evidence. We don't have anyone
24 saying I saw Heyward shaking this baby. There's
25 nothing saying Heyward admitted to shaking this

1 baby. No one said Heyward did any type of trauma at
2 all to this baby. Yes, the State can prove a case
3 by circumstantial evidence, but they haven't done it
4 yet.

5 What's the State's case hinge on? It hinges on
6 one thing; hinges on Dr. Fisher. Now, Dr. Fisher
7 answered a lot of questions by the State. Certainly
8 he's very qualified. I wouldn't want to have his
9 job. And he talked about the terrible injuries this
10 child has, the terrible condition this child is.
11 Really, it's heartbreaking. When I got up I didn't
12 really have that many questions of Dr. Fisher. I
13 really wanted to know three things. Okay?

14 First thing I asked him, I said, Dr. Fisher is
15 there debate in the medical community when symptoms
16 of a serious trauma of a child like this will occur.
17 And you recall his answer. His answer was kind of
18 coy. His answer was, there's always debate in the
19 medical community. Let's translate that. That
20 means yes. So there is debate about how soon
21 symptoms of a serious trauma like this could occur.

22 The second thing I asked was, do different
23 infants respond differently to pain? He also said,
24 yes, all of us respond differently to pain. He
25 said, infants, yes, they do respond differently.

1 The third thing and my very last question, I said,
2 did you meet with Officer Evensen the day after the
3 incident about this case? And he said, yes, I did.
4 I said, did you tell the officer that the symptoms
5 from this trauma could have arisen within one day
6 from when the trauma occurred? What did he say?
7 What did he say when I asked could the symptoms have
8 occurred in the day, 24 hours? He said yes.

9 Now, you probably heard several times from the
10 State, and in fact, I believe the Court said it one
11 time, do you have an opinion, Doctor, to a
12 reasonable degree of medical certainty? And that's
13 a coin-catch phrase. And when we have an expert
14 testifying in a case, that's the term you use.
15 Okay. And, yes, do you have an opinion to a
16 reasonable degree of medical certainty that this
17 child suffered injuries? Certainly. This child may
18 be blind? Yes. May not be able to see? Yes. Had
19 blood on the brain? Yes.

20 What was never asked though by the State:
21 Doctor, do you have an opinion to a reasonable
22 degree of medical certainty that this trauma would
23 have occurred between 5:30 and 9:30 on June 10th?
24 And the reason he wasn't asked that is because he
25 can't say it. He cannot say when the trauma

1 occurred. He doesn't know.

2 He does know it happened within 24 hours.

3 Okay. And we've already established that my client
4 only had the child from 5:00 PM on the 10th. That's
5 an established fact. So the State's case hinges on
6 what the doctor says. And you know what, he doesn't
7 help them.

8 In this case many people talked with the
9 police, okay, and you heard from most of them
10 yesterday. Who told the whole truth to the police?
11 Who told the whole truth to the police? That means
12 who can we really trust? Kaylee [sic] and Jason.
13 Why is that? They were -- Jason said he was 12 at
14 the time. He was actually only 11, about to turn 12
15 at the time. They were 11 and 14 at the time. Why
16 can we trust them? For the very reason that they
17 were 11 and 14 at the time, that's why we can trust
18 them.

19 Imagine this scenario: Jason is 11 years old,
20 he just saw this child be rushed off to the hospital
21 the day before, and the next day the police show up
22 at his house. My kid is 11 years old. They're
23 scared of the police. And the police have a search
24 warrant and go through the entire house looking for
25 evidence. Dad gets home from Family Dollar and they

1 take Dad and question Dad, and they don't know what
2 Dad is talking about.

3 Right after they question Dad, they get Jason
4 in and question him by himself without Mom or Dad
5 there. Eleven years old, already scared, already
6 nervous, is he going to make up a story or is he
7 going to tell the truth? He's going to tell the
8 truth.

9 And what did he say? What did he say that was
10 different than Heyward's story? He said, well, Dad
11 lays the child down and then Dad goes out on the
12 porch and he's smoking and fixing a lawnmower. And
13 says, hey, Jason, listen up for the child for me.
14 So in other words, Dad -- once he left the living
15 room, Dad wasn't with the child.

16 Heyward, when he meets with the police -- and
17 again, he's already upset. He's at Dollar General,
18 gets a call from his wife, Honey, the cops are here,
19 better get home. And he comes home and he's
20 thinking to himself, this child was injured on my
21 watch. And he stated, they're going to think I did
22 something or didn't watch the child properly, so I
23 better tell them I was with the child the whole
24 time. That's what he did; he said he was with the
25 child this whole time.

1 This lie that he told though makes the case
2 worse for him. If Joey is assaulted on a Friday
3 night and they say, well, Brian, were you with Joey
4 on Friday night, wouldn't it be better to say, no, I
5 wasn't with Joey, because if I'm with Joey, I can't
6 be the one who assaulted him. But I'm talking to
7 law enforcement at my house and I get scared and
8 say, oh yeah, I was with Joey. Heyward not telling
9 the truth didn't help his situation, it hurt his
10 situation. It would have much smarter for him to
11 say, yeah, I laid the child down, I went outside and
12 I was screwing around outside instead of watching
13 the child. So if you don't trust Heyward's
14 statement about that but we trust Jason's statement,
15 Heyward wasn't even with the child most of the time.
16 He was with him when he was in the living room where
17 Jason was.

18 I told you at the beginning of the case and the
19 Judge will tell you this in the charge: To find
20 Heyward Martin guilty, the State has to prove the
21 case beyond a reasonable doubt. And the Judge will
22 read a definition to you. It's kind of like a
23 standard definition on reasonable doubt. And I'll
24 acknowledge to you that the definition kind of spins
25 around and makes it difficult to follow.

1 Now, if this was a civil case, let's say a car
2 accident case, let's say you're going through an
3 intersection and you say the car came and hit you
4 and caused damage and they're disputing that fact,
5 we'd have a trial and you testify and say I had the
6 green light and the other person says, no, I had the
7 green light, the jury in that case doesn't have to
8 prove beyond a reasonable doubt.

9 Have you ever seen the scales of justice?
10 They're like this (demonstrating). In that kind of
11 case you just have to tip the scale a little bit.
12 You don't have to show a whole lot in a civil case.
13 Beyond a reasonable doubt though, those scales, they
14 got to really tip it; not just a little, they have
15 to really tip it.

16 Now, I'm a person kind of better with examples
17 than definitions, so I was trying to think of an
18 example to give y'all that's a real-life thing.
19 Have you ever had the family packed up, kids in the
20 car, suitcases in the car, ready to go. You pull
21 out the driveway and you say to yourself, did I
22 leave the stove on? For you ladies, did I leave the
23 curling iron on? My wife says that every time: Did
24 I leave the curling iron on? And you know in your
25 mind you turned it off, you know you did, but you

1 know what you do, you put it in park and go inside
2 is because you want to be sure. And you go, oh,
3 it's off, I knew it.

4 Another example: I go to ball games. Have you
5 ever been going to a ball game or a concert and the
6 night before you get your ticket and put it in your
7 pocket, your wallet or, ladies, you put it in your
8 purse? You're driving to that event and all of a
9 sudden you have a cold rush come over you, I don't
10 have the tickets. And you check your wallet, you
11 check your purse, and you look and, yeah, they're
12 there. You had a reasonable doubt whether the stove
13 was off or the iron was off. You had reasonable
14 doubt if you had the tickets. You had to be sure.

15 These are heartbreaking photographs. They
16 are -- they're terrible photographs. We're not
17 doubting that this child suffered terrible trauma,
18 suffered injuries. Do you remember what I told you
19 at the beginning? The mere fact that this child has
20 these injuries, has this permanent damage, doesn't,
21 in itself, convict my client. Okay? I know when
22 you saw those -- I saw your faces. I know those
23 upset you. They upset me. That fact alone, you
24 can't say I'm upset about it, someone has to pay,
25 he's the one sitting over there. You can't do that.

1 We don't know when the trauma occurred. The
2 State may come up here and say they tried to tell
3 you a story and that this child rolled off the bed
4 and that's the cause of these injuries. We never
5 said that. Jason said he went in the room and found
6 the child had rolled off the bed, and we've
7 established that you can trust him. And Heyward
8 said he came in and found the child there.

9 Did that cause some of the injuries? It didn't
10 cause the serious injuries. I'm no doctor, no way.
11 Dr. Fisher said it had to be something violent.
12 Okay? We're going to acknowledge that. These
13 serious injuries were not cause by falling off that
14 bed. The State comes up here and says, they're
15 trying to make you think falling off the bed caused
16 those injuries. I'm telling you right now, no, we
17 don't think that.

18 Who has to prove that Heyward Martin caused
19 these injuries? Who has the only burden in doing
20 that? The State does. Folks, you may not like me,
21 you may not like my client, you may not like these
22 facts, you may not like what happened, but that's
23 not the question you have to answer. You have to
24 answer they proved beyond a reasonable doubt that
25 Heyward Martin, who only had the child in his care

1 the last few hours, that he inflicted this bodily
2 harm to this child.

3 If you can't answer that, if you can't say the
4 State proved that beyond a reasonable doubt, in
5 other words, if you can't say I'm sure, then there's
6 only one verdict you can come back with, and that's
7 the only verdict in this case that I believe is the
8 correct verdict, and that's the verdict of not
9 guilty.

10 MS. HAMMACK: Your Honor, members of the jury,
11 Minor was entrusted to the defendant.
12 That trust cost Minor his way of life, his
13 future, forever.

14 Now, one thing that Mr. Katonak said is
15 absolutely true: There's not a lot in this case
16 that we disagree about. There's not a lot that
17 happened on June 10th, 2014 that anybody disagrees
18 about. Every person that sat in that stand,
19 everything you've heard over the last couple days,
20 everybody agrees that five-month-old Minor
21 and his mom Melodi were living with the
22 defendant, his wife, and children, in their house on
23 [REDACTED] in Jackson in June of 2014.

24 Everyone agrees that Minor and his mom had
25 been living there for a few weeks. And everybody

1 agrees that on June 10th, 2014, Minor 's mother
2 Melodi had a class that she had to attend in Aiken.
3 And every single person agrees that while Melodi was
4 at that class in Aiken, that the defendant was
5 watching Minor , that he agreed to care for
6 Minor Every single person that testified
7 agrees that when Melodi left her baby with that man,
8 that Minor was awake, that he was healthy, that
9 he was happy.

10 The defendant told you that Minor had just
11 woken up from a nap, that he was in the living room.
12 Mr. Katonak made a big point that we can believe
13 everything that the defendant's children said.
14 Jason told you that when Melodi left Minor with
15 the defendant, that Minor was awake, that he was
16 fine. Kaitlynn told you that when Melodi left
17 Minor with the defendant that Minor was
18 laughing and playing. And Jason told you that when
19 the defendant took baby Minor back to his
20 bedroom away from the children, away from witnesses,
21 that Minor was awake.

22 Every single person that testified in this
23 courtroom agrees that while Minor was in the
24 care of the defendant, he wasn't okay anymore; that
25 he had a seizure, that he quit breathing, that his

1 eyes rolled back in his head, that he stiffened up,
2 and that he ultimately had to go to the hospital.

3 Tyler told you that when he brought Melodi home
4 from her class that that strong, fat baby that he
5 had last seen looked half dead; his lips were white,
6 his arms were stretched out like this
7 (demonstrating), and that Melodi had to breathe for
8 Minor all the way to the hospital, emergency
9 flashers on, hitting every red light straight to the
10 hospital. Everyone agrees to all of that.

11 And because of that, most of the elements that
12 I, as the State, have to prove have been agreed on
13 too. The defendant is charged with inflicting great
14 bodily injury on a child. Nobody is disputing the
15 injuries that Minor suffered on June 10th, 2014.
16 Nobody is debating that when Minor got to the
17 hospital, that the doctors immediately had to put
18 him on life support and put a tube down his throat
19 to breathe for him because he could no longer
20 breathe on his own.

21 No one is disputing the bleeding on Minor's
22 brain, different parts of his brain, different
23 layers of his brain. No one is disputing that that
24 five-month-old baby's skull was cracked. No one is
25 disputing that his eyes were filled with blood, that

1 that blood got between the layers of his eyes and
2 formed pockets and tears. No one is disputing the
3 bruises all over his tiny head. The only question
4 for you today is whether the defendant caused that
5 horrific trauma to baby **Minor** .

6 Now, the Defense made a big deal that this
7 didn't happen from the baby falling off the bed, and
8 he's right. That's common sense. Dr. Fisher told
9 you that falling 23 inches off of a bed onto carpet
10 isn't going to cause the horrific trauma that
11 **Minor** suffered. **Minor** knows that, you and
12 your common sense know that, and he knows that,
13 that's why he got up here and told you that we can't
14 say this because it doesn't make any sense.

15 Now yesterday, for the first time, we hear from
16 the defendant: Well, you know what, when I talked
17 to the police I lied; I wasn't really in there when
18 the baby fell off the bed. That's what I told
19 everybody; I told Tyler that, I told the police
20 that, that I was laying there with the child in the
21 bed and he rolled off the bed. You know what? Now
22 I realize that doesn't make sense either, so that's
23 not what happened. What really happened is that I
24 went to go smoke a cigarette on the porch and play
25 with my carburetor. That must have been how this

1 child spontaneously got injuries by himself in the
2 bed.

3 But I wanted to correct a couple of things that
4 were said just a minute ago that wasn't what you
5 heard in the testimony. The Defense got up and said
6 the defendant went out on the porch and he left the
7 baby alone most of the night. Well, that's not what
8 the defendant said and that's not what his son Jason
9 said. The defendant sat right here in this chair
10 yesterday and he told you, I went out on the porch
11 to smoke a cigarette -- I quit now, but I was
12 smoking back then -- and to look at this carburetor,
13 and I was out there about 30 minutes. Jason said
14 the same thing.

15 But the Defense made a big point of letting you
16 know that the defendant was in charge and watching
17 this baby for over four hours. So that means for
18 three hours and 30 minutes he was the one with
19 **Minor** , just like he told law enforcement when he
20 first talked to them. Whether you believe that he
21 was sleeping with this baby on the bed and the baby
22 rolled off or that he was out smoking a cigarette
23 and playing with the carburetor, or if you don't
24 believe either of that, the defendant told you
25 himself the timeline.

1 He said he saw the baby facedown on the ground
2 off the bed, Minor wasn't crying. He said he
3 looked around at me, I checked him out made sure he
4 was okay, that he seemed fine, that he was coherent,
5 that he was okay, and so then he put him back on the
6 bed and laid down with him.

7 He made a point of telling you, I had to take a
8 nap with the baby because the baby will cry if
9 someone is not in the room with him. You heard it
10 on the statement to law enforcement: If the baby
11 can't see someone directly, he will cry. So he laid
12 down on the bed with that baby. And he told you 30
13 minutes later he had to change Minor 's diaper.
14 He changed his diaper, the baby cried for about 30
15 seconds then -- oh, excuse me; he changed his diaper
16 the first time then they laid back down.

17 About an hour and a half later, he had to
18 change his diaper again. That time Minor was
19 crying. He said he cried for about 30 seconds. And
20 he made a point of telling law enforcement, you
21 listened to it; he made a point of telling Tyler in
22 the text messages that from the time that baby was
23 on the floor in the bedroom to the time that he
24 started having seizures was three hours. All that
25 time he was alone with Minor .

1 Another thing that was said just a few minutes
2 ago that I wanted to correct: The Defense said that
3 Jason went and checked on the child and found him on
4 the floor. That's not what Jason said at all.
5 That's not what Jason told law enforcement and
6 that's not what Jason sat right there and told y'all
7 yesterday. He said, well, my dad told me to keep an
8 ear out, I heard a thump so I went and asked my dad
9 if that was him, he said no and so I went back to my
10 Xbox, Dad went in the room and he stayed with the
11 baby after that. He didn't go in that room with
12 that baby; he was an 11-year-old playing video
13 games. That was Dad's job to take care of the baby.
14 He didn't go in that room.

15 I guess the Defense wants you to believe that
16 little baby **Minor** laying on this bed by himself
17 managed to give himself a skull fracture, give
18 himself bleeding on the brain and the eyes, and give
19 himself bruises all over his head. That's not
20 possible. Your common sense tells you that that's
21 not possible. Dr. Fisher told you that's not
22 possible.

23 Dr. Fisher is the head of the pediatric
24 intensive care unit over in Georgia. This is what
25 he's been doing for 20 years. He sees babies like

1 this every day. And he told you that Minor 's
2 injuries didn't come from a fall, they didn't come
3 from being left alone, and a five-month-old couldn't
4 do this to himself.

5 They didn't come from having a seizure, they
6 didn't come from an accident. Dr. Fisher told you
7 exactly where Minor 's injuries came from. He
8 told you it was nonaccidental trauma; in other
9 words, the trauma that Minor suffered that night
10 was intentional. It was intentional. It was caused
11 by another person and it was caused from extreme,
12 severe force. He said this was the type of force
13 that you would expect to see if a child was in a car
14 accident unrestrained; that this was the type of
15 force that you would see if a child fell off the
16 roof of a building; he said that this was violent
17 force.

18 Dr. Fisher told you that this type of force,
19 this type of extreme violence, is the kind that
20 tears blood vessels in the brain, it's the kind of
21 force that cracks a little baby's skull; that this
22 would require violent, extreme shaking and impact,
23 the kind of shaking that would rock a baby's head
24 back and forth, tearing those blood vessels in the
25 brain, causing bleeding in different layers of the

1 brain both on top of the skull and under the skull,
2 bleeding that spread up and down; extreme violent
3 shaking that caused the child's brain to strike and
4 bounce off his own skull, the type of forceful
5 shaking that would cause a child's eyes to fill
6 completely with blood until you can't even recognize
7 what they are in the pictures; the type of impact
8 that would either knock a child unconscious or cause
9 inconsolable crying.

10 That type of force, that type of violence, is
11 not an accident; it's intentional and it's on
12 purpose. It's the type of intentional violent act
13 that when doctors see the results of it, they call
14 the police. It's the type of intentional violent
15 act that leaves a child dependent on his father for
16 the rest of his life.

17 Dr. Fisher also told you when these injuries
18 occurred. He told you that for a child to suffer
19 this way, that this child would be in immediate
20 pain. He said just from the bruises themselves that
21 a child would be in pain, but that this type of
22 catastrophic injury to a child's brain and eyes
23 would cause immediate symptoms.

24 Now you've heard just a few minutes ago that
25 Dr. Fisher wasn't able to tell you when these

1 injuries occurred, and that's just wrong. He went
2 step by step through the injuries he saw and the
3 tests he performed to tell you when these injuries
4 happened. He told you that the bruises on
5 Minor 's face here, here, here on his back, that
6 they were all the same color which meant they
7 happened at all the same time. There were no
8 bruises in states of healing, some older than
9 others. He said they were all fresh bruises.

10 He told you about the CT scan. And it was
11 pretty technical, but what he told was you depending
12 on the color of that CT scan, that they can know how
13 fresh the blood that was spreading over Minor 's
14 brain was. He said this was fresh blood.

15 And lastly, talking about those symptoms, I
16 asked Dr. Fisher several questions to determine how
17 we can look at the symptoms that a child displays to
18 determine when a child was hurt. And I asked him, I
19 said, Dr. Fisher, if a child suffered the type of
20 catastrophic trauma that caused these injuries,
21 could that child who watched for hours and nobody
22 notice any symptoms? He said no.

23 I asked him, could a child suffer that type of
24 trauma hours earlier and be laughing and playing in
25 the floor? And he said no. I asked him, could a

1 child who suffered that type of trauma hours earlier
2 eat? He said no.

3 Now, a few minutes ago you were told that
4 Dr. Fisher said that infants respond differently.
5 That's not quite what he said. He was asked if
6 children at different ages respond differently to
7 pain, and he said yes. A five-year-old can tell
8 you, my head hurts. A 12-year-old can go open the
9 Tylenol jar and take Tylenol if his head hurts. A
10 five-month-old can't tell you that he's in pain, so
11 what does he do? He cries. He cries while he's
12 unconscious because his body is shutting down and
13 he's dying.

14 The Defense also wanted you to believe that the
15 doctor said that this could have occurred any time
16 during the day. That's not right either because I
17 asked Dr. Fisher that and he said that wasn't the
18 whole statement; I said that these injuries could
19 have occurred in the day but that if the victim was
20 conscious when the brain and eye injuries occurred,
21 they would the cause victim to be in extreme pain
22 and inconsolable. And every witness that sat in
23 that stand told you that **Minor** was happy,
24 healthy, laughing, and playing until he was in his
25 hands.

1 That's not the picture of a baby that had
2 gotten hurt earlier, a different day, a different
3 week; that's the picture of a baby that had not yet
4 been shaken and beaten within an inch of his life.
5 The doctor told you the symptoms would be immediate
6 and the defendant himself told you when those
7 symptoms occurred, that while he was watching that
8 child, while he went to go change a doctor for the
9 second time, that the baby was crying, crying, he
10 was screaming and crying. As he said in his
11 interview, he was red-faced and crying and then he
12 was quiet, and then his eyes rolled back in his
13 head, and then he got stiff, and then he quit
14 breathing, and then he had to be put on life
15 support. The only person with **Minor** when he
16 went through that trauma is that man hiding right
17 there.

18 So let's talk about what really happened on
19 June 10th, 2014. **Minor** and his mom trusted the
20 defendant, and **Minor** is the one that paid for
21 it. The Defense made a big point of asking every
22 witness, you know, Melodi didn't really do anything,
23 did she? She got dropped off at a party at the
24 defendant's house one night with a baby and she
25 never left.

1 Two weeks later, they had to agree to let her
2 stay living there. She wasn't working, the
3 defendant wasn't working, so the defendant's family
4 had to pay for formula, had to pay for diapers, they
5 had to take Melodi to her class because she didn't
6 have a car. Melodi and her baby were a burden on
7 the defendant, and they made sure you knew about it.

8 They wanted you to know every single thing that
9 he had to do for that baby that wasn't even his.
10 They made sure you knew that he had to watch
11 Minor the night of the 9th and they made sure
12 you knew that on the 10th, when Melodi went to
13 class, he had to watch the baby again.

14 Now, the Defense wants you to think that the
15 defendant didn't mind watching the baby. But when
16 the defendant talked to Kris Evensen, he mentioned
17 three different times over the course of that
18 interview: She sprung this on me again. This isn't
19 the first time that she sprung this, this baby, on
20 me at the last minute. I told her she was going to
21 have to quit springing this on me. I told her I had
22 plans, I was going to play baseball. I told her I
23 couldn't watch the child and when she didn't have
24 any other option, I had to watch the baby. I'm not
25 mad, but I'm going to make sure I mention that more

1 than anything else when I'm talking to law
2 enforcement about what happened to **Minor** .

3 So his plans got ruined, he's having to watch a
4 baby that's not his. His wife sat up there and told
5 you that when Melodi wasn't in the house that she
6 would usually watch the baby, that the defendant
7 would help, but he wasn't responsible for the child.
8 She said that the defendant had watched the child
9 one or two times before, but never alone.

10 The defendant's wife told you this was the
11 first time that he had to watch this five-month-old
12 baby alone. When you're alone watching a baby, you
13 don't get breaks. Mellisa wasn't there to give him
14 a break so he could go play Xbox with Jason.
15 Mellisa wasn't there to give him a break so he could
16 go smoke a cigarette and play on a carburetor.

17 No one else was there to give him a break when
18 it was time to feed **Minor** . No one was there to
19 give him a break when he had to change **Minor** 's
20 diaper. No one else was there to give him a break
21 when **Minor** started crying and needed another
22 diaper change. From the time that child was in his
23 care, he never got a break. It never stopped until
24 finally he had to stay in the room with **Minor**
25 and he couldn't do anything else.

1 And on top of that, his own kids weren't
2 behaving. He couldn't even get a break from them.
3 He made a point that Kaitlynn and Jason were
4 fighting and he had to send Kaitlynn to her room.
5 Nothing about this day is working out. He told you
6 that when he got Minor , that Minor had just
7 woken up from a nap. So what was the first thing
8 the defendant did? He put a Minor in a swing
9 and hoped to God that child would go back to sleep.
10 He left Minor in the swing till he went to
11 sleep, went and put him on the bed just go to sleep.

12 An hour later he had to get a bottle out of the
13 fridge and feed him. Okay, I fed you, just go to
14 sleep. Forty-five minutes later, a diaper? Okay,
15 let me change your diaper, just go to sleep, I'm
16 going to get some peace. An hour and a half later,
17 another dirty diaper? You're crying? Just go to
18 sleep. And then Minor was asleep because his
19 brain was shutting down from the trauma that he had
20 just incurred.

21 His body was shutting down trying to save his
22 organs, trying to save his life. And at that point,
23 the defendant knew he had a problem. He got rid of
24 this burden that he'd been saddled with, but he was
25 going to have to come up with an explanation, an

1 explanation that worked, because this one wasn't
2 going to work.

3 He wanted to talk to you about how panicked he
4 was, but he could explain his military training
5 about putting the baby in an ice bath to try to wake
6 him up. He was so panicked, but he was able to call
7 his wife and was able to try to call Melodi twice.
8 He didn't call 911.

9 And what's important is that he's not on trial
10 because he didn't call 911. Not calling 911 didn't
11 destroy Minor 's brain and eyes. What he did
12 caused great bodily injury to that baby. The reason
13 he didn't call 911 is because he was trying to fix
14 what he had done before somebody found out. He was
15 trying to fix what he had done before this happened
16 (indicating).

17 He was patting that baby on the back, he was
18 putting that baby in an ice pack, he was doing
19 everything he could to wake that baby up and pretend
20 that everything was okay with Minor before
21 doctors examined him and found this (indicating).
22 But it didn't work.

23 Melodi got home, she and Tyler took the baby
24 immediately to the hospital, so he had to start
25 covering his tracks at that point. The last thing

1 he said is they were trying to get in the car to go
2 to the hospital. Oh, yeah, by the way, if the
3 doctors say anything about bruises on his back, that
4 was from me patting him, trying to get him to
5 breathe.

6 Then he started thinking some more. How else
7 can I cover my tracks? So he started texting Tyler
8 at the hospital. First text came in at 10:39: Did
9 y'all make it to the hospital yet? How is he? And
10 then at 11:30 when Tyler asked the defendant: They
11 said it's from trauma. Did he fall or get hit? And
12 the defendant's response: I forgot to tell Melodi
13 and you he fell off the bed today when he and I were
14 taking a nap. That was three hours before he had
15 had symptoms, so I hope he didn't have a concussion.
16 I would feel responsible for that.

17 Then he talks about how bad the rain and wind
18 and lightning is. That storm is so inconvenient.
19 And the last thing he says to Tyler at 11:41 the
20 night this happened: I feel responsible for this.
21 He knew what he had done. He couldn't explain it
22 away with the bed. As he sat there on that stand
23 yesterday and told you, it's my responsibility. And
24 he's exactly right. That child was left in his
25 care, Minor was his responsibility, and that's

1 how he responded.

2 Members of the jury, I don't think that the
3 defendant woke up that morning and had a plan, I'm
4 going to destroy **Minor** 's life today, that's what
5 I'm going to do, I'm going to wait till afternoon to
6 do this. He didn't wake up and plan that. But
7 what's important is although he didn't have a long
8 plan to do this, this was not an accident. He may
9 have been mad, but this was not an accident.

10 Dr. Fisher told you, the amount of force to put
11 a child in that type of pain, to cause that type of
12 damage, is an intentional violent force, intentional
13 violent shaking and impact, violence that put
14 **Minor** at a substantial risk of death, that put
15 **Minor** in a position that he will never see.

16 He doesn't walk, he doesn't talk to his daddy.
17 **Minor** , at five months old, was completely
18 reliant on the defendant. He couldn't feed himself,
19 he couldn't change himself, he couldn't walk, he
20 couldn't talk, he couldn't crawl, he couldn't hide,
21 he couldn't run away, he couldn't beg for mercy.

22 You know what happened to **Minor**
23 The State has to prove their case beyond a
24 reasonable doubt, and that doesn't mean whether you
25 forgot your tickets or forgot whether you left a

1 curling iron on or not. What reasonable doubt means
2 and what the Judge will tell you is that reasonable
3 doubt, proof beyond that reasonable doubt, is proof
4 that leaves you firmly convinced of what happened.
5 It's not proof beyond all doubt.

6 But, members of the jury, there's only one
7 explanation, backed by the facts, backed by science,
8 of how **Minor** suffered these
9 life-threatening injuries. He suffered them at the
10 hands of the only person caring for him and
11 responsible for him at the time that they happened,
12 and that's the defendant.

13 Members of the jury, **Minor** can't get
14 up here and tell you what happened that day, and he
15 never will be able to. He trusted the defendant.
16 He was a burden to the defendant and the defendant
17 got rid of that burden and made that baby go to
18 sleep the only way he knew how, and that was to
19 destroy that baby's life. Find him guilty.

20 THE COURT: Mr. Foreman, ladies and gentlemen,
21 let's take a quick break before I charge you. It's
22 almost 11:00. They'll bring you a menu in there so
23 you can go ahead and order some lunch so we won't
24 have to break during deliberations. We'll come back
25 out and I'll charge you and then you'll be in a

1 position to start deliberations. Please don't start
2 deliberations yet. Don't talk about the case.
3 We'll break however long it takes you to order.

4 Everybody else remain seated, please.

5 (The jury exits the courtroom at 10:40 AM.)

6 THE COURT: All right. We'll stand at ease
7 long enough for them to complete that task and take
8 a bathroom break. The defendant is in custody.
9 We'll come back as soon as they're ready.

10 (Short break 10:41 AM to 10:49 AM.)

11 THE COURT: Is the State prepared to start
12 back?

13 MS. HAMMACK: Yes, Your Honor.

14 THE COURT: Mr. Katonak?

15 MR. KATONAK: Yes, sir.

16 THE COURT: Bring the jury in, please.

17 (The jury enters the courtroom at 10:50 AM.)

18 THE COURT: Mr. Foreman, ladies and gentlemen
19 of the jury, this is what's the charge on the law.
20 It's simply instructions dealing with the law
21 applicable to this case.

22 As we try cases all over the state, in criminal
23 cases there are certain propositions that I will
24 charge you that apply to all criminal cases. They
25 are broad criminal propositions, so we'll start with

1 those. And then after that, we'll go straight into
2 the charges contained in the indictment.

3 And, quite, frankly that is a very succinct
4 statute, very short, so that part of it will be
5 very, very short. So please pay attention and let
6 me give you some general propositions of law, and
7 then we'll move into the code section involved in
8 this case.

9 Let me remind you of the fact that the
10 defendant was arrested, charged, and indicted in
11 this case is not evidence in this case and cannot be
12 considered by you as evidence of guilt in the case
13 nor does it create any presumptions or inferences of
14 guilt. The indictment, this document, is simply the
15 formal written instrument which contains the charges
16 made against the defendant. It's the formal
17 document by way this case comes into the court.

18 To this indictment the defendant has pled not
19 guilty, and that plea of not guilty puts the burden
20 on the State of South Carolina to prove the
21 defendant's guilt beyond a reasonable doubt. A
22 person charged with committing a criminal offense in
23 our state is never required to prove himself
24 innocent. He has no burden whatsoever. The burden
25 of proof is on the State to prove his guilt to you

1 beyond a reasonable doubt.

2 I charge and instruct you that it is an
3 important constitutional rule of law that a
4 defendant charged in a criminal trial, no matter how
5 serious the charges may be, will always be presumed
6 to be innocent of the crimes for which the
7 indictment was issued unless guilt has been proven
8 by evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 The presumption of innocence does not end when
11 you start your deliberations, but it stays with the
12 defendant throughout the trial until you reach a
13 verdict of guilt based on evidence satisfying you of
14 that guilt beyond a reasonable doubt. The
15 presumption of innocence not a mere legal theory or
16 phrase; it is a substantial constitutional right to
17 which every defendant is entitled unless you, the
18 jury, are satisfied from the evidence the
19 defendant's guilt beyond a reasonable doubt.

20 Our state supreme court and our United States
21 Supreme Court has defined reasonable doubt with two
22 definitions that we use. They're basically the
23 same: A reasonable doubt is the kind of doubt that
24 could cause a reasonable person to hesitate to act.
25 It's the kind of doubt that would cause a reasonable

1 person to hesitate to act.

2 As I said, the State has the burden of proving
3 the defendant guilty beyond a reasonable doubt.
4 This is not, as some people say in civil cases,
5 where the burden is by the presumption or greater
6 weight of the evidence. In a criminal case it is
7 beyond a reasonable doubt.

8 Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the defendant's
10 guilt. It is proof that leaves you firmly convinced
11 of the defendant's guilt. There are very few things
12 in the world that we know with absolute certainty,
13 and in criminal cases, the law does not require
14 proof that overcomes every possible doubt.

15 If, based on consideration of the evidence, you
16 are firmly convinced that the defendant is guilty of
17 the crime charged, then you must find the defendant
18 guilty. However, on the other hand, if you think
19 there is a real possibility that he is not guilty,
20 then you must give the defendant the benefit of the
21 doubt and find him not guilty.

22 As I told you when we started the trial of this
23 case, you and I have different duties to perform.
24 My duty and my judging duties are I am the judge of
25 the law, I instruct and tell you what the law is, I

1 rule on the admissibility of evidence.

2 You are the judges of the facts. You determine
3 from the evidence presented in the trial of the case
4 as to whether or not the State has proven their case
5 to you beyond a reasonable doubt. So you have to
6 analyze the evidence and determine whether the State
7 has met their burden of proof.

8 Therefore, if at any time during the trial of
9 the case you've looked over here at me and I've
10 smiled or frowned or raised my eyebrows or yawned or
11 did anything that you think I have an opinion about
12 the facts, the law does not allow me to do that. I
13 cannot have an opinion. I try cases day in and day
14 out all over the State. It is your job to determine
15 what the facts are and it is your job to determine
16 from the evidence whether or not the State has
17 proved its case to you beyond a reasonable doubt.

18 So don't infer that I have any opinion about
19 anything about the facts because I can't. If I've
20 done something that you think I did, please set that
21 aside. Every now and then I have to smile or frown,
22 so don't think I meant anything by it.

23 In the trial of cases, obviously trials are
24 based on evidence, admissible evidence. And there
25 are two types of evidence which are generally

1 presented during a trial. It is what is known as
2 direct evidence and circumstantial evidence. Direct
3 evidence directly proves the existence of a fact and
4 does not require deduction. Circumstantial evidence
5 is a proof of a chain of facts and circumstances
6 indicating the existence of a fact.

7 You walk outside and it's raining and you get
8 wet, that's direct evidence it's raining. You walk
9 outside, the sky is cloudy, it's windy, there's mud
10 puddles everywhere, lightning and thundering but
11 there's no rain, that's circumstantial evidence that
12 it has rained or is going to rain. So that's the
13 difference. Two types of evidence: Direct and
14 circumstantial.

15 Crimes may be proven by circumstantial evidence.
16 The law makes no distinction between the weight or
17 value to be given to either direct or circumstantial
18 evidence. However, to the extent the State relies
19 on circumstantial evidence, all of the circumstances
20 must be consistent with each other, and when taken
21 together, point conclusively to the guilt of the
22 accused beyond a reasonable doubt. If these
23 circumstances merely portray the defendant's
24 behavior as suspicious, the proof has failed.

25 The State has the burden of proving the

1 defendant guilty beyond a reasonable doubt. The
2 burden rests with the State regardless of whether
3 the State relies on direct or circumstantial
4 evidence or a combination of the two.

5 Now, in making your determination as to whether
6 or not the State has proven the defendant's guilt to
7 you beyond a reasonable doubt from the evidence that
8 is presented, in making that analysis you must
9 determine the credibility of the witnesses who have
10 testified in the case. Credibility simply means
11 believability. It becomes your duty as jurors to
12 analyze and to evaluate the evidence and determine
13 which evidence convinces you of its truth.

14 In determining the believability or credibility
15 of the witnesses who have testified in the case, you
16 can believe one witness over several, several over
17 one; you can disbelieve everything a witness says,
18 you can believe everything he or she says, you can
19 believe a part and disbelieve a part.

20 You may consider whether a witness has
21 exhibited to you any interest, bias, prejudice, or
22 other motive in the case. You can also consider the
23 appearance and manner of the witness while on the
24 witness stand. So, therefor, please use your
25 ordinary common sense in judging the credibility of

1 witnesses, and from that you'll be able to determine
2 which evidence in this case convinces you of its
3 truth.

4 In the trial of this case we had the doctor who
5 I qualified as an expert. Under our rules of
6 evidence, they do not normally and ordinarily permit
7 a witness to testify to opinions or conclusions. An
8 exception to this rule exists for witnesses we call
9 expert witnesses. A witness who by education and
10 experience has become --

11 (Brief interruption of the proceedings.)

12 THE COURT: A witness who by education and
13 experience has become an expert in some art,
14 science, or profession, such as medicine, may state
15 an opinion as to relevant and material matters in
16 which the witness claims to be an expert and state
17 the reasons for the opinion.

18 You should consider any expert opinion received
19 into evidence in this case like any other evidence;
20 give it the weight you think it deserves, if any.
21 If you decide the opinion of an expert is not based
22 on sufficient education and experience or if you
23 conclude the reasons given in support of the opinion
24 is not sound or the opinion is outweighed by other
25 evidence, you may disregard the opinion entirely.

1 An expert witness' testimony is to be given no
2 greater weight than that of any other witness simply
3 because a witness is an expert. Further, you're not
4 required to accept an expert's opinion even though
5 it is not contradicted.

6 In the trial of this case there was a statement
7 given by the defendant in evidence. The statement
8 alleged to have been made by the defendant has been
9 admitted into evidence in this case. While I've
10 made a determination that the statement is
11 admissible, I instruct you that you make the
12 ultimate decision as to whether or not the defendant
13 in fact made the statement. And if he did make the
14 statement, you must determine whether the statement
15 was made by the defendant voluntarily and of his own
16 free will. This means the statement was not caused
17 by pressure, force, fear, threats, coercion, or
18 intimidation or by hope or a promise of leniency or
19 a reward of any kind.

20 You must -- in making the determination whether
21 it was voluntary, you should consider both the
22 characteristics of the defendant and the details of
23 the questions. You must determine whether or not
24 his constitutional rights had been given to him
25 including his right to remain silent, that any

1 statement could be used against him in a court of
2 law, or right to have a lawyer present; if you
3 cannot afford a lawyer, a lawyer would be provided
4 for him, and that he can stop making the statement
5 at any time. Please, you must carefully consider
6 all of the surrounding circumstances before you give
7 any weight to an alleged statement.

8 The State has the burden of proving beyond a
9 reasonable doubt that the alleged statement was
10 voluntary. If you determine it was, then you may
11 give the statement any further consideration that
12 you deem proper. You must decide what weight, if
13 any, should be given to the statement.

14 Now, Mr. Foreman, ladies and gentlemen of the
15 jury, that covers all of the general propositions in
16 a criminal case that we normally talk about. In
17 this case the defendant has been indicted and is
18 charged with the offense of inflicting great bodily
19 injury upon a child. And that is a statutory
20 offense which is codified in our code of laws by our
21 Legislature in Section 16-03-95 (a).

22 In order to find the defendant guilty of
23 inflicting great bodily injury upon a child, the
24 State must prove to you -- it's very simple -- must
25 prove to you -- the definition is very simple --

1 beyond a reasonable doubt that the defendant
2 inflicted great bodily injury upon a child. It's a
3 very simple written statute. But in order to prove
4 that, the State has to prove to you beyond a
5 reasonable doubt that the defendant did, in fact,
6 inflict great bodily injury upon the child named in
7 the indictment.

8 And the other part of the statute defines the
9 term great bodily injury. It means bodily which
10 creates a substantial risk of death or which causes
11 serious or permanent disfigurement or protracted
12 loss of impairment of the function of any bodily
13 member or organ.

14 So in order to find the defendant guilty, the
15 State must prove to you beyond a reasonable doubt
16 that the defendant did, in fact, inflict great
17 bodily injury upon the child named in the
18 indictment, to wit, **Minor** . It's not like
19 some other statutes we have that just keep going on
20 and on and on. This one is succinctly stated what
21 the State has to prove to you beyond a reasonable
22 doubt.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 obviously system of -- jury system is the greatest
25 legal system in the world. You're here, you don't

1 have any enemies to punish or friends to reward.
2 You're here to make a careful deliberation of the
3 evidence that you've heard, determine what the facts
4 are, and determine whether or not, from those facts
5 and evidence, the State has proven to you beyond a
6 reasonable doubt that the defendant has violated the
7 statute.

8 Your verdict must be unanimous. All 12 of you
9 must agree. So when you go into your deliberations,
10 you'll deliberate that one question, whether or not
11 the defendant inflicted great bodily injury upon the
12 child named in the indictment and whether or not the
13 State has proven that to you beyond a reasonable
14 doubt.

15 Mr. Foreman, you'll have a verdict form in the
16 jury room. It's very simple. Two choices: We find
17 the defendant not guilty or find the defendant
18 guilty. Your decision must be unanimous. All 12 of
19 you must agree. Once you reach a decision, you
20 check the appropriate box, not guilty or guilty,
21 sign your name, knock on the door, Mr. Whittle or
22 one of the bailiffs will receive the verdict and
23 we'll come back in and publish it.

24 Sometimes you'll have a question and sometimes
25 you don't. If you do have a question, the protocol

1 is this: You write the question out on a legal pad
2 back there, knock on the door, one of the bailiffs
3 will hand it to me. Sometimes I can answer it,
4 sometimes I can't, it just depends on what the
5 question is and how the law applies to the question
6 that you posed. So if you have a question,
7 sometimes you do during the deliberation, please
8 write it out and send it to me.

9 We've sent for lunch, I think the easiest and
10 most efficient way. I think they ordered pizza. So
11 when you get back to the jury room, you can start
12 your deliberations, and then when the lunch comes
13 you can eat and deliberate or you can break. I
14 can't let you go once you start deliberating, so
15 you'll have to stay in the jury room. So handle
16 that however you want to.

17 If you happen to conclude your deliberations
18 before the lunch gets here -- obviously it will be
19 here when we get through. It's on the way and
20 shouldn't take long. I'm going to let you go back
21 to your jury room now. I'm going to separate the
22 two alternates out.

23 Do not start yet deliberating. I have to ask
24 the lawyers if I've left anything out or if I need
25 to add anything or take something out. I have to go

1 over the exhibits with them. Once I do that, then
2 we'll send the verdict form along with the exhibits
3 back to you in the jury room and then you can start
4 your deliberations. So just wait about two or three
5 more minutes until I get all that taken care of.

6 (The jury exits the courtroom at 11:10 AM.)

7 THE COURT: Are there any objections, requested
8 additions or deletions to the charge on behalf of
9 the State?

10 MS. HAMMACK: Not from the State, Your Honor.

11 THE COURT: Mr. Katonak?

12 MR. KATONAK: No, sir.

13 THE COURT: Thank you.

14 Would the three of you please come forward,
15 review the exhibits and verdict form, make sure we
16 them all in order. We'll put that on the record
17 when you complete that task and send it to the jury.

18 (Brief pause in the proceedings.)

19 THE COURT: All right. Ma'am, gentlemen, have
20 y'all reviewed all of the exhibits and verdict form
21 and find them to be accounted for and in order?

22 MS. HAMMACK: Yes, sir.

23 MR. KATONAK: Yes, sir.

24 THE COURT: All right. Mr. Bailiff, it's
25 11:15. If you would, please take the verdict form

1 and exhibits back to the jury room and tell them
2 they may start their deliberations. Thank you.

3 (The jury starts deliberations at 11:12 AM.)

4 (Trial in recess 11:12 AM - 12:12 PM.)

5 THE COURT: Is the State ready to receive the
6 verdict?

7 MS. HAMMACK: Yes, Your Honor.

8 THE COURT: Mr. Katonak?

9 MR. KATONAK: Yes, sir.

10 (The jury enters the courtroom at 12:13 PM.)

11 THE COURT: Mr. Foreman, have you reached a
12 verdict?

13 THE FOREMAN: We have, Your Honor.

14 THE COURT: Hand it to the bailiff, please.

15 THE CLERK: Your Honor, we have State of South
16 Carolina, County of Aiken -- State of South Carolina
17 vs. Heyward Legree Martin, III, Indictment
18 No. 2015-GS-02-00895. As to the offense of
19 inflicting great bodily injury upon a child, we the
20 jury find the defendant guilty. We unanimously
21 agree. Signed February 16th, 2017, by Foreperson
22 Ronald Hammet.

23 Ladies and gentlemen of the jury, if this is
24 your verdict, please indicate by raising your right
25 hand. All hands are raised, Your Honor.

1 THE COURT: Thank you. Anything further for
2 the jury before I dismiss them by the State?

3 MS. HAMMACK: No, Your Honor.

4 THE COURT: By the Defendant?

5 MR. KATONAK: Judge, we'd ask that the jury be
6 polled.

7 THE COURT: Thank you.

8 Mr. Foreman, ladies and gentlemen of the jury,
9 what that means is the Clerk will call your names
10 individually, she will pose a question to you. The
11 question is this: Is this your verdict and is it
12 still your verdict? If it is, please answer yes; if
13 not, answer in the negative. Stand as your name is
14 called.

15 THE CLERK: Juror No. 63, Amanda Flanagan, is
16 this your verdict?

17 JUROR NO. 63: Yes, ma'am.

18 THE COURT: And is it still your verdict?

19 JUROR NO. 63: Yes, ma'am.

20 THE CLERK: Juror No. 106, William D. Lamb, was
21 this your verdict?

22 JUROR NO. 106: Yes, ma'am.

23 THE CLERK: Is it still your verdict?

24 JUROR NO. 106: Yes, ma'am.

25 THE CLERK: Juror No. 85, Ronald Hammet, is

1 this your verdict?

2 JUROR NO. 85: Yes, ma'am.

3 THE CLERK: Is this still your verdict?

4 JUROR NO. 85: Yes, ma'am.

5 THE CLERK: Juror No. 143, Jennifer Penley, was
6 this your verdict?

7 JUROR NO. 143: Yes, ma'am.

8 THE CLERK: Is this still your verdict?

9 JUROR NO. 143: Yes, ma'am.

10 THE CLERK: Juror No. 127, Debra Mimms, was
11 this your verdict?

12 JUROR NO. 127: Yes, ma'am.

13 THE CLERK: Is this still your verdict?

14 JUROR NO. 127: Yes, ma'am.

15 THE CLERK: Juror No. 77, April Graci, was this
16 your verdict?

17 JUROR NO. 77: Yes, ma'am.

18 THE CLERK: Is this still your verdict?

19 JUROR NO. 77: Yes, ma'am.

20 THE COURT: Hold on one second.

21 Mr. Katonak, tell your client to turn around.

22 Thank you.

23 THE CLERK: Number 138, Ben Nguyen, was this
24 your verdict?

25 JUROR NO. 138: Yes, ma'am.

1 THE CLERK: Is this still your verdict?

2 JUROR NO. 138: Yes, ma'am.

3 THE CLERK: Juror No. 55, Brenda Elgin, was
4 this your verdict?

5 JUROR NO. 55: Yes, ma'am.

6 THE CLERK: Is this still your verdict?

7 JUROR NO. 55: Yes, ma'am.

8 THE CLERK: Juror No. 45, Rebecca Day, was this
9 your verdict?

10 JUROR NO. 45: Yes, ma'am.

11 THE CLERK: Is this still your verdict?

12 JUROR NO. 45: Yes, ma'am.

13 THE CLERK: Juror No. 39, Terry Cox, was this
14 your verdict?

15 JUROR NO. 39: Yes, ma'am.

16 THE CLERK: Is this still your verdict?

17 JUROR NO. 39: Yes, ma'am.

18 THE CLERK: Juror No. 187, Linda Vancott, is
19 this your verdict?

20 JUROR NO. 187: Yes, ma'am.

21 THE CLERK: Is this still your verdict?

22 JUROR NO. 187: Yes, ma'am.

23 THE CLERK: And that's all, Judge.

24 THE COURT: Thank you.

25 All right. The jury has been polled, they've

1 all answered in the affirmative as to --

2 MS. HAMMACK: Your Honor, I apologize --

3 THE CLERK: I have one more. I'm sorry, Judge.

4 I got out of line here.

5 Juror No. 91, Sara Holmes, was this your
6 verdict?

7 JUROR NO. 91: Yes, ma'am.

8 THE CLERK: Is this still your verdict?

9 JUROR NO. 91: Yes, ma'am.

10 THE COURT: Thank you. All jurors have been
11 polled and answered in the affirmative to the
12 questions. Anything else by either side?

13 MS. HAMMACK: No, Your Honor.

14 MR. KATONAK: No, sir.

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 I can't thank you enough. You listened to all of
17 the testimony. Obviously this is a tough case.
18 We're all hurt when children that young are ruined
19 for the rest of their lives. And I know your
20 decision, you deliberated it hard, and I know you
21 paid close attention. I thank you on behalf of the
22 judiciary and everyone involved in the case.

23 If any of you need a work excuse, just sit back
24 there in the jury room and I'll get you one. If
25 not, there will be a check sent to you in the next

1 couple days. I apologize it's not a very big check,
2 but it's still some token of the County's
3 appreciation.

4 What's left to do sometime this afternoon is he
5 will be sentenced. That is up to the Court to
6 decide the amount of sentence, the proper sentence.
7 I will tell you that under the statute that he was
8 charged with and you found him guilty of, the
9 statute give me the discretion to sentence him up to
10 20 years in the department of corrections. So I can
11 sentence him anywhere from zero to 20. This is a
12 what we call no-parole offense which means whatever
13 sentence I give him, he will have to do 85 percent
14 of it.

15 Isn't that correct? This is a no-parole
16 sentence.

17 MS. HAMMACK: I believe so, Your Honor.

18 THE COURT: I'm almost positive it is. But
19 he'll do 85 percent of whatever he receives. And
20 once he's released from custody, he'll be into
21 what's called a community supervision program.

22 I thank you. It's not a very pleasant case to
23 sit on. You've done a wonderful job. So you're
24 excused and free to go and I thank you very much.
25 Everyone else remain seated.

1 (The jury is excused at 12:19 PM.)

2 THE COURT: All right. I've got a little bit
3 of other business. It's 12:20. What do y'all want
4 to do about lunch? I know y'all haven't eaten. You
5 want to break until what time? Somebody tell me.

6 MS. HAMMACK: 1:30.

7 THE COURT: All right. We'll stand at ease
8 until 1:30. I'll do the sentencing at 1:30. Give
9 the sentence sheets to Mr. Katonak and so forth.

10 (Trial in recess 12:20 PM - 1:31 PM.)

11 THE COURT: All right. Mr. Katonak, bring your
12 client up here, please.

13 MR. KATONAK: Judge, we do have a couple
14 motions to make before the sentencing.

15 THE COURT: All right, sir.

16 MR. KATONAK: Judge, at this time I do renew
17 our directed verdict motion based upon the same
18 grounds we brought the first two times.

19 THE COURT: Anything else?

20 MR. KATONAK: Judge, we'd also make a motion
21 for a new trial based on a couple reasons. First
22 off is we believe Mr. Martin's case was very
23 hampered by not being able to bring in the
24 third-party defense. The Court heard proffer from
25 both my client and his son of the child being in the

1 back room the day before with the mother, hearing a
2 large thump that we believe would be consistent for
3 the jury to consider as to who possibly did injure
4 this child.

5 Also in regards to attempting to try to get
6 that testimony of Dr. Gaskins in which, as we
7 stated, was going to testify to the mental state of
8 Ms. Tucker at the time, in particular her PTSD, and
9 that we believe that would have been pertinent for
10 the jury to consider that as part of the third-party
11 guilt.

12 Additionally, we were -- we had attempted to
13 proffer but were denied the opportunity to get in
14 information that Ms. Tucker had failed a hair
15 follicle drug test for methamphetamines and
16 amphetamines.

17 THE COURT: You weren't denied that. That was
18 agreed upon that's all you had from that witness was
19 that and I found it not to be relevant. You
20 proffered it, I mean, it's in the record, you're
21 protected on that.

22 MR. KATONAK: Yes, sir. In addition, Your
23 Honor, as far as seeking a new trial, the jury went
24 out approximately 11:20. It's my understanding that
25 they were fed lunch. I was before the Court for

1 another matter and it was totally -- they had just
2 finished lunch. I walked out of the courtroom and
3 called and ordered lunch myself, and by my phone it
4 was 11:48. I walked out of the courtroom and was
5 walking to my office and received a call from the
6 clerk's office at 11:57, nine minutes later, that
7 they had a verdict.

8 We don't believe, based on the evidence in this
9 trial, the fact that we had 12 exhibits -- excuse
10 me, 20 exhibits, including a 25-minute audiotape of
11 my client, that the jury could have possibly
12 reviewed everything and rendered a fair verdict for
13 my client. Based on that, we're asking for a new
14 trial.

15 THE COURT: All right. As to your motion for
16 renewal of your directed verdict, notwithstanding
17 the fact that this was a circumstantial evidence
18 case, it was substantial evidence in the record from
19 which the jury could conclude that all the
20 circumstantial evidence taken together pointed
21 conclusively to the guilt of the accused.

22 It was a simple question they had to answer. I
23 mean, was your client responsible for the injuries?
24 And he was the only one there, from what they found,
25 that could have done it. So I respectfully deny

1 your motion for renewal of your directed verdict.
2 There was, in my opinion, substantial evidence which
3 supported their verdict.

4 As to the third-party guilt, I respectfully
5 deny that. The only thing that -- and through your
6 proffers was two things: That the mom suffered
7 posttraumatic stress disorder or syndrome and she
8 tested positive for drugs eight days after the
9 event, which to me is nothing but pure speculation
10 that she may have been responsible for anything.
11 The fact she had PTS- -- posttraumatic stress
12 syndrome and she was -- had a positive drug test
13 eight days later, there's no connection at all to
14 the horrible injuries this child sustained; that and
15 particularly coupled with the doctor's testimony
16 wherein he stated that the injuries were so
17 significant, so catastrophic, that the symptoms
18 would have been immediately recognizable or the
19 child would have been completely unconscious.

20 And it doesn't take a doctor to determine that
21 when you've got a fractured skull, subdural hematoma
22 subarachnoid hematoma, you got that diffuse
23 hemorrhaging of both eyes, completely throughout
24 both eyes. There's no way to sustain that kind of
25 injury and eat and cut up and giggle and be a happy

1 baby and not just to be completely uncontrollable or
2 either unconscious. It's just -- the third-party
3 guilt was just pure speculation in this case and
4 does not meet the tests that were outlined in the
5 cases that were cited yesterday.

6 As to the jury not deliberating any longer than
7 they did, number one, they ate through their
8 deliberations. The pizzas were delivered -- I think
9 they were delivered right at the beginning, so that
10 was all taking place at the same time. And, quite
11 frankly, there wasn't a lot of contested evidence in
12 the case. I mean, you even, in your closing
13 argument, and the defendant was that it was
14 uncontested that the child went there, your client
15 was taking care of him exclusively, that the
16 child -- when he got the child, the child was
17 normal.

18 And all the other evidence was just basically
19 uncontested. The question was, did the jury believe
20 from the evidence that the State proved beyond a
21 reasonable doubt that under the circumstances that
22 your client was the only one that could have done
23 it. And apparently they concluded that. And it
24 doesn't take all-day-long deliberation on that.

25 The exhibits weren't contested; the pictures of

1 the child, the text messages, the pictures of the
2 house, the pictures of a yardstick or a tape
3 measurer. None of that was contested. So I think,
4 I mean, it was not a case that would have required a
5 substantial amount of deliberation because it was
6 just one issue that had to be decided. So I
7 respectfully deny your motion for a new trial.

8 MR. KATONAK: Thank you.

9 THE COURT: I think I covered it all.

10 MR. KATONAK: Yes, sir.

11 THE COURT: Anything you need to tell me?

12 MS. HAMMACK: Your Honor --

13 THE COURT: Any of the victims want to speak?

14 The victim's dad?

15 MS. HAMMACK: A representative from the
16 victim's family would like address Your Honor at the
17 appropriate time.

18 The defendant's criminal history is as follows:
19 Brandishing a firearm in public out of Colorado.

20 THE COURT: When was that, please?

21 MS. HAMMACK: 2004. Domestic violence from
22 Colorado in 2004; retail fraud third degree from
23 Colorado in 2005; and a breach of trust with
24 fraudulent intent from South Carolina in 2007.

25 THE COURT: Mr. Katonak.

1 MR. KATONAK: Judge, my client has pointed out
2 that he has never been to Colorado, but as far as
3 those offenses, that those offenses occurred when he
4 was in Michigan. So just to make the record
5 straight.

6 Your Honor heard my client's background through
7 testimony. There's really nothing more to add.
8 Your Honor knows he's married, got two kids he's
9 raising. He's 34 years old, does construction work,
10 graduated high school, was in the Army for five
11 years. I'm not sure if he wants to address the
12 Court at the appropriate time.

13 THE COURT: Anything you want to tell me?

14 THE DEFENDANT: No, sir. Just thank y'all for
15 listening to the case. That's about it. And I
16 thank my family for supporting me 100 percent. I
17 love them with all my heart and soul, no matter what
18 time you give out, sir. I'll be appealing it --

19 THE COURT: You're what?

20 THE DEFENDANT: I'll be appealing it for a new
21 trial and all that and I'll be PCR-ing and all that
22 good stuff. So...

23 THE COURT: You can do all that good stuff.

24 THE DEFENDANT: Yes, I know that. Up the road,
25 sir, I know.

1 THE COURT: Sir?

2 THE DEFENDANT: I said up the road, I know.
3 But I just thank y'all for hearing the case and
4 everything.

5 THE COURT: Well, it's a sad situation.

6 THE DEFENDANT: It is.

7 THE COURT: It's a horrible situation.

8 MS. HAMMACK: Tell him your name.

9 MS. HAFFLY: Melissa Haffly, H-A-F-F-L-Y.

10 THE COURT: Ms. Haffly.

11 MS. HAFFLY: I know that we had Dr. Fisher come
12 and speak about the quality of life that a child
13 could have that has suffered these type of --

14 THE COURT: Tell me, before you start, how you
15 are related to the family?

16 MS. HAFFLY: I'm basically Minor 's
17 grandmother; not legally, but he is our grandchild.

18 THE COURT: Explain that to me.

19 MS. HAFFLY: Kayla Haffly, Branden's girlfriend
20 that helps take care of Minor , I'm her mother.
21 So Minor came into our life a child that didn't
22 smile, didn't laugh, and very surprised that we
23 received him one day in a parking lot at the police
24 office with a wet diaper and a T-shirt that was too
25 small. It scared us all to death because we didn't

1 know what to expect because we knew the child had
2 lots of disabilities.

3 But he has turned into our grandchild. We love
4 him to death. He is the sweetest thing. It took a
5 long time for him to even learn how to smile. The
6 day he smiled, I cried. The day he learned to
7 laugh, I cried. This child has went above and --

8 THE COURT: How old is he now?

9 MS. HAFFLY: He's three. He turned three in
10 [REDACTED]. And he has come a long way from what the
11 doctors told us that he would ever -- they ever
12 imagined he would be. He does not speak sentences
13 but he does relate sometimes that he wants his DaDa
14 or his GiGi or his TiTi, which is me or his
15 granddaddy, his mom, which is Kayla, or Minor as
16 his dad. He's learning to hop around the house.

17 THE COURT: To hop around the house?

18 MS. HAFFLY: He hops. He doesn't know how to
19 walk, but he likes to hop. He does not -- he cannot
20 sit and play like a normal child. He does not have
21 the capability to sit and understand how to sit down
22 with a toy and sit in the floor and play. He
23 literally hops all day long. He's constantly moving
24 all day.

25 It's difficult to keep up with him throughout

1 the day and manage his needs, but we want to give
2 **Minor** every opportunity that he deserves in his
3 life. That's our goal, that's our mission. We as
4 grandparents want to go and buy for him. At
5 Christmas my husband wanted to buy him an electric
6 car. I said, Honey --

7 THE COURT: I hope you let him.

8 MS. HAFFLY: I said -- well, I said, our
9 grandson is blind. I said, he has seizures. I
10 said, does this car have a seatbelt? Is it remote
11 controlled? And it broke his heart because, you
12 know, he had to say no.

13 THE COURT: And that's the difference between
14 granddaddies and grandmamas.

15 MS. HAFFLY: I know. He's looking for one. He
16 said he --

17 THE COURT: I'm saying that with most due
18 respect to you. I'm a granddaddy and my wife says
19 that's a bit much.

20 MS. HAFFLY: I don't say it's a bit much, I
21 just say that sometimes it's not appropriate. We
22 walk through the store and want to find **Minor** a
23 birthday present or just something. I can't do that
24 because he requires special toys, he requires
25 special needs. The toys at local stores don't

1 support his needs of epilepsy, of blindness,
2 seizures. He still puts stuff in his mouth. His
3 quality of life is not going to be that of a normal
4 child.

5 THE COURT: Is he completely blind?

6 MS. HAFFLY: He's completely blind. We go to
7 see Dr. Goei and Dr. Espinosa who was his doctor at
8 the hospital when he had the surgeries. He had two
9 surgeries on his eyes during all of this.

10 THE COURT: What were the surgeries for?

11 MS. HAFFLY: They were to reattach the retinas.
12 And I don't remember what the second one was for.

13 MR. GRIFFIS: To reattach the retinas and drain
14 the hemorrhaging of his eyes.

15 MS. HAFFLY: So he's been through a lot. It
16 was months after we received him before we could
17 even touch him on the head. It's an ordeal to cut
18 his hair; everyone is about to have a nervous
19 breakdown just to trim his hair. He doesn't have
20 the quality of life, and never will, that we want
21 for him to have, that we expected for our first
22 grandchild to have.

23 The ability to take him -- my husband is a
24 hunter -- to take him and go hunting with him, to be
25 able to do things that every person wants to do with

1 their child or grandchild. And 20 years for
2 **Minor** is nothing. He's going to live with this
3 the rest of his life. He's a wonderful
4 three-year-old. He's loved more than anything in
5 the world.

6 But he is never going to get to do, never going
7 to get to see, never going to get to play, he's not
8 really going to a lot of friends because he's not
9 coherent enough to be able to do that. Twenty years
10 for **Minor** does not seem like a lot when it's his
11 lifetime at stake. And I know we heard from expert
12 witnesses about what happens when a child has been
13 engaged in that type of trauma.

14 But this is the real life for **Minor** , for us
15 as grandparents, for Branden and Kayla as parents,
16 that we walk into a store and think we want to buy
17 something for our child, but we walk out and can't.
18 I walked through the store not too long after we had
19 **Minor** and passed a woman with her son and, you
20 know, they were laughing and joking and they were a
21 having a great time. I burst into tears. My
22 husband said, what is wrong? I said, we'll never
23 have that. He'll never be the child that sits with
24 us and laughs and giggles and gets into trouble and
25 gets into mischief.

1 So that's why I say this is the reality of his
2 life and the reality of keeping him safe, the
3 reality of keeping a nurse for him. Branden has
4 lost almost two jobs because we can't keep nursing
5 for **Minor** . They haven't had a nurse for three
6 weeks. We're having to rely on friends and us to
7 take off work to take care of him.

8 THE COURT: Is he required 24/7? Somebody has
9 to be with him all the time?

10 MS. HAFFLY: He does not require 24/7.. But we
11 need a 50-hour-a-week nurse at minimum for them to
12 work. Their current nurse --

13 THE COURT: In other words, you can't leave him
14 at home in the daytime by himself.

15 MS. HAFFLY: No. He'll never be left alone by
16 himself, ever.

17 THE COURT: I understand he's three years old.
18 You don't leave them by themselves. But I
19 understand when someone is special needs --

20 MS. HAFFLY: They tried to send in an aide.
21 They took us from a nurse and brought us in an aid.

22 THE COURT: Who is providing these services?

23 MS. HAFFLY: I'm not sure what the name of the
24 company is now. Branden?

25 THE COURT: I mean, where is the money coming

1 from?

2 MS. HAFFLY: The State.

3 MR. GRIFFIS: Medicaid.

4 MS. HAFFLY: And it's great that they provide,
5 but it's not stable. Kayla has missed part of court
6 because she's been out so much with Minor .
7 We're worried about her losing her job. Financially
8 these two are never going to make it because one of
9 them is going to be constantly losing their job
10 trying to keep Minor in a comfortable
11 environment.

12 We've had to fire nurses because they would not
13 pay attention to Minor . They would just put him
14 in the beanbag and let him sit there all day long.
15 He was crawling under a table and hit his head.
16 Twenty years for what Minor has to go through
17 and what we need to keep him safe, to give him the
18 home, the attention, the nurse that he needs, the
19 care that he needs, stability, it's not there.

20 THE COURT: Thank you.

21 MS. HAFFLY: Thank you. I appreciate it.

22 THE COURT: Well, the child is most lucky to
23 have y'all and I commend you. Anything by anybody
24 else?

25 Mr. Martin, most days this job is not a very

1 difficult job. I have to make big decisions dealing
2 with money and dealing with whether or not somebody
3 breached a contract or give somebody a little bit of
4 time because they got some marijuana or crack on
5 them or they've gotten into a spat with somebody.

6 The days when I have to deal with a child with
7 these types of injuries makes me wish, some days, I
8 didn't have this job, and today is one of those
9 days. When I took this job 12 years ago, 13 now,
10 over the 13 years one of my biggest -- I've said
11 this many times in this courtroom: One of my
12 biggest responsibilities is to protect children, and
13 especially babies, five-month-old babies.

14 And I practiced law for 30 years and I've sat
15 on this bench for 13 had, and I don't think I've
16 ever seen a five-month-old child with this
17 significant of head injury, other than those who
18 were in horrible car wrecks or horrible trauma in an
19 accidental setting.

20 I wish my sentence could undo all the damage
21 this child sustained to its little brain because
22 that damage will be with him the rest of his life
23 and he will be -- suffer the consequences of his
24 brain injuries.

25 The sentence of this Court is that you be

1 committed to the state department -- the South
2 Carolina Department of Corrections for a period of
3 20 years. Good luck to you.

4 THE DEFENDANT: Thank you.

5 -- END OF TRANSCRIPT OF RECORD --

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

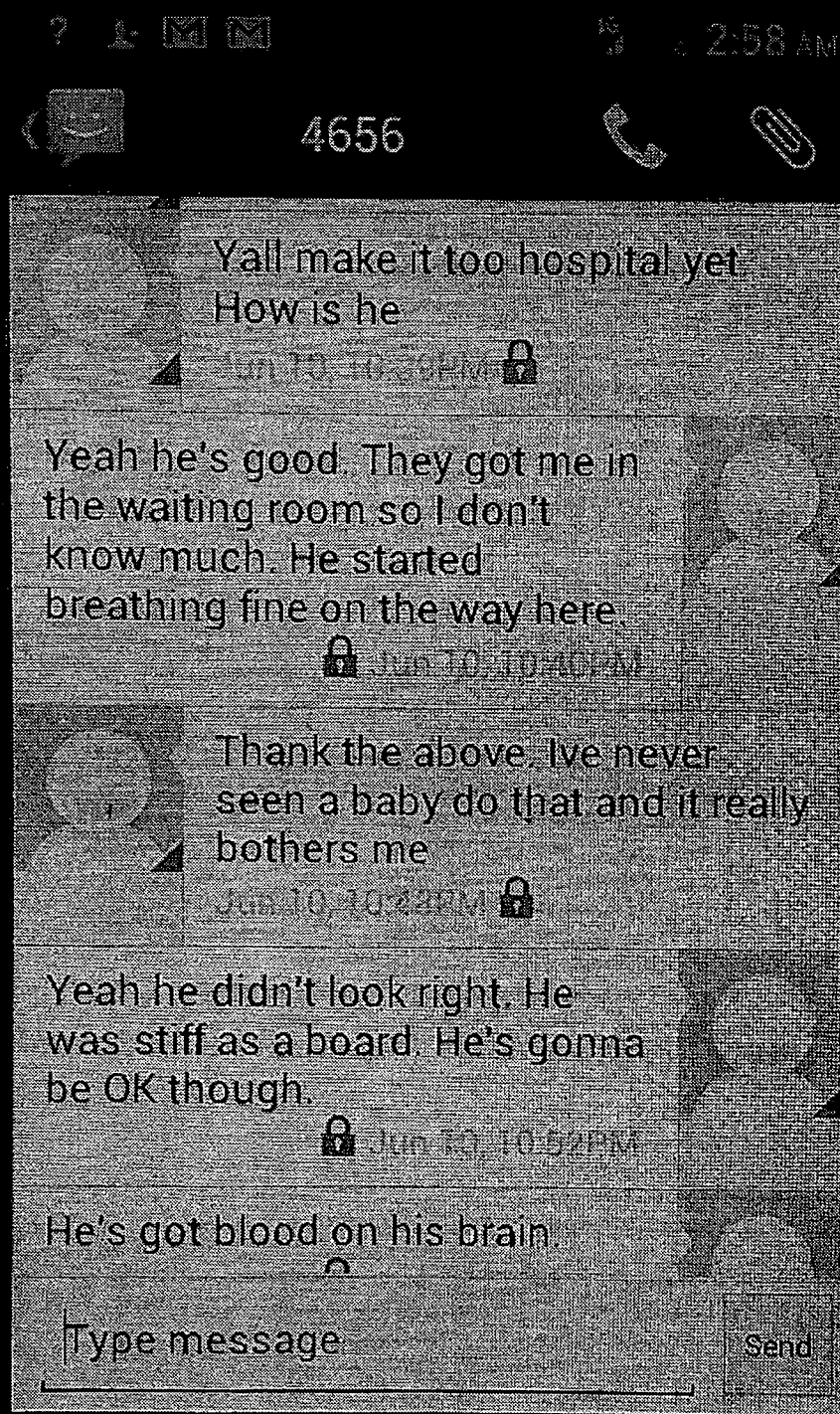
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second 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 the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Aiken County, South Carolina, on the 14th, 15th, 16th of February, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 11, 2017

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter





3G 2:58 AM



4656



He's got blood on his brain.



Blood on his brain. Like a
aneurism



Jun 10, 11:10 PM



Is he gonna be ok. What do they
have to do



Jun 10, 11:22 PM



He's gonna be OK. They are
giving him tests right now.



Jun 10, 11:23 PM

They said its from trauma. Did
he fall or get hit?

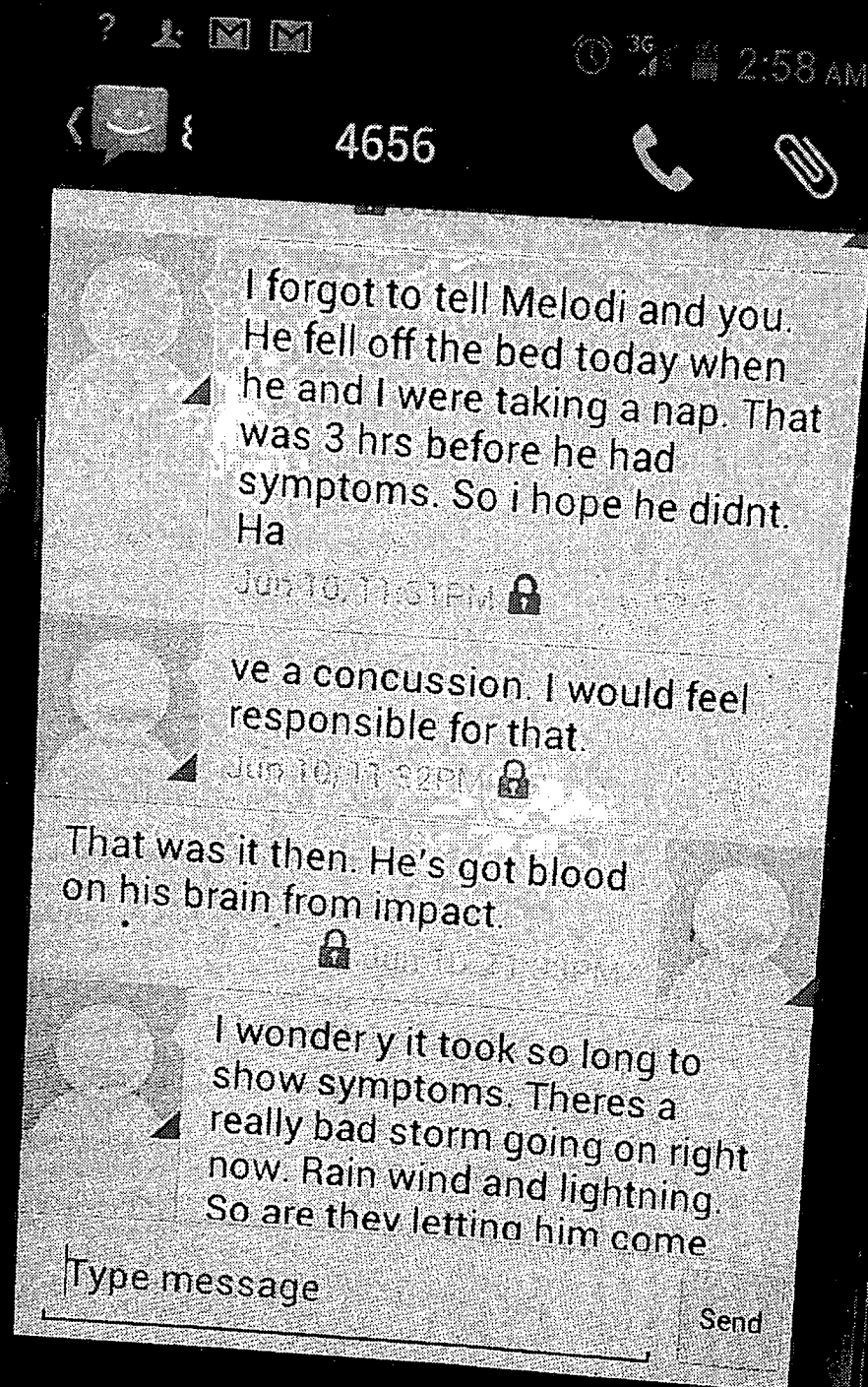


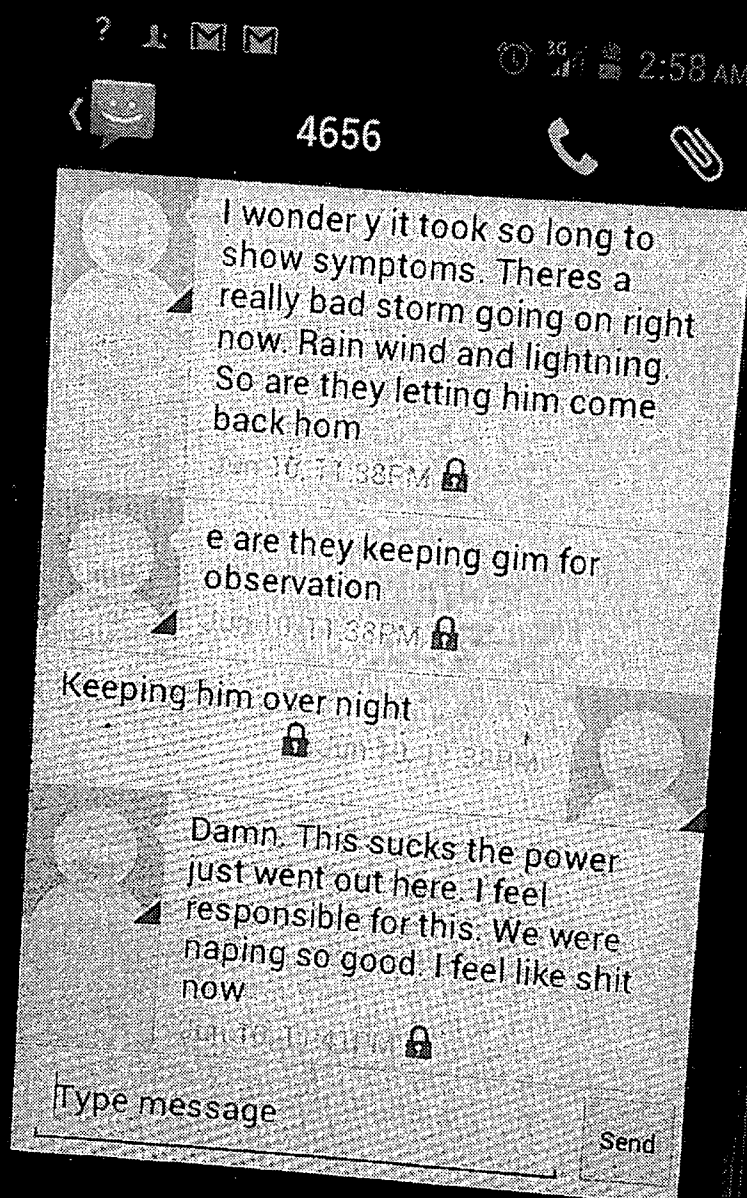
Jun 10, 11:20 PM

I forgot to tell Melodi and you.

Type message

Send



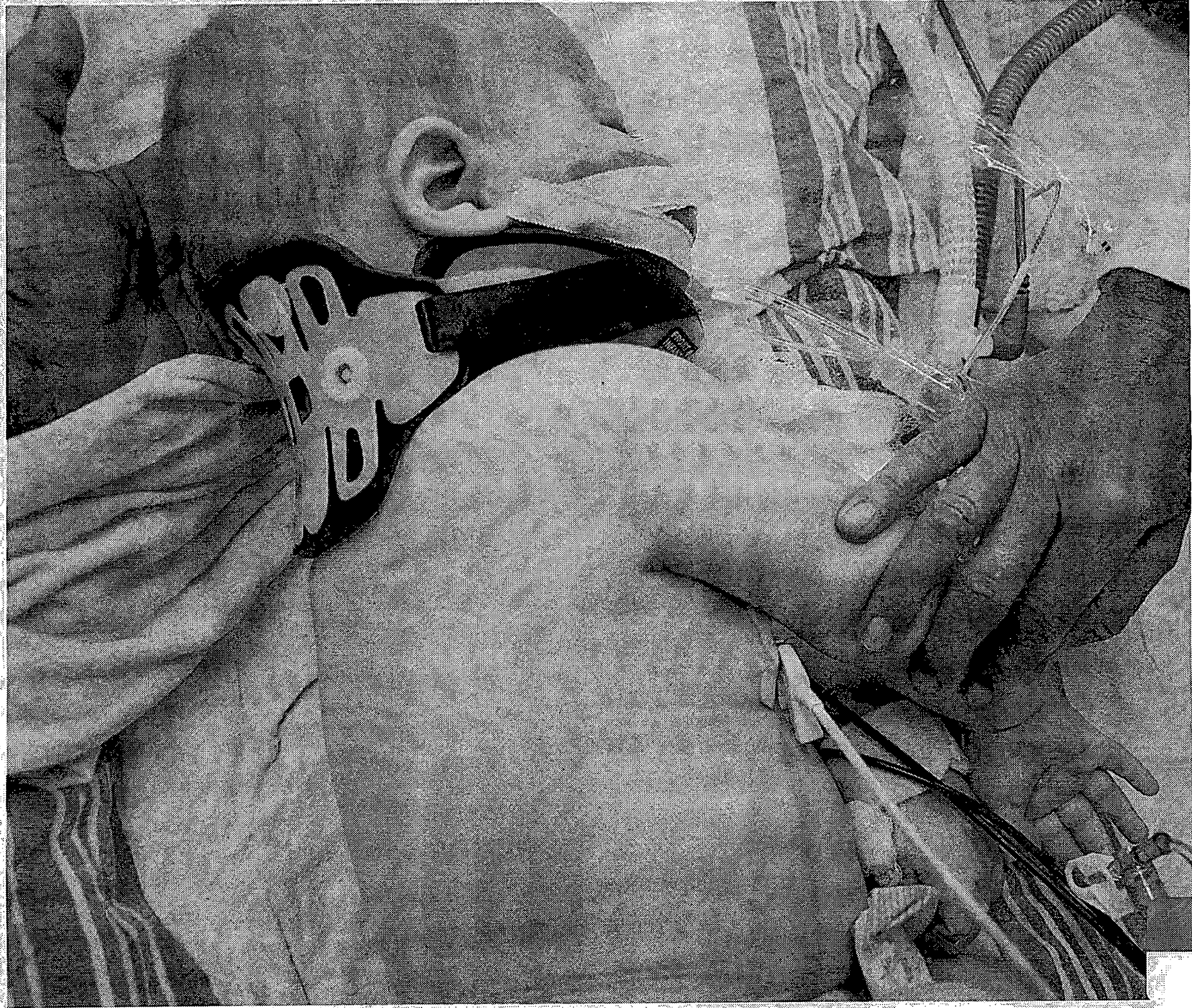












WITNESSES

Aiken County Sheriff

Kristopher Evensen

Law Enforcement Case #: 14-35439

DOCKET NO. 2015GS0200895

The State of South Carolina

County of Aiken

AAH

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

JUNE TERM 2015

2015A0210900027

FILED

4 June 2015

Lij Hodard
C.C.P. & G.S.
L. J. Hodard
Deputy Clerk

THE STATE

vs.

HEYWARD LEGREE MARTIN III

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury
Date: June 4, 2015

VERDICT

CDR #: 2766

Indictment for

INFLECTING GREAT BODILY INJURY
UPON A CHILD

§ 16-03-0095(A)

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN) INDICTMENT FOR
) INFLECTING GREAT BODILY INJURY UPON A
) CHILD

§ 16-03-0095(A)

At a Court of General Sessions, convened on June 8, 2015, the Grand Jurors of Aiken County present upon their oath:

That **HEYWARD LEGREE MARTIN III** did in Aiken County on or about June 10, 2014, while having custody of Minor , a child of five (5) months of age, unlawfully inflict great bodily injury upon the child, to wit: struck him about the head, neck, and back. All in violation of Section 16-3-95 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.Heyward Legree Martin III

AKA:

Race: White Sex: M Age: 34SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Jackson, SC 29831-3197DL#: [REDACTED] SID#: SC01317556*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Abuse / To inflict great bodily injury upon a child

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS0200895A/W#: 2015A0210900027Date of Offense: 6/10/2014S.C. Code § : 16-03-0095(A)CDR Code #: 2766SENTENCE SHEET 0-20 years☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0095(A) of the S.C. Code of Laws, bearing CDR Code # 2766
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Gale A. Hammack 80176 [Signature] [Signature] 64079
Hammack, Ashley Agnew SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of (20) 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp. Recipient: May serve W/E beginning *Fine: \$ Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) \$ Random Drug/Alcohol testing ☐§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ pmts. of \$ beginning § 56-5-2995 (DUI Assessment) \$12 \$ \$ paid to Public Defender Fund§ 56-1-286 (DUI Breath Test) \$25 \$ Other: Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.15TOTAL \$ 128.15

Clerk of Court/ Deputy Clerk

Court Reporter: Bethanie Creppon

SCCA/217 (07/2016)

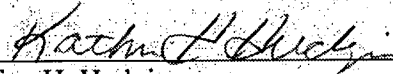
Presiding Judge

Judge Code: 0136Sentence Date: Feb 16, 2017

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 25th day of April, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 25th day of April, 2018.

RECEIVED
APR 25 2018
SC Court of Appeals