

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

ANTWAN LYDELL GADDIST,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001608

APPENDIX

SARAH E. SHIPE
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF PRE-TRIAL, TRIAL, AND GUILTY PLEA HELD JANUARY 31, 2014 AND FEBRUARY 3-7, 2014.....	1
NOTICE OF APPEAL.....	1022
STATEMENT OF BASIS OF APPEAL	1024
LETTER FROM COURT OF APPEALS DATED FEBRUARY 11, 2014	1025
LETTER FROM PETITIONER TO COURT OF APPEALS RECEIVED MARCH 7, 2014	1027
ORDER OF DISMISSAL.....	1028
PCR APPLICATION.....	1029
STATE’S RETURN.....	1034
TRANSCRIPT OF PCR HEARING HELD JULY 20, 2017	1040
ORDER OF DISMISSAL.....	1115
INDICTMENT.....	1178
SENTENCE SHEET	1180

SW - R. OATES - DIRECT

1 A I did, yes.

2 Q And do they fairly and accurately depict the
3 scene as you observed them, what you observed at the
4 scene?

5 A Yes, they do.

6 MS. SIMPSON: Your Honor, at this time the
7 State would offer State's 19 through 75 into
8 evidence as well as State's Exhibit 86 and State
9 Exhibits 94 through 106.

10 MS. PINNOCK: Without objection.

11 THE COURT: So admitted without objection.
12 (WHEREUPON, State Exhibits Nos. 19 through
13 75, 86, 94 through 106 were admitted into
14 evidence.)

15 BY MS. SIMPSON:

16 Q I want to go through -- what was the first step,
17 where did you go first in your search.

18 A Okay, I went to the left rear bedroom.

19 Q And what did you observe in the left rear
20 bedroom?

21 A Okay. As soon as I entered the left rear bedroom
22 I saw reddish brown stains believed to be blood,
23 okay, on the carpet next to a bed. Also during this
24 search, also found a blue colored infant one-see, a
25 type of a garment on top of a black dresser there.

SW - R. OATES - DIRECT

1 Also, there was a small bear type of children's toy,
2 a stuffed bear that was lying on the floor, had
3 reddish brown stains on the snout of the mouth of
4 the actual toy and that was lying next to or near,
5 excuse me, near the black dresser. Also, there was
6 a hammer that I found lying up under or where the
7 one--see was located at on top of this actual black
8 dresser. The hammer was up under that; I found
9 that. And also, there was some reddish brown stains
10 on a purplish multicolored type of a -- actually, it
11 was a Tinkerbell Disney character design comforter
12 that was on top of the bed. And also some reddish
13 brown stains were believed to be blood was on a
14 fitted sheet, blue fitted sheet that was on the bed.
15 And also, during my search after documenting that
16 and found some more blood stains up under that or
17 reddish brown stains.

18 Q And you indicated that you actually photographed,
19 are these things that you see. Do you also mark
20 them in some way?

21 A Yes, yes.

22 Q And what is the purpose of marking items?

23 A That's for identification purposes, yes.

24 Q And ---

25 A It also can depict size, I'm sorry. Also can

SW - R. OATES - DIRECT

1 depict side of an object.

2 Q Essentially just you wanted to preserve the scene
3 as it was when you got there?

4 A Right.

5 Q You mentioned you observed a stain and I won't go
6 through all of these in the interest of time. I'm
7 gonna show you what's marked State's Exhibit 26 with
8 marker AB, what is that?

9 A That is one of the reddish brown stains on the
10 carpet in that bedroom beside the bed, or in front
11 of the bed, excuse me.

12 Q And then in State's, State's 25, what are we
13 observing here?

14 A Okay, that is the blue colored one-see or infant
15 piece of clothing.

16 Q And when you come to a scene and assess the scene
17 and photograph it, do you necessarily know the
18 relevance or probative value of those items that you
19 find ---

20 A No, we don't. We ---

21 Q ---at that point?

22 A ---we stay objective, instead of subjective in
23 situations like this where they're solely processing
24 the scene, collecting evidence there.

25 Q I'm also gonna show you what's in State's Exhibit

1 32 with marker AC. What is that referring to?

2 A Okay, that's gonna be the actual fitted sheet,
3 the reddish brown stains, possibly blood, on the
4 fitted sheet that's in the bed.

5 Q And were any type of presumptive tests or
6 anything done on those items?

7 A No.

8 Q And then in State's 34 I believe you said you
9 also searched and found a Disney comforter?

10 A Yes.

11 Q I'm gonna show you State's 34 with marked AD.

12 A Yes.

13 Q What is that?

14 A That is the actual comforter as it was on the bed
15 when I found it with marker, and that's reddish
16 brown stains on that, believed to be blood on that
17 garment.

18 Q And you say believed to be blood, they're just
19 reddish brown stains?

20 A Right.

21 Q Which may or may not be blood?

22 A Right.

23 Q Correct?

24 A Correct.

25 Q After observing the comforter what else did you

SW - R. OATES - DIRECT

1 observe?

2 A Okay. Also during the search Sergeant Faust came
3 and basically informed me that there was another
4 area within the home that there was some evidence
5 and that was a laundry room, front laundry room. I
6 went into the laundry room and started searching
7 there and found a white T-shirt, Florida T-shirt,
8 that had some reddish brown stains on the front and
9 back of it. Also, a multicolored wash cloth that
10 had reddish brown stains, green towel, also a blue
11 towel that also had reddish brown stains on it
12 there.

13 Q Let me back up just a little bit. In State's 35
14 what do we see here?

15 A That is, that's after finding the actual garment
16 ready for photographing. That's the white T-shirt,
17 Florida T-shirt, and the wash cloth with reddish
18 brown stains.

19 Q And these were located in the laundry room?

20 A Yes.

21 Q Were they on top of the dryer as far as you will
22 recall?

23 A The -- yes. The -- on top of the dryer, let's
24 see, wait a minute, sorry, I apologize. The Florida
25 T-shirt was below a white washing machine is where

SW - R. OATES - DIRECT

1 that was. And also the wash cloth also, yes.

2 Q And then State's Exhibit 36, is this the wash
3 cloth ---

4 A Yes, it is.

5 Q ---that you're referring to ---

6 A Yes.

7 Q ---with the reddish ---

8 A Yes.

9 Q ---brown stains? And again, in State's 37 that
10 would be the T-shirt that was found as well?

11 A Yes.

12 Q Also containing the stains. Did you locate
13 anything else in the laundry room? Specifically
14 referring to marker AE.

15 A I believe, I believe that is all.

16 Q I'm gonna show you what's been marked as State's
17 Exhibit 39. Do you recognize that?

18 A Yes.

19 Q And what is that that we're seeing?

20 A That is the green bath towel that was found below
21 the washing machine.

22 Q And ---

23 A With reddish brown stains believed to be blood.

24 Q I'm actually gonna show you -- where certain
25 items collected from the scene that day?

SW - R. OATES - DIRECT

1 A Yes.

2 Q We're talking about them; I will focus on them
3 now. I'm gonna show you what's been marked as
4 State's 110, item number 17, do you recognize that?

5 A Yes, that is the green towel that was in the
6 laundry room, AE.

7 Q And did you actually properly collect it sealed?

8 A Yes, yes. It was collected. It was packaged.
9 Should have been in a brown bag and actually placed
10 in my vehicle, transferred back to the Sheriff's
11 Department.

12 Q And was it tampered or altered in any way while
13 in your custody?

14 A Negative, no.

15 MS. SIMPSON: Your Honor, at this time the
16 State would offer State's 110 into evidence.

17 MS. PINNOCK: No objection.

18 THE COURT: Admitted without objection.

19 (WHEREUPON, State Exhibit No. 110
20 admitted into evidence.)

21 BY MS. SIMPSON:

22 Q I'm also gonna show you item 14 which is marked
23 at State's Exhibit 111. Do you recognize that?

24 A Yes. That is the multicolored wash cloth.

25 Q And was that collected by you?

SW - R. OATES - DIRECT

1 A Yes, it was.

2 Q And was it properly sealed and packaged at the
3 time?

4 A Yes, same as the green towel.

5 Q And while it was in your custody was it tampered
6 with or altered in any way?

7 A No.

8 MS. SIMPSON: Your Honor, at this time we
9 would offer State's 111 into evidence.

10 MS. PINNOCK: I'm sorry, which was that?

11 MS. SIMPSON: The wash cloth.

12 MS. PINNOCK: No objection.

13 THE COURT: You say no objection?

14 MS. PINNOCK: No objection.

15 THE COURT: So admitted.

16 (WHEREUPON, State Exhibit No. 111
17 admitted into evidence.)

18 BY MS. SIMPSON:

19 Q Finally, let me show you what's been marked
20 State's Exhibit 112. Do you recognize this item as
21 well?

22 A Oh, yes. This is the white Florida, white
23 Florida T-shirt.

24 Q That was collected from the laundry room?

25 A Yes.

SW - R. OATES - DIRECT

1 Q And when you collected it, at that point was it
2 properly sealed, packaged?

3 A Yes, it was.

4 Q And while it remained in your custody was it
5 tampered or altered with in any way?

6 A No.

7 Q Did you also photograph some other items of
8 evidence, or potential evidence?

9 A Yes. I was requested by Sergeant Faust to also
10 photograph, there was a front master bedroom. I
11 photographed that room. And also focused on,
12 there's a closet in that room, take a photograph of
13 male clothing, shoes, clothes, and also
14 identification like receipts and letters and things
15 of such.

16 Q And backing up just a little bit 'cause I jumped
17 ahead, did you take some general pictures of the
18 room, the master bedroom, and the closet area where
19 the child was believed to have been found?

20 A Yes.

21 Q I'm gonna show you what's been marked as State's
22 51.

23 A That's it, yes.

24 Q And when we say that's it, is that the master
25 bedroom?

1 A Yes.

2 Q Okay, and in that bedroom did you actually locate
3 some items, both female and male?

4 A Yes, clothing, yes.

5 Q And those items are documented in your
6 photographs?

7 A Yes.

8 Q Correct?

9 A Yes, correct.

10 Q Did you also find some paperwork belonging to a
11 Mr. Gaddist ---

12 A I did, yes.

13 Q ---as well?

14 A Yes.

15 Q And in the closet area, as I said, in the
16 interest of time, I'm gonna show you State's 56.

17 Did you photograph some male shoes?

18 A Yes, I did.

19 Q In that?

20 A Lying in the closet, yes.

21 Q And the focus of this room was because that's
22 where the child was found, correct?

23 A Right, yes.

24 Q That's where you were directed. And State's 58,
25 more items?

SW - R. OATES - DIRECT

1 A Yes, more items, yes.

2 Q From the closet area. And again, when you
3 respond to a scene you don't necessarily know what
4 evidence will be probative or valuable at the time?

5 A Right, that's correct.

6 Q And but if you did observe something you would
7 document it?

8 A Yes, yes.

9 Q By photographing and marking?

10 A Yes.

11 Q And possibly processing that item?

12 A Yes.

13 Q You indicated you also found a Teddy bear I
14 believe. I'm gonna show you State's Exhibit 44.

15 A Yes, that's the Teddy bear that was laying in the
16 left rear bedroom on the floor near the black
17 dresser that had the reddish brown stains believed
18 to be blood on the mouth area.

19 Q And you also, in addition to the master bedroom
20 I'm gonna show you -- back up one more time, State's
21 46?

22 A Yes. That is the black handled hammer that was
23 lying on the top of the black dresser left, her
24 bedroom up under the blue infant one-see or garment.

25 Q And was this in the master bedroom or in the ---

SW - R. OATES - DIRECT

1 A That was in the left rear bedroom, children's
2 room, child's room.

3 Q And in understanding that this was a case
4 involving children, were you requested or directed
5 to photograph the infant twins' room as well?

6 A Yes.

7 Q Let me show you what's been marked as State's ---

8 A Okay, yeah.

9 Q State's 47 and State's 48?

10 A That's what I'm calling as left rear, the left
11 rear bedroom, yes.

12 Q And it was clear that that bedroom was a child's
13 bedroom?

14 A Yes.

15 Q Were you also asked to photograph -- I guess was,
16 did Sergeant Faust point out a possible marking on
17 the hallway?

18 A Yes.

19 Q I'm gonna show you State's 72.

20 A Yes, a reddish brown stain as you walk into the
21 apartment it's a hallway, and on the right side,
22 middle ways of the hallway there was a small reddish
23 brown stain that was there. So I documented by
24 photographs without and with that scale or number
25 one evidence for marker that you see there.

SW - R. OATES - DIRECT

1 Q But that stain -- and you said evidence one so
2 we're going here, that doesn't look like blood
3 spatter or ---

4 A No.

5 Q ---anything of that nature?

6 A No blood spatter is totally different.

7 Q Just kind of a swiped small stain in the hallway?

8 A Right.

9 Q And as far as any testing that goes on, who
10 actually makes that determination as far as what
11 will be tested?

12 A The head investigator on the case. Normally ---

13 Q And -- I'm sorry, go ahead.

14 A Normally we will collect the evidence, the bulk
15 of evidence at the scene. And a lot of times we
16 don't know which of evidence is gonna be tested for
17 DNA or further testing so we'll place it into
18 evidence on hold until it's requested by an
19 investigator that wants that tested.

20 Q So you also collect possible swabs and things of
21 that nature?

22 A Yes.

23 Q And when you do that are they properly sealed,
24 packaged, and turned over to evidence?

25 A Yes, they are.

SW - R. OATES - DIRECT

1 Q And if something is not properly sealed or
2 packaged will evidence accept it?

3 A They will not, no.

4 Q And again, do you actually do any of the testing
5 yourself as far as DNA or things of that nature?

6 A No.

7 Q In processing certain items of evidence, in this
8 case were you required to actually place some items
9 into a drying chamber?

10 A Yes. It's normal procedure if we have evidence
11 that we collect that's possibly still wet being it's
12 possibly blood or reddish brown stain, we have three
13 drying cabinets in forensic garage. We'll dry it
14 out before we can actually place them in evidence.
15 If we don't that evidence could be destroyed through
16 mold, mildew, things like that.

17 Q And on May -- well, did you place certain items
18 into the drying chamber?

19 A Yes. On the 23rd the towels, blanket, the wash
20 cloth, the shirt, any item that had possible reddish
21 brown stains would have been placed in a drying
22 cabinet. These were, on that day on 23rd.

23 Q Okay. And subsequently on May 25th did you
24 actually take those items out of the drying chamber?

25 A Yes, on the 25th I removed the items from actual

SW - R. OATES - DIRECT

1 drying cabinet a little over 24 hours to dry so.

2 Then I would transport those items from the forensic
3 garage back into our main forensic laboratory for
4 further processing.

5 Q And were those items actually photographed by
6 you?

7 A They were, yes.

8 Q And do you recall what those items were based on
9 your report?

10 A Yes. It was the blue one-see or infant garment
11 and the white Florida T-shirt.

12 Q And finally, again, when you do your initial walk
13 through of the scene do you walk through every room
14 in the house?

15 A Yes.

16 Q And if you had noted anything to be possible
17 evidence or out of place would you have photographed
18 that as well?

19 A Yes. If I had any question then I would
20 communicate of course with the investigator on scene
21 as well to make sure.

22 Q And a primary focus would have been in this case
23 where the child had been found?

24 A Right, correct.

25 Q Beg the Court's indulgence one moment. Thank

1 you, Investigator Oates.

2 MS. PINNOCK: If it please the Court.

3 **CROSS-EXAMINATION**

4 BY MS. PINNOCK:

5 Q Investigator Oates, you said that all of your
6 directives when you show up to a scene, you're
7 contacted and cooperating with the lead
8 investigator, right?

9 A Yes, in certain cases. In this case it was, yes.

10 Q So when you got there you said you did an initial
11 walk through?

12 A Yes.

13 Q And then Sergeant Faust said, I want you to go,
14 you know, look more in this room and that room,
15 right?

16 A Right, yes, yes. While I'm in there processing
17 all he's also, you know, -- it's a search warrant so
18 he's also looking also.

19 Q Now you took some pictures of, you said, the left
20 rear bedroom?

21 A Yes.

22 Q That was the child's bedroom?

23 A Yes.

24 Q There was a bed in it?

25 A Yes.

SW - R. OATES - CROSS

1 Q There were sheets on it?

2 A Yes.

3 Q There's a pillow in there?

4 A Yes.

5 Q There was toys in it?

6 A Yes, there was toys.

7 Q So it also looked like somebody slept there?

8 A Right.

9 Q Right, okay. Instead of going back through and
10 trying to find yours, I'm gonna show you four
11 pictures that previously marked as Defense's Exhibit
12 6, 21 -- sorry, 20 and 19. Do you recognize these?

13 A Yes.

14 Q Are those pictures you took of the left rear
15 bedroom May 23rd, 2011?

16 A Yes, some of them. Yes.

17 Q I'm sure some of those are in evidence; but
18 instead of going through that full pile, are those
19 adequate depiction of what you took photos of that
20 night?

21 A That day, yes, uh-huh.

22 MS. PINNOCK: Your Honor, at this time I
23 would move to introduce Defense 19, 20, 21, and 6
24 into evidence.

25 MS. SIMPSON: Without objection.

SW - R. OATES - CROSS

1 THE COURT: So admitted.

2 (WHEREUPON, Defendant's Exhibits Nos. 6,
3 19, 20, 21 were admitted into evidence.)

4 BY MS. PINNOCK:

5 Q You said this -- explain what this picture is.

6 A This is a medium ranged photograph of left rear
7 bedroom showing the bed with the Tinkerbelle
8 comforter, brown pillow, a sheet lying beside it,
9 blood, some rich brown stains on the carpet, and
10 little bit of the stuffed bear in the lower right
11 hand corner.

12 Q Okay. And Defendant's Exhibit 6.

13 A This is a closeup photograph of the actual purple
14 Tinkerbelle comforter, the brown pillow on top of the
15 bed.

16 Q And number 20?

17 A Okay. After, like I said, after further search,
18 removed the fitted sheet revealing the mattress, and
19 these are photographs of reddish brown stains,
20 stains believed to be blood on that mattress.

21 Q Okay, and 21?

22 A And this is also, this is the actual, looks like
23 the box spring up under the mattress, and this is a
24 stain there. It's a picture of, that's a closeup
25 shot, a closeup.

SW - R. OATES - CROSS

1 Q Thank you. Now when you were doing your scene
2 processing did you say you did not do any
3 presumptive tests to see if any of these things ---

4 A I did do a presumptive test.

5 Q On everything?

6 A I did on the stains on the carpet.

7 Q Stains on the carpet?

8 A Yes.

9 Q Was that presumptive for blood?

10 A It was positive for blood, yes.

11 Q Okay. Did you submit that to the DNA lab for
12 testing?

13 A Yes.

14 Q Okay. Did you take swabs of what was just, what
15 you just testified about?

16 A I did not, no, not that.

17 Q You didn't take swabs of that?

18 A Huh-uh.

19 Q Did you collect the sheets?

20 A Yes, the fitted sheet, yes, and the full sheet
21 that was rolled up on the side near the bed.

22 Q You did not collect the mattress?

23 A Did not collect the mattress, no. Photographs
24 only.

25 Q You testified that you did the drying, drying

1 time under that blue one-see?

2 A Yes, in our drying cabinet, yes.

3 Q That's just a regular small person T-shirt,
4 right? It didn't have the snaps or anything?

5 A I don't think -- no, it didn't have snaps, not
6 that I know of. I call them a one-see.

7 Q Did you submit that for DNA testing?

8 A I submitted it into evidence.

9 Q Okay.

10 A Yes.

11 Q Are you assuming you did testing on it? Can we
12 assume that?

13 MS. SIMPSON: Objection, Your Honor, as
14 far as assumptions that can be made by him.

15 THE COURT: Sustained.

16 BY MS. PINNOCK:

17 Q You submitted the white Florida T-shirt --

18 A Yes.

19 Q --in evidence?

20 A Yes.

21 Q Now when you got there -- let me ask this first.
22 All these brownish stains, you have absolutely no
23 idea what any test results would be, right?

24 A I don't, no.

25 Q You don't know if they're absolutely blood, if

SW - R. OATES - CROSS

1 they're blood whose blood it is?

2 A Right.

3 Q Your job is just to collect them?

4 A Correct, yes.

5 Q Submit them to evidence?

6 A Yes.

7 Q And then it's in somebody else's hands at that
8 point?

9 A Correct, yes.

10 Q And the left rear bedroom, again, Sergeant Faust
11 asked you to go in there?

12 A Yes, uh-huh.

13 Q He asked you to go into the master bedroom?

14 A Yes, the front bedroom as we go to the right,
15 yes.

16 Q You took pictures of that closet?

17 A Yes.

18 Q That bed?

19 A Yes.

20 Q And the carpet surrounding it?

21 A Not in the master bedroom.

22 Q Okay.

23 A Huh-uh. That was just the actual 360 type of
24 photographs of the room and then the closet.

25 Q You took a number of pictures of the closet

1 showing that there are male clothes in the closet?

2 A Yes.

3 Q Along with female clothes?

4 A Yes.

5 Q Correct?

6 A Yes.

7 Q And this was State's 51. That was one of the
8 pictures of the master bedroom?

9 A That's one of them, yes.

10 Q And that's the first bedroom you got to when you
11 walked in, correct?

12 A That is right, yes. As soon as you get through
13 the front entrance wall area there, yes. On around
14 to the right would be that master bedroom.

15 Q I'm gonna show you what has been marked as
16 Defense Exhibit 14, 15, 16, 17 and 18. Do you
17 recognize these?

18 MS. SIMPSON: And Your Honor, if I can
19 just have an opportunity to review.

20 MS. PINNOCK: Yes, sorry.

21 THE WITNESS: Yes.

22 BY MS. PINNOCK:

23 Q Did you take the photographs on May 23rd, 2011?

24 A On the 23rd, yes.

25 Q As part of executing the search warrant?

SW - R. OATES - CROSS

1 A Yes.

2 Q And that depicts how you saw the apartment that
3 day?

4 A Yes, those pictures do, yes.

5 MS. PINNOCK: Your Honor, at this time I
6 would move Defense 14 through 18.

7 (Attorneys Simmons and Pinnock confer.)

8 MS. PINNOCK: I would move Defense 14
9 through 19, 18 in evidence.

10 MS. SIMPSON: Without objection, Your
11 Honor.

12 THE COURT: So admitted.

13 (WHEREUPON, Defense Exhibits Nos. 14
14 through 19 were admitted into evidence.)

15 BY MS. PINNOCK:

16 Q Can you explain what's in this picture?

17 A Yeah, it's a living room area.

18 Q That's a living room area?

19 A Yes. It appears to be in rear kitchen area with
20 the bar.

21 Q Okay, and number 16?

22 A This is a photograph of a different angle from
23 the rear part where the kitchen table was, open
24 area. And the rear there's a kitchen.

25 Q Okay. 17?

1 A This is just another photograph inside the living
2 room area, couches and coffee table.

3 Q And Exhibit 18?

4 A Okay. Now this is the master bedroom that's as
5 you walk in, the first right bedroom out here. It's
6 a picture.

7 Q So we have the living room and the master
8 bedroom?

9 A Yes.

10 Q Correct? How many bedrooms was in this
11 apartment?

12 A Three bedrooms.

13 Q Three bedrooms?

14 A To my knowledge three bedrooms.

15 Q Okay, and the way it's set up you said you walk
16 in. There's a bedroom off to the left and you go
17 farther down the hall and then you have left rear
18 bedroom. The third bedroom will be right in front
19 of you, correct?

20 A Well, when you walk in after you get past the
21 hallway, then you got, you turn to your right,
22 you've got the actual living room area, then you
23 have the master bedroom. Then you have the kitchen
24 going back more to your left. Then you go down a
25 rear hallway. As soon as you go toward the hallway,

SW - R. OATES - CROSS

1 enter that hallway on your left you have the laundry
2 room. And then continue down the hallway, then you
3 have a bedroom on the left and on the right.

4 Q Okay, you were never asked to go into that
5 bedroom on the right?

6 A That's correct, right. Well, right, I was not --
7 yes, I was not, I apologize.

8 Q So the room tha K.H. [REDACTED] slept in the night
9 before she was found unresponsive, you didn't even
10 enter?

11 A I did not enter that bedroom. I was not
12 instructed to.

13 Q And you were getting your instructions from
14 Investigator Faust, correct?

15 A Correct.

16 Q Okay. Was Sergeant Faust present the whole time?

17 A Yes, he was.

18 Q When you were processing?

19 A Yes, he was.

20 Q And I'm gonna show you what's been marked Defense
21 7 and 8 for I.D. purposes.

22 A Yes.

23 Q You recognize these photos as photos you took on
24 May 23rd?

25 A Yes.

1 Q As part of executing the search warrant on
2 apartment ■4?

3 A Yes.

4 MS. PINNOCK: Your Honor, at this time I
5 would move to introduce Defense Exhibit 7 and 8 in
6 evidence.

7 MS. SIMPSON: Your Honor, we don't object.
8 They're actually already into evidence as State's
9 exhibits.

10 MS. PINNOCK: Now can you explain ---

11 THE COURT: Why are we doing that?

12 MS. PINNOCK: 'Cause, Judge, there's quite
13 a number and I don't know where they are so it's in
14 the interest of time.

15 THE COURT: Well, we can show them
16 something that's already been marked; but I mean,
17 just adding more photographs for the sake of adding
18 the same photograph. It's so admitted.

19 (WHEREUPON, Defendant Exhibits No. 7 and 8
20 were admitted in evidence.)

21 BY MS. PINNOCK:

22 Q That's the white T-shirt that you photographed
23 and collected?

24 A Yes.

25 Q Can you explain where the stains are on this

SW - R. OATES - CROSS

1 picture?

2 A This is a reverse side of the actual white
3 T-shirt and it's across the right rear shoulder
4 area.

5 Q Right rear shoulder area?

6 A Yes. I'm looking at it from this photograph,
7 yes.

8 Q And can you explain what's in Exhibit 7?

9 A Okay. This is another, it's a closeup photograph
10 that same white T-shirt. It looks like it's been
11 folded a little bit, but that's a picture of reddish
12 brown stains believed to be blood, yeah.

13 Q That was on the right shoulder?

14 A I'm sorry, excuse me.

15 Q That's okay. And I had it on my left so right
16 shoulder.

17 A Right. Well, it'd be folded back, maybe on left.
18 That's the same stain that I photographed so prior
19 to.

20 Q And again ---

21 A And I said right, it's on the right rear facing
22 it. It's just been flipped or folded back.

23 Q And you didn't perform any testing on anything?

24 A No.

25 Q So again, you don't know whose DNA, if any, is on

1 these brown stains?

2 A Correct.

3 Q And that's true for the comforter, right?

4 A That's correct, yes.

5 Q Top sheet?

6 A Correct.

7 Q The blue shirt, the child's blue shirt?

8 A Right.

9 Q This towel, you don't know who it is?

10 A Right, you're correct.

11 MS. PINNOCK: Beg the Court's indulgence.

12 I have nothing further. Thank you.

13 THE COURT: Anything?

14 MS. SIMPSON: Nothing further from the
15 State, Your Honor.

16 THE COURT: All right, thank you. You may
17 step down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Who's got the next witness?

20 MS. CAMPBELL: I do.

21 (WHEREUPON, counsel approached the Bench
22 for an off-the-record discussion.)

23 THE COURT: Ladies and gentlemen, the next
24 witness is going to take longer than we have for
25 this afternoon so I'm gonna send you home a little.

1 bit earlier than what I anticipated. We're gonna
2 start at 9:30 in the morning. Again, I'm gonna ask
3 you to not talk about the case with anybody or with
4 each other. Also don't do any reading about this
5 case, don't watch anything about it, don't listen to
6 anything about it, and don't investigate it in any
7 way either at home or else where. And y'all be on
8 time tomorrow and have a nice evening. We will see
9 you at the start at 9:30.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 3:30 p.m., and the following
12 proceedings commenced in open court.)

13 THE COURT: All right, folks, y'all have a
14 nice afternoon. See you tomorrow morning.

15 (WHEREUPON, the proceedings were concluded
16 for the day to be reconvened on February
17 5, 2014.)

18 THE COURT: After we left last night I got
19 a note from one of the jurors and basically it says,
20 are they permitted to take notes or can they get a
21 copy of the transcript in the testimony. My normal
22 practice is do not allow them to take notes 'cause I
23 sometimes get concerned they might write something
24 down and then they'll get in the jury room and it's
25 harder to maybe convince them they made a mistake

1 when they wrote it down, so it's sort of what I'm
2 inclined to do, continue to do here. I'll listen to
3 what y'all have to say. Obviously I don't get a
4 transcript of the testimony so they can have it in
5 the jury room, but you know, there's only one
6 charge. There's a lot of evidence, doesn't seem all
7 that complex to me. Anything from the State?

8 MS. CAMPBELL: No, sir.

9 THE COURT: Anything from Defense?

10 MS. PINNOCK: No, sir.

11 THE COURT: Anything else we need to take
12 up before we ---

13 MS. PINNOCK: Yes, sir, just briefly, we
14 got a list of witnesses. There's 19 people on the
15 list. Two of those witnesses are very brief, we're
16 anticipating a hearing about today, hearing from
17 today, Kevin Eisenhower, Sergeant Faust. In their
18 reports there's mention of a demonstration of with
19 the teddy bear in their office. I don't, I'm not
20 assuming they're going to go into that or try to
21 have a Teddy bear up there, but we would like to
22 have that excluded from their testimony.

23 THE COURT: Have what excluded? A
24 demonstration here in the courtroom?

25 MS. PINNOCK: Any sort of demonstration or

1 mentioning that there's a shaking of a teddy bear in
2 the office.

3 MS. CAMPBELL: If they want to stipulate
4 that his confession is valid, we don't have problem
5 with it. Part of what he did during his confession
6 is they had a teddy bear there. They handed it to
7 him. He was talking about how he was shaking the
8 baby at which point he then grabs the teddy bear and
9 starts shaking it violently, and then they go
10 through a period of questions with him about how
11 long did you shake it and they go 15 seconds, 30
12 seconds, getting longer but they were going to
13 demonstrate anticipating him to show ---

14 THE COURT: Who is going to demonstrate?

15 MS. CAMPBELL: Investigator Isenhoward.
16 He witnessed it.

17 THE COURT: I'm gonna allow him to go into
18 that. I'm not gonna allow a demonstration by
19 somebody else.

20 MS. PINNOCK: Your Honor.

21 THE COURT: He can describe what he
22 observed, but I'm not gonna let him try and recreate
23 what he alleges that the defendant did in the
24 interrogation.

25 MS. PINNOCK: Your Honor, our problem is

1 that a teddy bear is not appropriate example of a
2 human child.

3 THE COURT: Well, you can make that
4 argument in your closing or you can address that on
5 your cross-examination, but that was something that
6 was done in the course of this investigation and I'm
7 gonna allow him to do it. This may go to the
8 credibil-- I mean, the weight of whatever his
9 testimony is. I don't think he -- we're just not
10 three years later gonna have somebody demonstrate
11 something that occurred with a teddy bear when your
12 witness didn't, didn't participate in that process.
13 He observed it, but trying to recreate that I think
14 is gonna to be very difficult but he can ---

15 MS. CAMPBELL: He can ---

16 THE COURT: ---certainly describe it.

17 MS. CAMPBELL: Thank you, Your Honor.

18 THE COURT: Anything further?

19 MS. PINNOCK: No, sir.

20 THE COURT: All right. Let's bring the
21 jury in.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 9:38 p.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: Ladies and gentlemen, good
2 morning to you. I don't want y'all to think because
3 we bring you ten minutes late that we're, you were
4 having to wait for us. We actually started at 9:30,
5 but we had a few housekeeping matters that we have
6 to take up and that's — if you're not in here at
7 9:30 that's because we're dealing with something in
8 this case that has to be resolved either order of
9 witness, things of that nature. Let me ask you
10 before we get started, ladies and gentlemen, anybody
11 have any conversation about this case or were you
12 approached by anybody to discuss the case or
13 discussed the case with anyone since we left
14 yesterday afternoon?

15 (There was no response.)

16 THE COURT: Did anybody read anything,
17 listen to anything, watch anything on television,
18 anybody do any investigation in this case, get on
19 the computer, do anything of that nature?

20 (There was no response.)

21 THE COURT: All right, Ms. Harris, where
22 is Ms. Harris? You wrote me a note last night and
23 asked about taking notes. My policy normally is to
24 not let the jury take notes. I'm concerned
25 sometimes that jurors in taking notes, they're

1 writing things down and they write it down wrong or
2 they're, get involved in writing and miss some of
3 the testimony and if they write it down wrong when
4 they're in deliberations, it's sometimes more
5 difficult to convince that juror that, hey, that's
6 not really what was said. So my policy is normally
7 not to allow that. I think I'm gonna continue that
8 here today. I feel confident looking at y'all that
9 you are going to be able to understand each and
10 everything, and so I'm gonna go ahead and decline
11 that at this point in time. If something changes we
12 might revisit the issue at sometime in the future
13 so.

14 All right, ladies and gentlemen, as you
15 recall we broke a little early yesterday because of
16 my situation, and I think the State has a full list
17 of witnesses and ready to proceed again here today
18 so I'll call on one of my Solicitors to proceed.

19 If you would please.

20 MS. SIMPSON: Thank you, may it please the
21 Court, the State calls Doctor Michael Hayes.

22 WHEREUPON,

23 **MICHAEL T. HAYES,**

24 having been duly sworn by the Clerk, testified as
25 follows:

SW - M. HAYES - DIRECT

1 THE CLERK: Thank you. Please have a seat
2 in the witness stand and state your full name for
3 the record.

4 THE WITNESS: Michael Thomas Hayes.

5 **DIRECT EXAMINATION**

6 BY MS. SIMPSON:

7 Q Doctor Hayes, what is your profession?

8 A I work as emergency physician at Providence
9 Hospital.

10 Q And how long have you been with Providence
11 Hospitals?

12 A May 1995.

13 Q And what is your position? I know you said you
14 work in emergency services. What is your position
15 there?

16 A I'm attending physician in the emergency room.

17 Q And as an attending physician in the emergency
18 room what do your duties include?

19 A Broadly handling any patient that comes through
20 the door.

21 Q And what types of cases do you see?

22 A Over the years there are any type of case you can
23 imagine. I mean, the, there are very few things I
24 haven't seen.

25 Q So any type of emergency situation where a person

SW - M. HAYES - DIRECT

1 comes into the ER, be it gunshot wound, stab wounds,
2 just sick, or some type of emergency trama?

3 A Or almost nothing sometimes.

4 Q And can you tell the jury a little bit about your
5 educational background and your training.

6 A So I came from New Jersey and went to Furman
7 University in Greenville, South Carolina, finished
8 with a bachelors in chemistry, went to Medical
9 University in Charleston, finished 1990 with a
10 medical doctorate degree. I went to Los Angeles for
11 residency at the Los Angeles County University of
12 Southern California Hospital in internal medicine,
13 finished in three years. Spent an additional year
14 as a clinical instructor, chief resident role where
15 I attended on the wards. Returned to South
16 Carolina, went to law school, started working in the
17 Providence emergency department in May of '95 and
18 I've been there ever since.

19 Q And are you Board certified to practice?

20 A I'm Board certified internal medicine in 1993,
21 recertified in 2003, recertified just last year in
22 2013, so yes.

23 Q What is internal medicine?

24 A Generally it's adult medicine.

25 Q And but through your training it is included all

SW - M. HAYES - DIRECT

1 types of areas within?

2 A I've seen pediatric and obstetrical patients the
3 entire time I've been there.

4 Q Can you tell us a little bit about Providence
5 Hospital, specifically Providence Northeast and the
6 services that are provided there?

7 A It's a small community hospital, approximately 28
8 beds, full service emergency department. At the
9 time in 2011 we had obstetrical services. We no
10 longer do; it's now orthopaedic hospital. But I
11 characterize it as small community hospital with a
12 busy emergency department.

13 Q And focusing on child victims, have you had
14 occasion to treat pediatric patients at Providence
15 Northeast?

16 A Yes.

17 Q And how many patients would you say you've
18 treated as far as pediatric?

19 A I hadn't considered that before I came in, and
20 I'd need a minute to think about how many patients
21 I've seen but.

22 Q But a number of patients in your practice?

23 A Hundreds certainly.

24 Q And have cases presented to you where there have
25 been suspected child abuse or things of that nature?

SW - M. HAYES - DIRECT

1 A Rarely, but yes.

2 Q And in those cases is Providence Northeast really
3 equipped to handle extensive severe injured,
4 injuries, to pediatric patients?

5 A Not pediatric patients, nor adult patients.

6 Q And on occasion when a child presents to you with
7 severe injuries what is your protocol, where would
8 you send them?

9 A So we stabilize the patient and arrange for
10 transfer to Palmetto Richland.

11 Q And are all the children that come in necessarily
12 transported to Palmetto Richland?

13 A Any pediatric patient that is admitted to the
14 hospital be transmitted to Palmetto Richland, but
15 vast majority we home.

16 Q So you've treated some where there was just
17 general sickness where they could leave that day?

18 A All the time.

19 Q I want to turn your attention to May 23rd of
20 2011. Did you have a occasion to become involved in
21 this case and in the care of the victim K.H. [REDACTED]
22 [REDACTED]?

23 A Yes, I did.

24 Q Can you tell us how that occurred.

25 A The child was transported by EMS to our emergency

SW - M. HAYES - DIRECT

1 department, cardiopulmonary arrest. By the time the
2 child arrived there was a heart beat. The EMS
3 personnel had provided oxygen through a mask device
4 attached to a bag for pushing the air in attached to
5 a hundred percent oxygen. They had established
6 intravenous access, given normal saline which is
7 just a maintenance fluid and Epinephrin which is
8 commonly known as adrenaline which is ---

9 MR. STRICKLER: Your Honor, at this point
10 in time, if she's gonna ask this witness to testify
11 as an expert I ask he be offered as an expert.

12 MS. SIMPSON: Your Honor, at this time I
13 would offer him as an expert in emergency medicine.

14 MR. STRICKLER: I have no voir dire for
15 this witness.

16 THE COURT: Any objection to him being
17 admitted?

18 MR. STRICKLER: No, sir.

19 THE COURT: All right, I'm --- ladies and
20 gentlemen, I think I told you at the, when I made my
21 opening comments is that one of the types of
22 witnesses you might have on a case such as this is
23 what we call expert witness, and the law provides if
24 scientific, technical, or other specialized
25 knowledge will assist the trier of the fact in

SW - M. HAYES - DIRECT

1 understanding any evidence or determining any fact
2 that may be an issue in a case, then a witness can
3 be qualified as an expert by virtue of his or her
4 knowledge, skill, experience, training, or
5 education, and as such can offer an opinion in his
6 or her areas of expertise. The State has offered
7 this witness as an expert in the field of internal
8 medicine. I will find him qualified as an expert in
9 the field of internal medicine. He can offer
10 opinions in that, his area of expertise. You are to
11 give his testimony such weight and credibility as
12 you deem appropriate as you will with any and all
13 witnesses who will testify in this trial. Thank
14 you.

15 MS. SIMPSON: Thank you, Your Honor.

16 BY MS. SIMPSON:

17 Q Going back, so she was transported to you by EMS.
18 And can you tell us again her condition at the time
19 she presented to you.

20 A There was a heart beat and a pulse, was not
21 breathing, was being provided oxygen through the bag
22 valve mask apparatus that I described, had an IV
23 established.

24 Q What's the purpose of establishing an IV?

25 A For giving medication.

SW - M. HAYES - DIRECT

1 Q And so she wasn't essentially breathing on her
2 own at that point; the mask was breathing for her?

3 A That's right.

4 Q And once she came into the ER what did you
5 observe and what did you do?

6 A On arrival I realized that she needed an air way
7 and so I placed an endotracheal tube between her
8 vocal cords into her air way to breathe for her, and
9 the nurses were busy getting vital signs and
10 starting intravenous fluid. And then it was a
11 matter of ordering tests to determine extent of the
12 injury.

13 Q So the first course of action, the most primary
14 concern, was to establish an air way?

15 A Yes.

16 Q How is that done, intubation?

17 A Yes. Placed between vocal cords. You lift up
18 the tongue and the soft tissues of the pallet in
19 order to place a plastic, hollow plastic tube
20 between vocal cords into the bronchial tree so you
21 can direct pressure on the air going in.

22 Q And were you able to actually establish an air
23 way at that point?

24 A Yes.

25 Q You indicated the other -- you were the attending

1 physician, correct?

2 A That's right.

3 Q Essentially in charge of what was going on?

4 A That's right.

5 Q And other nurses were obtaining vitals and things
6 of that nature. Can you tell us what type of
7 information they were trying to obtain?

8 A Normal vital signs, blood pressure, pulse,
9 temperature, oxygen saturation. They'd be
10 establishing other intravenous lines in case the
11 first one was faulty.

12 Q And as this was going on I know things are
13 probably happening quickly as far as life saving
14 efforts, were you in communication with Richland,
15 the pediatric intensive care unit?

16 A As soon as we had information available I believe
17 after CAT scanning, then we contacted Richland for
18 transfer.

19 Q And you said CAT scanning, what do you mean by
20 that?

21 A Computer tomography is a, I guess now very old
22 x-ray procedure where you get a three dimensional
23 look at structures in the body.

24 Q And so CTs were ordered in this case?

25 A Yes.

SW - M. HAYES - DIRECT

1 Q And the information that you're receiving, are
2 you directly providing that information or is
3 someone providing information to another doctor at
4 Richland Memorial?

5 A I'm sorry, I didn't understand the question.

6 Q As you are -- the information that you're
7 receiving serving as far as her condition and her
8 vital signs and things of that nature, is that
9 information being communicated with the doctors at
10 Richland Memorial?

11 A I would provide necessary information to the
12 accepting doctor. Many of the smaller details
13 including more of the more important lab work and
14 probably the vital signs were provided between the
15 nurses.

16 Q Okay. So nurses would have potentially provided
17 things such as pulse, blood pressure, and
18 temperature, that would have been relayed at the
19 time?

20 A Yes.

21 Q And throughout this you immediately knew the goal
22 was to stabilize her so that she could be
23 transported, correct?

24 A That's correct.

25 Q Did you conduct any further testing or request

1 any further testing in this case?

2 A Yes.

3 Q What were those tests?

4 A There were CT scans of the head, the cervical
5 spine, chest, abdomen, pelvis. Lab work to include
6 a complete blood count, comprehensive metabolic
7 profile including things like liver and kidney
8 function, arterial blood gas determination to see
9 oxygenation and the extent of acid in the body.

10 Q Without going into details, were you able to
11 observe also her physical condition at the time and
12 her appearance?

13 A Yes.

14 Q And you use that to evaluate her condition as
15 well?

16 A Yes.

17 Q At some point were you able to get her stable
18 enough for transport?

19 A Yes.

20 Q What was her condition or how would you describe
21 her condition upon discharge from you all?

22 A Hemodynamically stable meaning blood pressure and
23 pulse were stable, neurologically unstable.

24 Q Okay. And describe specifically I believe in
25 your reports, when she presented to you her pupils

SW - M. HAYES - DIRECT

1 were extremely dilated, correct?

2 MR. STRICKLER: Objection to the leading,
3 Your Honor.

4 THE COURT: Sustained.

5 BY MS. SIMPSON:

6 Q What was the status of her pupils?

7 A Her pupils were unreactive and dilated.

8 Q And what does that mean to you as a doctor?

9 A Neurological injury.

10 Q And neurological being what?

11 A Brain.

12 Q And when she left you was she still intubated and
13 having -- was she, her air way was still
14 established, things of that nature, but her brain
15 functioning wasn't functioning essentially?

16 A Correct.

17 Q What did you do once you had her stabilized, what
18 was ordered?

19 A Transfer.

20 Q Were you all actually responsible for the
21 transfer of K.H. [REDACTED]?

22 A Palmetto Richland has a specialized pediatric
23 transport team that came to transfer the patient.

24 Q Beg the Court's indulgence. And upon her
25 transfer was that the extent of your involvement

1 with the treatment of K.H. [REDACTED]?

2 A Yes.

3 Q Thank you, Doctor Hayes.

4 THE COURT: Mr. Strickler.

5 MR. STRICKLER: Thank you, sir. May it
6 please the Court.

7 **CROSS-EXAMINATION**

8 BY MR. STRICKLER:

9 Q Good morning, Doctor.

10 A Good morning.

11 Q My name is Doug Strickler. I'm one of the
12 attorneys representing the defendant in this case.
13 Just very few questions for you. As I understand
14 your testimony your hospital is a relatively small
15 operation, correct?

16 A Yes.

17 Q You say 28 beds?

18 A It may be more, but it's less than a hundred for
19 sure.

20 Q Okay. So you have some limited ability to house
21 patients inpatient basis, and you also operate an
22 emergency service, correct?

23 A Correct.

24 Q Okay. Now on the 23rd, the day we're talking
25 about, when did your patient arrive at the hospital?

SW - M. HAYES - CROSS

1 A May I consult the record?

2 Q Certainly.

3 A Nursing staff has the patient arriving at 13:01.

4 Q That would be 1:01 in the afternoon?

5 A Yes, sir.

6 Q And you've described what y'all did there as far

7 as your treatment and your testing in this matter

8 and the fact that subsequent to that as is the

9 normal protocol she was transferred to Palmetto

10 Richland pediatric?

11 A Correct.

12 Q And can you tell us when that transfer occurred?

13 A Once again, I'd like to look at the record.

14 Q Certainly.

15 A Nurses have it at 15:07 or 3:07.

16 Q Okay. S K.H. [REDACTED] was at your facility for

17 roughly two hours?

18 A Correct.

19 Q Okay. Now just a couple more things. The

20 primary procedure I hear you referencing was placing

21 an endotracheal tube in this case, correct?

22 A Correct.

23 Q So there was no air way present on this child

24 when she arrived at the, at your facility?

25 A Bag valve mask with oxygenation. No advanced air

1 way.

2 Q Okay, and you lost me just a little bit on your
3 terminology. Any air way at all, or what?

4 A So we distinguish between advanced air way and
5 just oxygenation so there is a mask placed over the
6 nose and mouth with a, you can say a bag, for
7 connected to oxygen to push the oxygen into the
8 lungs which is not ideal; and so the best thing to
9 do is place the advanced air way further into the
10 air way in order to provide better oxygenation.

11 Q So if I understand you correctly, once she
12 arrived she had a bag and was having air forced into
13 her via that bag?

14 A Correct.

15 Q But there was no air way in place as far as down
16 her breathing?

17 A Correct.

18 Q Thank you very much.

19 MS. SIMPSON: Nothing further from the
20 State. May this witness be excused?

21 THE COURT: Thank you, Doctor, you may
22 step down. You're free to leave.

23 THE WITNESS: Thank you.

24 MS. MCDUFFIE: May it please the Court,
25 the State calls Doctor Elizabeth Mack.

SW - E. MACK - DIRECT

1 WHEREUPON,

2 **ELIZABETH MACK,**

3 having been duly sworn by the Clerk, testified as
4 follows:

5 THE CLERK: Please have a seat in the
6 witness stand and state your full name for the
7 record.

8 THE WITNESS: Elizabeth Mack.

9 **DIRECT EXAMINATION**

10 BY MS. MCDUFFIE:

11 Q Doctor Mack, where are you currently employed?

12 A Palmetto Children's Hospital.

13 Q And what are your duties with Palmetto Children's
14 Hospital?

15 A I'm a pediatric intensivist and director of
16 quality for the Children's Hospitals.

17 Q Will you please tell the ladies and gentlemen of
18 the jury a little bit about your education,
19 background and training, in the field of pediatric
20 intensive care?

21 A Okay. I am from Columbia. I went to undergrad
22 medical school here in Columbia. I did my pediatric
23 residency here for three years, and then I went to
24 Cincinnati Children's Hospital to do a pediatric
25 critical care fellowship for three years and I did a

SW - E. MACK - DIRECT

1 masters in biostatistics and epidemiology while I
2 was there, and then I came back here four-and-a-half
3 years ago.

4 Q And you've been employed as a pediatric
5 intensivist at Palmetto Health Children's Hospital
6 since 2009?

7 A That's correct.

8 Q And please tell the jury what a pediatric
9 intensivist does.

10 A So basically our job is to stabilize critically
11 ill children so anything that can threaten a child's
12 life, it's ultimately our responsible to sort of try
13 to figure out what that is and then try to save
14 their life if that's possible; and if it's not
15 possible or not maybe the best way to go, then make
16 the end of life as painless as possible.

17 MS. MCDUFFIE: Your Honor, at this time
18 we'd offer Doctor Mack as an expert in pediatric
19 intensive care.

20 MR. STRICKLER: Without objection.

21 THE COURT: All right, ladies and
22 gentlemen, again I'll tell you scientific, technical
23 or other specialized knowledge will assist you, the
24 trier of the facts, in understanding any evidence or
25 determining any fact and issue. A witness may be

SW - E. MACK - DIRECT

1 qualified as an expert by virtue of his or her
2 knowledge, skill, experience, training or education
3 and may offer opinions in his or her areas of
4 expertise. The Court finds Doctor Mack to be
5 qualified as an expert in pediatric intensive care;
6 and such, she may offer opinions in that area of
7 expertise. Again, you are to give her testimony
8 such weight and credibility as you feel appropriate
9 as you will with all witnesses who testified.

10 BY MS. MCDUFFIE:

11 Q Doctor Mack, what's the difference between what a
12 pediatric intensive care doctor does and what the
13 normal pediatrician that many of us will take our
14 children to?

15 A So, I don't work in an office; I work only in a
16 hospital. And I don't do like well baby shots or do
17 well check ups, or anything like that. My only role
18 is to work in the pediatric ICU and stabilize and
19 treat critically ill children.

20 Q And are you Board certified as a pediatric
21 intensive care physician?

22 A I am Board certified pediatrician and pediatric
23 intensivist.

24 Q And what is being Board certified? How does that
25 distinguish you from other doctors in the field?

SW - E. MACK - DIRECT

1 A Basically you have to take a test and pass it and
2 so it's just sort of a, you know, extra
3 certification that you can get to sort of say that
4 you meet the standard of pediatric intensivists
5 across the country.

6 Q So you're Board certified pediatrician and
7 pediatrician intensivist?

8 A I am.

9 Q And you work at Palmetto Health Children's
10 Hospital?

11 A Correct.

12 Q You work with Ms. Campbell's husband in the
13 children's hospitals?

14 A Correct.

15 Q And he did not treat K.H. [REDACTED], nor did you
16 discuss this case with him in any way, did you?

17 A Correct.

18 Q On May 23rd of 2011 how did you first become
19 aware that K.H. [REDACTED] was gonna be transported to
20 Palmetto Health Children's Hospital?

21 A So I got the phone call from Providence Northeast
22 and telling me that there was a critically ill child
23 there; and of course, we accepted her and dispatched
24 our transport team to go pick her up.

25 Q And what information was provided to you prior to

SW - E. MACK - DIRECT

1 her arriving at the children's hospital.

2 A That she had come in with basically getting CPR
3 and her life was in danger and that they had done
4 their very best both in the pre-hospital setting and
5 in the hospital setting to resuscitate her and had
6 gotten a heart beat back so she had return of her
7 own circulation. In other words, it wasn't
8 requiring CPR actively, and she needed to come to
9 us.

10 Q And so whe [K.H.] arrived at Palmetto Health
11 Children's Hospitals please describe to the jury
12 what you did when she initially presented?

13 A So I was there when our transport team brought
14 her in, and obviously all hands-on deck. She's
15 about as sick as they get. And so basically trying
16 to assess the severity of her illness and injuries
17 and diagnose and stabilize her as best we can. So
18 you know, vital signs first thing to do, try to
19 stabilize all those, is the first priority.

20 Q And so you collected vital signs fro [K.H.]?

21 A Right.

22 Q Do you recall what her temperature was when she
23 arrived at your facility?

24 A Sure. Her temperature was 29.8-degree Celsius
25 which is 85.6-degrees Fahrenheit.

SW - E. MACK - DIRECT

1 Q What is normal for that?

2 A Much higher than that so generally in the
3 98-degree Fahrenheit height range or 37-degree
4 Celsius range.

5 Q And do you recall her weight and things of that
6 nature?

7 A Sure.

8 Q Can you tell us.

9 A Her weight was 7.9-kilos which is, you know, 18,
10 19 pounds, something like that. And her -- you want
11 me to continue with her vitals or?

12 Q Please.

13 A Okay. Her heart rate was 126, which is, would be
14 normal for that age except in the setting of
15 hypothermia, extreme hypothermia. She's relatively
16 bradycardiac. In other words, her heart rate is
17 lower than it would be before you warmed her up. So
18 she's relatively bradycardic. In other words, her
19 heart rate is inappropriately low; and her blood
20 pressure is what you would expect for this situation
21 that she's in, it's 114 over 99. Her respiratory
22 rate spontaneously. In other words, what she's
23 doing on her own was zero, and we were breathing for
24 her obviously with a ventilator that through the
25 endotracheal tube that had been placed. Her oxygen

SW - E. MACK - DIRECT

1 levels were acceptable, but on the lower end at
2 91 percent requiring extra oxygen.

3 Q And you also did a general assessment of
4 K.H. 's over all concern?

5 A Sure.

6 Q Please describe that for the jury.

7 A So with an exam basically or?

8 Q Just how sick she was.

9 A How sick she was. So she had life threatening
10 critical illness, and this -- she has basically no
11 neurologic function that anyone can detect, but a
12 temperature that low, you have to rewarm someone
13 before you can basically say that they have no
14 neurologic function. And she is, at any moment, you
15 know, we're thinking she may go back into cardiac
16 arrest so trying everything that we can go to
17 stabilize all of her vital signs and really to try
18 to ward our any further neurological injury, or you
19 know, deterioration of her -- she's got multisystem
20 organ failure so trying to sort of ameliorate that
21 and also figure out what happened.

22 Q And when she presented, what in your opinion,
23 were her chances of survival?

24 A So, just right off the bat having seen other kids
25 in this situation, you know that this, her chances

SW - E. MACK - DIRECT

1 of survival are slim to none; and actually, when
2 preparing for this case I calculated her predicted
3 mortality rate and with some known severity of
4 illogical calculators, I know, upwards of
5 95 percent.

6 Q And you said that her temperature when she
7 presented to you, and I think that was around 3 that
8 afternoon, was 86-degrees or?

9 A 85.6.

10 Q And can you tell the jury if you're able to
11 determine how long it took her to get her
12 temperature that low or what factors could cause her
13 temperature to be that way?

14 A Sure. Unfortunately, I don't think anybody
15 really is able to say how long it would take to get
16 her temperature that low. Actually done some
17 reading on this to try to figure that out, and
18 there's so many factors that go into this so whether
19 you're exposed or not. In other words, do you have
20 clothes or what time of year is it, it's may, so
21 it's, you know, not icy cold outside, although I
22 guess the weather would be anything here. And then
23 the degree or the amount of down time is probably
24 the biggest predictor here so, in other words, you
25 know, if you don't -- if your heart isn't beating,

SW - E. MACK - DIRECT

1 then there's no warm blood to circulate in your body
2 and you get cold.

3 Q And so there's no way for you to tell if her
4 heart hadn't -- her blood hadn't been circulating
5 for two minutes or two hours or longer?

6 A No.

7 Q And when a patient presents to the hospital is it
8 important for you to get past medical history and
9 also an understanding of what happened leading up to
10 the symptoms the child was presenting with at the
11 hospital?

12 A Absolutely.

13 Q And please explain to the jury why that's
14 important.

15 A So you want to know if there's anything, you
16 know, she's only 17 months old but some kids have
17 very extensive past medical histories, in other
18 words, things that happened when they were born or
19 since then, that could have lead to any problem that
20 could occur. So just clarifying, again, with
21 through the records and with anybody that's present
22 that, you know, she was a healthy girl prior to
23 that, is important to be able to narrow down what
24 exactly happened and how you can make it better if
25 that's possible.

SW - E. MACK - DIRECT

1 Q And this is important for you in terms of being
2 able to diagnose and treat the injuries that the
3 child has I believe?

4 A What the child has, yes.

5 Q And in this case did you obtain a medical and
6 history from various sources about K.H. [REDACTED]?

7 A I did.

8 Q And please tell the jury the past medical history
9 you were able to obtain.

10 A So the past medical history that I obtained was
11 through the mother who was the person present, and
12 basically she indicated that K.H. [REDACTED] was a twin.
13 She and brother K. H. 2 were born at 36 weeks, which
14 is about four weeks — when you give a due date
15 that's 40 weeks so about four weeks early, which is
16 about on par for twins. She was born via C-section,
17 and she specifically indicated there were no
18 complications with the pregnancy, labor, or
19 delivery. And the twins were born at 4-pounds
20 4-ounces and 4-pounds 5-ounces, although mom didn't
21 remember, you know, wasn't sure which one but t hey
22 were only one ounce apart. Mom — excuse me,
23 K.H. [REDACTED] came home from the newborn nursery with the
24 mother. K. H. 2 stayed in the hospital for a few
25 days. K.H. [REDACTED] had never been hospitalized and she

SW - E. MACK - DIRECT

1 said never had any emergency department visits,
2 surgeries, wasn't on any medications, so a healthy
3 girl.

4 Q And it's also for you to obtain whatever
5 information you can about the factors or what
6 happened leading up to the time the injury occurred?

7 A Correct.

8 Q And you were able to obtain from the mother that
9 she received a phone call from her boyfriend Mr.
10 Gaddist saying that K.H. [REDACTED] wasn't breathing?

11 A Correct.

12 Q And that he ---

13 MR. STRICKLER: I would object to leading
14 at this point, Your Honor.

15 THE COURT: Sustained.

16 MS. MCDUFFIE: Your Honor, may we
17 approach.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record
20 discussion.)

21 BY MS. MCDUFFIE:

22 Q And Doctor Mack, Ms. Miller told you that
23 Mr. Gaddist said that he that day had gotten
24 K.H. [REDACTED] up, prepared her a jelly sandwich and she
25 wasn't acting right and then he called?

SW - E. MACK - DIRECT

1 A Correct.

2 Q And those were the facts and circumstances that
3 Ms. Miller relayed to you on May 23rd of 2011?

4 A Correct.

5 Q And are those statements that Ms. Miller told you
6 or the history she was able to provide you from Mr.
7 Gaddist consistent with the injuries that you
8 observed on K.H.?

9 A No.

10 Q After you initially assessed her and obtained a
11 history on her, please describe for the jury the
12 course of treatment that you proceeded with.

13 A So the primary course of action is to try to
14 stabilize her vital signs as best you can and
15 prevent any further injury. Unfortunately, there is
16 no treatment really for the injuries that she's
17 already sustained other than trying to not let her
18 worsen anymore; in other words, you can't undo
19 what's been done. But I basically tried to
20 stabilize her blood pressure, rewarm her to get a
21 better sense of what her neurological exam would be.
22 Once she was, had a normal temperature, was
23 normothermic, and then we tried to give her or we
24 gave her some medicine that in some settings will
25 decrease the degree of swelling in the brain. It's

SW - E. MACK - DIRECT

1 not usually very effective in this situation but we
2 gave it because there's not much else to do and it
3 doesn't have too much in the way of side effect,
4 particularly in the setting of a very critical
5 situation like this. And really, unfortunately,
6 it's stabilization and waiting.

7 Q And when you or any patient is being treated, or
8 specifically K.H. at the Children's Hospital,
9 are you the sole physician providing services?

10 A No.

11 Q Is there a team of doctors that are providing
12 services to K.H.?

13 A Correct.

14 Q Please explain that to the jury.

15 A Sure. So, I'm attending physician. In other
16 words, sort of the physician in charge of her care
17 so to evaluate all aspects of her care, anywhere
18 from medical to social, and to take input from the
19 other physicians, the other consulting physicians,
20 and take their opinions and then put it together
21 sort of for her whole body or her whole system so we
22 utilize residents because we're a teaching hospital
23 so I'm sure that there was a resident on with me
24 that night. And then we get consulting physicians
25 to help us with the other areas of the body that are

SW - E. MACK - DIRECT

1 affected.

2 Q And in this case you consulted with pediatric
3 radiologist?

4 A Correct.

5 Q Ophthalmologist?

6 A Correct.

7 Q Forensic pediatricians?

8 A Correct.

9 Q And all of those were part of the care team for
10 K.H. [REDACTED]?

11 A Correct.

12 Q And you were unable to develop a plan for her
13 care or a treatment assessment plan to treat her?

14 A Correct.

15 Q Please tell the jury what your plan was, what
16 your finding were with K.H. [REDACTED]?

17 A So, tests or physical exam or?

18 Q Let's start with the -- let's start with the
19 injury to the brain. Please tell the jury what you
20 observed and what your plan of care was.

21 A So, the injury to the brain is when you're
22 evaluating both what happened, what is the injury
23 and how bad is it, sort of two things go into that.
24 One is the child's physical exam. You look at the
25 child, do some physical exam tests yourself, and

SW - E. MACK - DIRECT

1 then, of course, the other is other tests that you
2 can perform that you can't do normally with your
3 hands. So, just when looking, doing a physical
4 exam, looking at her, she has unreactive pupils. In
5 other words, really big pupils that when you shine a
6 light in them do not constrict, and that's a very
7 primitive reflex of the brain that's not
8 functioning. She has no spontaneous breathing and
9 she's also not received any medicine to sedate her.
10 Of course, the caveat to do that is at this moment
11 she is also still really cold and so we have to
12 rewarm her really to know well what her neurologic
13 exam is. But she essentially has zero function of
14 her brain on arrival. On every test or reflex that
15 we can perform with a physical exam she has nothing.
16 And you know, we can go through exactly all what
17 that is, but she didn't have any findings consistent
18 with any brain function. So then the other piece of
19 that is testing that you can perform so the CAT
20 scan, MRI which is little bit of fancier scan, and
21 both of those things so cerebral edema, in other
22 words, bad brain swelling and lack of oxygen getting
23 to the brain, and that is sort of -- that's
24 consistent. Those findings are consistent with her
25 brain exam and the one difference is that cold

SW - E. MACK - DIRECT

1 temperature doesn't cause you to have weird things
2 on your radiology studies. In other words, you can
3 look at that and say this brain injury is really bad
4 in the context of a low temperature and know that
5 the low temperature is not causing the swelling and
6 this kind you're seeing on the exam.

7 Q Rather, lack of function of the brain and heart
8 is what's causing the low temperature. The low
9 temperature is not causing the injury to the brain
10 and the heart?

11 A Correct.

12 Q An **K.H. [REDACTED]** basically upon presentment was brain
13 dead?

14 A We -- you can't diagnose that at the time because
15 of her temperature, and also it's recommended that
16 you wait at least 24 hours particularly with a child
17 just in case something changes; but, yes, ultimately
18 she is diagnosed brain dead and that's certainly our
19 inclination of what's going to happen when she first
20 arrives.

21 Q And when assessing the injuries to her brain,
22 were you able to rule out these coming from any
23 diseases or explainable sources?

24 A Certainly, there's no history given to go along
25 with that so, you know, somebody tells you something

SW - E. MACK - DIRECT

1 that makes sense with what you see, then you can
2 sort of put the two things together; but if you
3 don't get any information about what happened, and
4 then no information does not equal what you see on
5 the scan, certainly.

6 Q And in this case did K.H. have any viral or
7 bacterial illnesses that were causing this injury to
8 her brain?

9 A No.

10 Q And your finding was that this was non-accidental
11 trama?

12 A Correct.

13 Q And explain to the jury what that means.

14 A Non-accidental trama is essentially abuse. And
15 that can take many forms, and I, you know, won't go
16 through them all 'cause they don't necessarily apply
17 to her. Essentially some sort of inflicted trama on
18 to the child; and certainly in context with all the
19 injuries that she had, that would be the diagnosis.

20 Q And would you say that the non-accidental trama
21 to K.H.'s brain was mild, moderate, severe, how
22 would you ---

23 A Her brain injury is what killed her, yeah.

24 Q And after suffering the injury that K.H. did
25 to her brain, are those injuries typically

1 compatible with life?

2 A Absolutely not.

3 Q And if a person suffers the type of injury that
4 K.H. did to her brain, would they be up walking
5 around, talking, living?

6 A No.

7 Q Could they be conscious and still functioning for
8 extended period of time?

9 A No.

10 Q Do you have any estimate based on your training,
11 experience, on how long someone could function
12 without showing symptoms with those types of
13 injuries?

14 A It would pretty much be immediate because what
15 she had is a lack of oxygen to her brain so that,
16 that causes the problem right away.

17 Q And so the injury to her brain and the
18 presentation of symptoms, her being unconscious and
19 nonresponsive, occurred simultaneously or in very
20 short time with each other?

21 A Yes.

22 Q And you consulted with ophthalmology in this case
23 as well?

24 A Correct.

25 Q And please tell the jury why that was important

SW - E. MACK - DIRECT

1 and what exactly you were looking for for K.H.'s
2 care and treatment.

3 A Sure. So an ophthalmologist helped — we consult
4 them for any time where even suspicion at all, even
5 if a story makes sense we will consult them to look
6 for any type of eye injuries because often eye
7 injuries accompany abuse. So the most common thing
8 that we would ask them to look for would be any type
9 of bleeding in the eye, and that's called retinal
10 hemorrhage. And then sometimes it's even more sever
11 than that and there are some findings that
12 unfortunately that ophthalmologists can see that are
13 basically often only consistent with abuse so.

14 Q And please describe for the jury the injuries to
15 K.H.'s eyes?

16 A So she had bilateral, in other words both sided,
17 her right and her left retinal hemorrhages so
18 there's bleeding in her retina that on both sides.
19 And in addition, on the left side there was
20 retinoschisis, in other words, tearing apart of the
21 retina from the rest of the brain and the back of
22 the eye, which is quite severe in terms of eye
23 findings.

24 Q And how does one's retina tear detach?

25 A Really, there are not that many ways that

SW - E. MACK - DIRECT

1 happens. It has to do with forces so acceleration
2 and deceleration forces so, you know, that type of
3 motion, and there's little that's known to my
4 knowledge otherwise that causes that sort of injury.

5 Q An [K.H. █████] had that -- she had bleeding in both
6 her eyes and then the left eye had the retinoschisis
7 that you just described?

8 A Correct.

9 Q And radiology was also consulted i [K.H. █████]'s
10 care?

11 A Correct.

12 Q And di [K.H. █████] have broken ribs?

13 A She did.

14 Q Please tell the jury about those injuries.

15 A Sure. So on the left side she had fractures of
16 the 8th and 9th rib, and according to the
17 radiologist possibly on the 7th and the 12th rib.
18 These are posterior rib fractures. In other words,
19 in your rib, the rib cage sits like this, and
20 they're in the back.

21 MR. STRICKLER: Your Honor, I object to
22 all these testimony regarding the ribs pursuant to
23 pretrial hearing last week.

24 MS. MCDUFFIE: Your Honor.

25 MR. STRICKLER: We understand your ruling,

SW - E. MACK - DIRECT

1 just trying to preserve objection.

2 THE COURT: All right.

3 BY MS. MCDUFFIE:

4 Q Please continue.

5 A About the ribs?

6 Q Yes, please.

7 A So, on the left side on the back, the 8th and the
8 9th, and then possibly two others are fractured.

9 Q And when a patient is living, the best way or the
10 only way you have to tell about broken bones is
11 through radiographs, CTs, things of that nature?

12 A Correct.

13 Q But then upon death the bones can be removed and
14 dissected to see if there's actual injury to them?

15 A Correct.

16 Q So when the information was that there were
17 possible rib fractures, that was the best diagnosis
18 that could be made at that time?

19 A Correct, and they were fairly certain about that.
20 They were seen both on x-ray and CT.

21 Q And again, you treat K.H. from the 23rd
22 until the early morning hours of May 26th of 2011.

23 At any point in time during that period did

24 K.H.'s condition improve?

25 A Unfortunately, no.

SW - E. MACK - DIRECT

1 Q Were you able to warm her body back up?

2 A We were.

3 Q And once you were able to get her body back up to
4 temperature, please tell the jury how you did that.

5 A So basically all the common things so, put
6 blankets on, that sort of thing. I don't remember
7 exactly what machines we used in her case, but we
8 put -- because as you can imagine at this degree of
9 hypothermia or low temperature, you can't just put a
10 thermometer and expect to get a temperature. It
11 doesn't register it's so low so we have to put in a
12 rectal thermometer or a thermometer in the bottom
13 that connects to the monitor specifically looking to
14 measure the temperature and then slowly rewarm. You
15 can't quickly rewarm; that's dangerous for many
16 reasons. So you have to sort of slowly rewarm and
17 readjust as you see how quickly the temperature is
18 rising.

19 Q And you were able to ge **K.H. [REDACTED]**'s temperature
20 back up?

21 A Correct.

22 Q And at that point in time once you were able to
23 bring her temperature back up, did she show any
24 signs of neurological improvement?

25 A No.

SW - E. MACK - DIRECT

1 Q And what did this indicate to you?

2 A Unfortunately, we proceeded with brain death
3 exams and she was brain dead.

4 Q Please describe to the jury how breath exams work
5 and how they proceed.

6 A Sure. So a brain death exam is basically just
7 requires her hands and a few other pieces of
8 equipment to perform. The child, so there are two
9 parts of it. There's a physical exam and then there
10 is what we call an apnea test to check for any
11 breathing. The physical exam portion that we do
12 basically, we look at the child. We look at their
13 pupils, shine a light in their eye to see if their
14 pupils are intact and that's one of the most sort of
15 primitive reflexes of the brain. All these things
16 are primitive, very basic reflexes. We're not
17 looking for anything fancy like talking or moving,
18 just sort of the reflex type things. Put a little
19 Q-tip on the eye; that's called corneal reflex, and
20 you know, if I did that to any of you, then your eye
21 should blink. We do some other reflexes where you
22 turn the head sort of left and right; and as you do
23 that, your eyes should move to sort of keep the
24 center of ambulence. We also put ice cold water in
25 one of the eyes to see if that very primitive brain

SW - E. MACK - DIRECT

1 stem reflects is intact, basically the eye should
2 move when you put cold water in them. We make sure
3 that several labs are correct because you don't want
4 to be diagnosing brain death in somebody if there's
5 some other reason for it, in other words, if there's
6 a medicine that was given or temperature is too low
7 or the salt levels are out of whack so all those
8 labs have to be perfectly, you know, on correct to
9 be able to perform the tests.

10 The second portion of the test is called
11 the apnea test. Essentially we continue to give the
12 child oxygen, but we disconnect the ventilator and
13 so the same apparatus that the gentleman was
14 describing before, the bag, is attached to her
15 breathing tube and basically we stop the ventilator,
16 continue to give oxygen and you look for a period of
17 ten minutes, literally just stare at the chest for
18 any signs of breathing. You have to get a carbon
19 dioxide level when you begin, a carbon dioxide level
20 when you end, to be sure as your carbon dioxide
21 level rises you should start to breathe again. So
22 just as if you hold your breath under water, at some
23 point your brain would say I need oxygen, my carbon
24 dioxide level is too high, same sort of situation.
25 And unfortunately she, her exam was consistent with

SW - E. MACK - DIRECT

1 brain death.

2 Q And the diagnosis that you placed on K.H.

3 upon admission was non-accidental trauma?

4 A Correct.

5 Q And the discharge diagnosis or diagnosis at death

6 that you reported were non-accidental trauma?

7 A Correct.

8 Q Diffuse global hypoxic ischemic injury?

9 A Correct.

10 Q And again, please tell the jury what that is.

11 A Sure. So that's again just basically a massive

12 stroke due to lack of oxygen to the brain

13 everywhere.

14 Q Retinal hemorrhages?

15 A Correct.

16 Q Retinoschisis?

17 A Correct.

18 Q And that's, again, the detachment of the retina.

19 Rib fractures?

20 A Yes.

21 Q Respiratory failure?

22 A Yes.

23 Q Shock?

24 A Yes.

25 Q Fluid with electrolytes, nutrition, and GI?

SW - E. MACK - DIRECT

1 A That's a sort of a category, yes.

2 Q And then you performed the first brain death exam
3 on May 25th of 2011?

4 A Yes, sir.

5 Q And your protocol dictates that you perform
6 another one 24 hours later?

7 A Yes, and that -- it's, if you looked it up now
8 it's actually changed. The new brain death guides
9 lines were released August 28th, 2011, so it was
10 just after, a few months after she died. So if you
11 looked it up now it's a little bit different than it
12 was at that time; but, yes. And of course, in the
13 case of a child you want to be absolutely sure that
14 you're not missing anything, that no one else sees
15 something that you don't see, and that you know,
16 you're a hundred percent positive that the child is
17 brain dead.

18 Q And as the attending physician you're ultimately
19 in charge of your care, but you're consulting with
20 the forensic pediatrician Doctor Rosa?

21 A Correct.

22 Q The ophthalmologist, radiologist?

23 A Correct.

24 Q And all the other members of the care team?

25 A Correct.

SW - E. MACK - DIRECT

1 Q And a second brain death exam was performed on
2 May the 26th of 2011?

3 A Correct.

4 Q And at that point the decision was made to remove
5 K.H. from life support?

6 A It's sort of a semantic thing because she's dead
7 and it's no longer life support; but yeah, it's --
8 the situation is over unfortunately, yeah.

9 Q An K.H. died at approximately five in
10 the morning on May 26th of 2011?

11 A Correct.

12 Q Beg the Court's indulgence. Doctor Mack, based
13 on your professional experience, training, and
14 background in pediatric intensive care, could
15 K.H. have survived from the injuries she
16 received on May 23rd, 201?

17 A Unfortunately, no. We tried what we could do.
18 There's unfortunately not much to be done, and so we
19 did all of the things that could possibly be done
20 for her, but no.

21 Q And again, the discharge diagnosis, the first
22 diagnosis was non-accidental trauma?

23 A Correct.

24 MS. MCDUFFIE: No further questions for
25 this witness at this time.

1 THE COURT: Mr. Strickler.

2 MR. STRICKLER: Thank you. May it please
3 the Court.

4 **CROSS-EXAMINATION**

5 BY MR. STRICKLER:

6 Q Good morning, Doctor.

7 A Good morning.

8 Q My name is Doug Strickler. I'm one of the
9 attorneys representing Antwan, and I have just a
10 very few questions please.

11 A Sure.

12 Q We've heard from the earlier doctor regarding
13 when Antwan was discharged from Providence
14 Northeast. When did he arrive at your facility?

15 A K.H. [REDACTED]? She?

16 Q Sorry, yes, she.

17 A Okay. She, the first set of vital signs that we
18 have are at 15:15 so 3:15 in the afternoon.

19 Q Okay. And that's a set that yielded the
20 temperature of 29.8 centigrade?

21 A Yes, sir.

22 Q 85.6 Fahrenheit?

23 A Yes, sir.

24 Q Do you have access to temperature readings from
25 Providence Northeast regarding what temperature was

SW - E. MACK - CROSS

1 like at that point?

2 A I don't have those on me.

3 Q Okay. 'Cause we heard that she arrived at
4 Providence Northeast, if I recollect correctly, 1:03
5 in the afternoon -- no, 1:01 rather, in the
6 afternoon so that's a period of a couple of hours
7 earlier than the reading that you have. You've
8 described what you all were able to determine as far
9 as nature of the injuries during your treatment of
10 her.

11 A Yes, sir.

12 Q You're not situated in a position to be able to
13 tell us precisely when those injuries took place,
14 correct?

15 A No.

16 Q 7:30 in the morning? No?

17 A I don't know.

18 Q 9:30 in the morning?

19 A I don't know.

20 Q 11:30 in the morning?

21 A I don't know.

22 Q You can't make any call in that regard, correct?

23 A No.

24 Q And you certainly don't sit here claiming to be
25 able to tell us based on your work, based on her

1 physical condition, based on the injuries that you
2 saw, who was responsible, correct?

3 A No.

4 Q And when you refer to having a CAT scan did you
5 have the results from the CT scan from Providence
6 Northeast provided you or did you re-run a CT scan?

7 A We took the CAT scan that she already had and had
8 our radiologist review it.

9 Q And then you subsequently did an MRI?

10 A Yes, sir.

11 Q And as to your description of your findings
12 regarding the body itself, the external physical
13 exam ---

14 A Yes.

15 Q ---you can't determine when any of the items that
16 you describe on the external exam, when those
17 occurred, correct?

18 MS. MCDUFFIE: Your Honor, may we
19 approach.

20 (WHEREUPON, counsel approached the Bench
21 for an off-the-record discussion.)

22 BY MR. STRICKLER:

23 Q We'll move on, Doctor. At the end of your direct
24 examination you were asked whether your opinion

25 K.H. [REDACTED] could have survived the injuries that she

SW - E. MACK - CROSS

1 had, and your response was no. Let me modify that
2 question just a bit. Had she received immediate
3 attention and intervention, could she have survived
4 those injuries?

5 A I'm sorry, I don't know what you mean by
6 immediate, as in a hospital or?

7 Q If whatever the injuries were caused,
8 specifically the injury to the head what you've
9 indicated was the problem, if she were immediately
10 within minutes transported to facility such as
11 yours, could she have survived in that situation?

12 A I don't know.

13 Q Okay. As I understand it, the problem in her
14 situation was a loss of brain activity, a sensation
15 of brain activity, correct?

16 A She had many problems. I'm not sure what you
17 mean by the problem.

18 Q Well, as far as what caused the death of this
19 child, she stopped breathing, was breathing for her.

20 A Yeah, the lack of breathing wasn't in the
21 hospital wasn't causing her brain problem.

22 Q Right.

23 A It's a symptom of the brain problem.

24 Q Right. And the brain problem what you resulted
25 in her death?

1 A Right.

2 Q And the brain problem was reflected by the edema
3 present there?

4 A She had fatal cerebral edema so brain swelling,
5 yeah.

6 Q And the length of time it takes for fatal edema
7 to occur?

8 A From when to when, I don't ---

9 Q Time of whenever injury happen?

10 A It varies. I mean, I don't know.

11 Q Well, I'm asking you because your testimony is to
12 the effect that very short time to loss of
13 consciousness to lack of oxygen to the brain and I
14 assume lack of oxygen to the brain is going to be
15 the result of edema which impacted the brain?

16 A So there, this type of injury is usually
17 multifactorial so part of the swelling, it will be
18 due to not breathing. Part of the swelling will
19 likely be due to other physical forces.

20 Q Okay.

21 A So it, it's, there are many things that impact
22 the swelling.

23 Q Okay. What kind of time frame can you put on the
24 swelling and sensation of breathing which leads to
25 lack of oxygen to the brain in relation to the

SW - E. MACK - CROSS

1 injury itself?

2 A I don't -- I mean, the injury, the injury caused
3 immediate symptoms which then resulted in her
4 ultimate demise.

5 Q Okay. The injury resulted in immediate symptoms
6 which eventually resulted in the lack of oxygen to
7 the brain, correct?

8 A And many other problems, yes.

9 Q Many other -- I don't mean to minimize any other
10 problems you may have.

11 A Sorry, I just -- brain problems, seems like, arm
12 problem, kidney problem.

13 Q I'm just trying to get, trying to get a handle on
14 a time period if you can give me one. If you can't
15 that's fine too; that's perfectly acceptable.

16 Between the injuries that you believe occurred to
17 the brain and the time that lack of oxygen equals
18 loss of consciousness equals sensation of breathing,
19 what kind of time frame you have for that?

20 A When the injury occurred to when she took in the
21 hospital I do not know the time. From when the
22 injury occurred to when she became symptomatic,
23 immediate.

24 Q And I'm sorry, that's a term. Symptomatic, what
25 does that mean?

SW - E. MACK - REDIRECT

1 A She stopped breathing, became unconscious.

2 Q Immediate?

3 A Yes.

4 Q Upon injury?

5 A (Shakes head.)

6 MR. STRICKLER: Beg the Court's
7 indulgence. Thank you. I have nothing further.

8 THE COURT: All right, anything?
9 Redirect?

10 MS. MCDUFFIE: Briefly.

11 **REDIRECT EXAMINATION**

12 BY MS. MCDUFFIE:

13 Q Doctor Mack, Mr. Strickler asked you about had
14 she got to your facility sooner, could that have
15 made a difference in her care. He asked you that
16 question.

17 A Yes.

18 Q Do most people bring their child to the hospital
19 to abuse them?

20 A No.

21 Q No further questions.

22 THE COURT: All right. Thank you, ma'am,
23 you may step down. You're free to leave if you
24 like.

25 Who's the next witness?

1 MS. CAMPBELL: Doctor Sheila Jones.

2 THE COURT: Lengthy?

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: All right, ladies and
5 gentlemen, we're gonna go ahead and take a break at
6 this time. I'm gonna let you step back to the jury
7 room. Please do not discuss the case while you're
8 back there. We'll bring you out in about 15
9 minutes.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 10:46 a.m.,
12 and the following proceedings commenced
13 in open court.)

14 THE COURT: All right, we'll stand in
15 recess.

16 (WHEREUPON, a recess was taken from the
17 proceedings and State Exhibit No. 113 was
18 marked for identification only.)

19 THE COURT: All right, we ready to go?

20 MS. CAMPBELL: Just as a housekeeping
21 matter, yesterday I believe it was State's Exhibit
22 112, it was a white T-shirt, Ms. Simpson, she just
23 neglected to actually move it into evidence. I have
24 spoken with defense counsel and they have no problem
25 with us moving it evidence at this time. It was

1 testified to and ---

2 THE COURT: Is that correct?

3 MS. PINNOCK: No objection, Your Honor.

4 (WHEREUPON, State Exhibit No. 112 was
5 admitted into evidence.)

6 THE COURT: Let me address this issue of,
7 Mr. Strickler asked a question of physical
8 appearance of injuries and Ms. McDuffie asked to
9 come up to the Bench, and said they specifically had
10 not asked this doctor anything about it and they
11 were attempting to avoid with this doctor. Let me
12 tell you, y'all have brought up the issue, the State
13 has brought up the issue of bruising on the child.
14 I think it was doc— I mean Mr., Deputy Wilder that
15 might have been the one that said he observed
16 bruising, and y'all have indicated that you're gonna
17 be able to tie that in to it being contemporaneous
18 with other injuries that she received. Now Mr.
19 Strickler has a right to cross-examine on that
20 because that is clearly an issue. Now he elected
21 not to do that at this time because I guess he
22 wasn't sure exactly what she was gonna say and
23 whether, since she didn't address it, I didn't hear
24 her say anything about bruising, but. Understand
25 that that is an issue in this case, and if he has to

1 pursue it, his client, then he's gonna be able to do
2 that.

3 MS. CAMPBELL: We have no problem. The
4 only thing we need to know is we have been
5 instructed, say, with the pathologist not to mention
6 the bite marks.

7 THE COURT: Well, it's the bite marks and
8 the black eye.

9 MR. STRICKLER: The black eye. The major
10 concern of my question was it was in-artfully stated
11 on my part. I certainly didn't want to get into
12 bite marks or black eye.

13 THE COURT: Well, I understand that, and I
14 just want y'all to understand that, I mean, that's
15 clearly an area you have the right to go into.

16 MR. STRICKLER: Yes, sir.

17 THE COURT: And it's not you're opening
18 the door to do it because it was addressed by the
19 State with one of their witnesses; and as I said,
20 they confirmed that this was going to be consistent
21 with those other injuries so.

22 MS. CAMPBELL: The only injuries, and as
23 we've indicated everybody can talk about are, say,
24 like the breaks that are acute and all that
25 information. We're not going into any bruising on

1 the eye. We are not going into any of the bite
2 marks, even though those ---

3 THE COURT: You've already gone into the
4 bruising on the face, I think. Wasn't that what he
5 said?

6 MS. MCDUFFIE: He said when he observed
7 the child he saw bruising.

8 MS. CAMPBELL: And the pathologist will
9 testify that there are multiple points of impact on
10 this child's head.

11 THE COURT: And that's where the bruising
12 is?

13 MS. MCDUFFIE: There's bruising on
14 multiple occasions on the body, Your Honor.

15 THE COURT: All right. Well, then I just
16 don't want to have to stop everything to meet up
17 here because Mr. Strickler may elect, or his
18 cocounsel may elect they want to pursue bruising.

19 MS. MCDUFFIE: Your Honor, and I don't
20 disagree with that. We've just instructed them not
21 to discuss ---

22 THE COURT: I understand. I just don't
23 want him to think that he's limited in any way.

24 MS. MCDUFFIE: My only issue is that a
25 black eye is a bruise so if he could just specify

1 his questions so that our witnesses don't say
2 something we've instructed them not to.

3 MR. STRICKLER: I've already said certain
4 questions that are in-artfully drafted, Your Honor,
5 I understand that. Beg the Court's indulgence one
6 moment.

7 THE COURT: Sure.

8 (Pause.)

9 THE COURT: All right, you ready to go?

10 MR. STRICKLER: I am.

11 MS. CAMPBELL: I don't have anything.

12 MR. STRICKLER: One other issue, Your
13 Honor. At some point in time we're going to get
14 into introducing photographs, or at least that was
15 my understanding; and my concern is that we're
16 getting ready to get to that point right now.

17 THE COURT: They have been instructed
18 don't introduce any photographs until the Court has
19 addressed that issue and ---

20 MR. STRICKLER: Well, I understand, I
21 guess I wonder whether we're ready to address that
22 issue at this point or whether we what to break
23 during the course of ---

24 THE COURT: They hadn't mentioned it. I'm
25 sure they appreciate you trying to help them on the

1 case.

2 MR. STRICKLER: Just trying to save the
3 jury trips in and out of the courtroom, Judge.

4 MS. CAMPBELL: At this point this is what
5 we anticipate, these two.

6 (Photographs tendered to Mr. Strickler).

7 MR. STRICKLER: Will you mark these for
8 I.D.

9 MS. CAMPBELL: Everything is I.D, either
10 x-ray or photograph.

11 MR. STRICKLER: I don't have a problem
12 with that.

13 MS. CAMPBELL: We aren't trying to put
14 pictures of the baby in there.

15 MR. STRICKLER: I don't have a problem
16 with that. You want to mark those so we can talk
17 about them?

18 (WHEREUPON, State Exhibits Nos. 114 and
19 115 were marked for identification only.)

20 MR. STRICKLER: Your Honor, what we have,
21 State's 114 for I.D. and State's 115 for I.D. 114
22 shows, it's an autopsy photo showing the scalp
23 reflected, the cranium removed from K.H. [REDACTED], and
24 demonstrates subdural hematoma. And 115 is the
25 underside of the scalp I believe.

1 THE COURT: All right. Is this an extent
2 of the pictures that y'all intend to introduce?

3 MS. MCDUFFIE: Yes, Your Honor, those are
4 the extent of the autopsy pictures we intend to
5 introduce. The only other ---

6 THE COURT: The ones previously been
7 introduced, exclusive of x-rays?

8 MS. MCDUFFIE: Exclusive of x-rays, those
9 are the only autopsy photographs.

10 THE COURT: Did y'all want to say
11 something, Mr. Strickler?

12 MR. STRICKLER: Yes, sir, I believe
13 probably Ms. Pinnock is prepared to address this, or
14 I can address it but she's worked on it.

15 THE COURT: Somebody address it quickly.

16 MR. STRICKLER: Go ahead.

17 MS. PINNOCK: Your Honor, we would object
18 to those pictures being brought in. The pictures
19 themselves are -- Your Honor has them. It's a
20 picture of the, pretty much the face of the child
21 pulled down. You can clearly tell it is, you know,
22 it's the child's head. You can see her. It is a
23 dissection photograph and the Court has been clear
24 that only extreme circumstances based on proper
25 testimony by the expert explaining why those

1 pictures are necessary to further corroborate their
2 testimony and explain what their testimony is based
3 upon, to the jury, for a better understanding should
4 the picture be admitted. The Supreme Court
5 cautioned possible agencies about ---

6 THE COURT: Wait a minute, is this when
7 y'all intend to introduce these pictures?

8 MS. CAMPBELL: No, not with this witness.

9 THE COURT: Well, let's address it when --
10 well, I've got this jury out long enough.

11 MS. PINNOCK: Yes, sir.

12 THE COURT: I thought that y'all had, were
13 at the point, I mean, who is the next witness?

14 MS. CAMPBELL: Doctor Jones, the
15 radiologist.

16 THE COURT: And who is that after that?

17 MS. CAMPBELL: Doctor Durso, the
18 pathologist.

19 THE COURT: Is that when that would come
20 in? And how long is Doctor Jones gonna be?

21 MS. CAMPBELL: I hope not too long.

22 MR. STRICKLER: Not very long from my
23 stand point.

24 MS. CAMPBELL: She's got a brief, a
25 present-- we've even consolidated the x-rays or CTs

1 and the ---

2 THE COURT: I wish y'all had told me this,
3 y'all had decided this. We could have done this
4 rather have the jury out for 30 minutes, and now
5 we're gonna have to maybe proffer some testimony on
6 behalf of the State.

7 MS. CAMPBELL: I'm sorry, Your Honor, I --
8 it's my fault. I thought that five photographs were
9 coming in from the autopsy.

10 THE COURT: Pardon me?

11 MS. CAMPBELL: I'm sorry, I understood
12 that the five photographs from the autopsy were
13 gonna come in, Your Honor, but.

14 THE COURT: Well, I told them the
15 photographs would probably come in, but I'm gonna
16 let them put up whatever objections that they want.
17 And the photographs are probably gonna come in
18 'cause I think that they're entitled to introduce
19 photographs absent some, the doctor saying, well, I
20 don't need that, that doesn't help me at all. We're
21 just trying to rowel up the jury. If he says that,
22 then they won't come in.

23 MS. MCDUFFIE: I understand.

24 THE COURT: All right. Well, let's bring
25 in your other doctor and we'll deal with it.

SW - S. JONES - DIRECT

1 (WHEREUPON, the jury was returned to the
2 courtroom and the following
3 proceedings commenced in open court.)

4 THE COURT: All right. You want to call
5 your next witness please.

6 MS. CAMPBELL: May it please the Court,
7 the State calls Doctor Sheila Jones.

8 THE BAILIFF: Place your left hand on the
9 Bible, raise your right.

10 WHEREUPON,

11 **SHEILA JONES,**
12 having been duly sworn by the Clerk, testified as
13 follows:

14 THE CLERK: Thank you. Have a seat in the
15 witness stand and state your full name for the
16 record.

17 THE WITNESS: My name is Doctor Sheila
18 Jones.

19 **DIRECT EXAMINATION**

20 BY MS. CAMPBELL:

21 Q Doctor Jones, where are you employed?

22 A Pitts Radiology.

23 Q And where do you primarily practice?

24 A I primarily practice at Palmetto Health Richland.

25 I also practice in other hospitals in town:

SW - S. JONES - DIRECT

1 Providence Hospital primarily downtown, Baptist
2 Hospital, and Newberry County Hospital.

3 Q And what do you do for Pitts Radiology?

4 A They hired me to be their pediatric radiologist.
5 I do mostly pediatric radiology, but also some
6 general adult radiology.

7 Q Can you tell this jury a little bit about your
8 education and training?

9 A Yes, I have a bachelor of science degree from
10 Yale University. I attended Washington University
11 in Saint Louis for medical school. I did my
12 diagnostic, a general radiology residency in Walter
13 Reed Army Medical Hospital. I practiced general
14 radiology for a few years after that, then I went
15 back and did a pediatric radiology fellowship at
16 Seattle Children's Hospital. And then after that I
17 practiced adult and pediatric radiology in the army.
18 I retired from the army in 2006, and since then I've
19 worked at Pitts Radiology doing predominantly
20 pediatric radiology but also some adult radiology.

21 Q Are you Board certified in any areas of
22 radiology?

23 A Yes, I'm Board certified in general adult
24 radiology, and I am Board certified in pediatric
25 radiology, specifically it's called certificate of

SW - S. JONES - DIRECT

1 added qualifications. I received that the first
2 time in 1998 and was re-certified in 2008.

3 MS. CAMPBELL: Your Honor, at this time
4 we'd offer her as an expert in pediatric radiology.

5 MR. STRICKLER: Without objection, sir.

6 THE COURT: All right, ladies and
7 gentlemen, I know I keep telling you this but
8 scientific, technical, or other specialized
9 knowledge will assist you, the triers of the
10 factors, in understanding any evidence or in
11 determining any fact that may be an issue in this
12 case. A witness may be qualified as an expert by
13 virtue of his or her knowledge, skill, experience,
14 training, or education, and may testify in the form
15 of opinion. I find this doctor to be qualified as
16 an expert in the field of pediatric radiology. As
17 such, she can offer opinions and I instruct you
18 should give her testimony such weight and
19 credibility as you deem appropriate as you will with
20 all witnesses who testify.

21 MS. CAMPBELL: Thank you.

22 THE COURT: You may proceed.

23 BY MS. CAMPBELL:

24 Q Doctor, as a pediatric radiologist what do you
25 do?

SW - S. JONES - DIRECT

1 A As a pediatric radiologist I interpret all by
2 different kinds of images for infants, neonates
3 through age 18. That's predominantly, and all
4 different kinds. I do MRIs, plain films,
5 ultrasounds, CT scans, all types of imaging for
6 children.

7 Q And you just mentioned the word CT scan. Can you
8 tell the jury what that is.

9 A Yeah, a CT scan is a specialized form, a
10 specialized radiology test where basically the
11 patient gets in a machine that looks like a big
12 doughnut and they take x-rays of the patient as if
13 they were cutting the patient up like slices of
14 bread. And it's a x-ray of the patient, a
15 cross-sectional slice of the patient.

16 Q And I've also heard here in court today reference
17 what's called an MRI. Is that a different mechanism
18 obviously?

19 A Yes, it is. An MRI can take pictures of any part
20 of the body, and basically it doesn't use ionizing
21 radiology. Basically it uses magnetic field to make
22 detailed pictures of patients.

23 Q And are there other mechanisms or testing that
24 can be done, can be used for you in your field of
25 radiology?

SW - S. JONES - DIRECT

1 A Yes, plain films, just a plain ordinary x-ray we
2 use. Sometimes use ultrasounds. But pursuant to
3 this case it was mostly CAT scan, MRI, and plain
4 films.

5 Q I want to turn your attention back to May of
6 2011. Did you become involved in the care and
7 treatment of K.H. [REDACTED]?

8 A Yes. During her time at Palmetto Richland I read
9 her MR of the brain and her pediatric survey. I
10 read those at the time. And I also reviewed the
11 head CT from Providence at the time, and then more
12 recently I was asked to review other x-rays in the
13 case.

14 Q And specifically, so you have reviewed many or
15 almost all of the imaging that was done with
16 K.H. [REDACTED] at the time?

17 A Yes, I have.

18 Q And that included things that were done at
19 Providence upon her admission there?

20 A Yes.

21 Q And then as well as imaging that was done at
22 Richland Memorial Hospital?

23 A Yes.

24 Q And when you're reviewing these films or -- I
25 don't know that the proper terminology would be --

SW - S. JONES - DIRECT

1 what types of things are you looking for?

2 A I mean basically when I review something that I
3 did not read at the time, I look at it as if I'm
4 reading it for the first time to see what I actually
5 can see on the film or the radiograph or the CT
6 scan.

7 Q And what type of injuries and/or trauma or disease
8 is it that you're able to see in some, say, MRI or
9 CT or CAT scan?

10 A Well, you can see all sorts of diseases. I mean,
11 it's a general test, but there's lots of different
12 findings and it's helpful for the diagnosis of many,
13 many diseases.

14 Q Specifically as to brain injury, do any of these
15 imagings help you as far as being diagnostic as to
16 possible brain injury?

17 A Absolutely. These type of imaging, the brain CT
18 and the brain MRI are very helpful for a diagnosing
19 brain injury.

20 Q And specifically as to the ability to breathe or
21 lung activity, is there a certain imaging that can
22 help you there?

23 A There's imaging that can help give some indirect
24 evidence as opposed to breathing; but actually, I
25 can't actually see breathing when I look at these.

SW - S. JONES - DIRECT

1 I cannot tell specifically whether a patient is
2 breathing or not breathing during the time of the
3 test. So I would say that you can see results of
4 not breathing, but I can't comment specifically on
5 breathing per se just from the test.

6 Q But you can see injuries that may have occurred
7 in the chest cavity?

8 A Yes, you can see injuries that have occurred in
9 chest cavity, absolutely.

10 Q And in that same vain as far as any possible
11 broken bones or things of that nature, of course,
12 the imaging can help you there?

13 A Yes, imaging can help you with broken bones.

14 Q Taking in whatever things, what, when you
15 initially reviewed or when you initially became
16 involved, what were your findings in this case as
17 far as when you were actually treating K.H. [REDACTED]
18 [REDACTED]?

19 A When I was actually treating her?

20 Q Uh-huh.

21 A Okay. I, on May 25th I interpreted ---

22 MR. STRICKLER: Excuse me, Your Honor. If
23 I may, I need to note an objection as to any
24 testimony regarding broken ribs in this matter.

25 THE COURT: All right.

SW - S. JONES - DIRECT

1 MR. STRICKLER: Thank you.

2 THE WITNESS: So am I allowed to address?

3 MS. CAMPBELL: Yeah, you can talk.

4 THE WITNESS: Yeah, I read the pediatric
5 skeletal survey which is basically a study that
6 involves taking x-rays of the entire patient's body
7 in multiple views and the specific purpose is to
8 look for skeletal injury. You could possibly see
9 some other injuries maybe in the lungs, but it's
10 predominantly to look for skeletal injury. And I
11 interpreted that, I believe it was May 20th.

12 BY MS. CAMPBELL:

13 Q And what were your findings when you reviewed
14 that?

15 A The permanent findings were that the baby's skull
16 had abnormality. The sutures which are actually the
17 spaces between the different bones of the skull,
18 it's normal that in order for a baby's head to grow
19 the bones are not one hundred percent fused.
20 They're separate bones, and there's normal spaces
21 called sutures; and as the baby's head grows, it
22 allows the skull to expand because the baby's bones
23 are not entirely fused. Well, on the pediatric bone
24 survey, those spaces that are normally very thin
25 were very wide, abnormally wide; it's an abnormal

SW - S. JONES - DIRECT

1 finding. And that indicates that the baby had had
2 brain swelling to spread those spaces out between
3 the bones. I did not see any fractures of the
4 skull, but just indicated there was marked brain
5 swelling because the spaces between the bones were
6 really wide, too wide.

7 The other abnormality is that on the left
8 side, there's normally 12 ribs on each side and this
9 infant had definite linear non-displaced. What I
10 mean, they were fractures but the bones were lined
11 of the left 8th and 9th rib and they were posterior
12 ribs. The ribs are both in the back and they wrap
13 around the side to the front. And one of the things
14 that we actually describe is where the fractures
15 are, are they in the front or are they in the back.
16 And these ribs were fractures in the posterior 8th
17 and 9th rib, and that was seen on the skeletal x-ray
18 and they also looked like acute fractures. What we
19 mean by that, something that happened recently as
20 opposed to something that was old. And it happened
21 a week before or ten days before. These looked like
22 acute fractures; they happened recently.

23 Q And when you say acute, what kind of time period
24 are we talking about?

25 A It's hard -- you cannot one hundred percent

SW - S. JONES - DIRECT

1 identify exactly within days or hours; but when I
2 say acute, within a few days. And why do I say
3 acute? There were no signs of repair because there
4 were radiographic signs. When the fractures are a
5 little old their body started repairing, and there
6 were no signs repair and there were definite signs
7 of hemorrhage. And I want to also say that these
8 fractures were better seen on a CT.

9 Q And we'll get to that in a minute.

10 A Yeah, but they were also, but they were seen on
11 the bone survey.

12 Q And the bone survey that you performed I believe
13 was on the 25th?

14 A Yes.

15 Q And that would have been two days after her
16 admission, correct?

17 A Correct.

18 Q Would that have been consistent with those
19 injuries occurring on the 23rd?

20 A Yes.

21 Q Continue with your -- were those, is that the
22 extent of your initial observations?

23 A Well, those were the extent of my observations on
24 the bone survey.

25 Q Okay.

SW - S. JONES - DIRECT

1 A And I would -- so those are the main
2 abnormalities: The rib fractures that were definite
3 in 8 and 9, and the abnormal plane or the spaces
4 between the skull bones.

5 Q And the brain swelling, is that something that
6 you observed?

7 A Uh-huh.

8 Q How would you characterize that? Was it mild,
9 moderate, severe?

10 A I would say it was severe. The sutures were very
11 wide.

12 Q And continue with what you did in this case.

13 A Okay. So also on the 25th I interpreted the
14 brain MRI that the child had. And I want to say
15 that because today is 2014, I don't have today any
16 independent recollection of looking at this study at
17 that time. I'm going by my report and also going by
18 the fact that I re-looked at the case. In my report
19 at that time it stated that I compared it to the
20 outside CT scan from Providence and I don't, like I
21 said, I don't have any independent recollection.
22 It's in my report so it means I had it to look at at
23 the time. And the findings -- and can I say what
24 the -- can I refer to the comparison study or just
25 limit myself to the MR?

SW - S. JONES - DIRECT

1 Q You can talk about anything that's helpful to
2 your testimony as far as this.

3 A I will talk about the MR first. The MR,
4 basically what the MRI showed that this baby had
5 basically what is equivalent to stroke in its entire
6 brain with maybe just small parts of the brain stem
7 that may not have been involved or not involved as
8 much, that basically both cerebral hemispheres and
9 the back of the brain were totally involved in
10 stroke. And what that means is, those parts of the
11 brain were showing on specific types of imaging that
12 they didn't have any oxygen and were essentially
13 really basically almost dead, and it involved almost
14 the entire brain.

15 It also showed that there was severe edema.
16 The total, the brain had severe swelling and the
17 actual gray scale was abnormal because the swelling
18 causes changes in the gray scale of some of the
19 injury so that was severely normal. There are
20 structures, normal structures in the center of the
21 brain that contain fluid. They're normal
22 structures. They were slit like because they were
23 squeezed because of brain swelling. And I would
24 like to say that that was also a finding on the CT
25 scan that I compared it to the day before. The CT

SW - S. JONES - DIRECT

1 scan at Providence doesn't have the detail that the
2 MRI has, but it definitely also shows that there was
3 brain swelling and these normal structures that you
4 would normally see were squeezed tight. The brain
5 MR also showed there was a little bit of blood
6 inside the, inside the head, inside the ventricles.
7 And I will note that the radiologist, not myself,
8 that read the head CT thought that they saw a
9 posterior right subdural hematoma. I did not see
10 that on my study, and I mentioned in my report at
11 the time that there's an explanation for why that
12 radiologist might have thought that and why I didn't
13 see it on my study. One explanation is that the
14 body had absorbed it and it wasn't there. One
15 explanation is that it's so thin that I might not be
16 able to have seen it. And another explanation is
17 when you have brain swelling and edema, it makes the
18 brain appear a little darker than normal, and then
19 Venous blood, which is posterior in the brain, can
20 actually look like it's abnormal blood, it's a
21 normal structure. But in any event, the predominant
22 finding was really the fact that almost the entire
23 brain was the result of having no oxygen and it was
24 swollen. That's the predominant, profound serious
25 finding.

SW - S. JONES - DIRECT

1 Q Okay. And you mentioned the swelling in the
2 brain. In this case it was, I think you
3 characterized it as severe?

4 A Yes, it was severe. And it was severe on the
5 initial study two days before the CT scan at
6 Providence on 5/23.

7 Q So that's where I was going with it. So the
8 swelling that you noted on the 25th was also present
9 in the studies that were done on the 23rd upon her
10 admission?

11 A Definitely.

12 Q And the swelling that you characterize, you
13 talked about subdural hematoma to it, what'd be
14 imaged, the swelling itself can make it more
15 difficult to see some of those?

16 A Yes, the swelling can appear very thin, you may
17 not be able to see it. One of the things I would
18 like everyone to understand is that these studies
19 are complimentary. Sometime you don't see
20 everything on every study, but just because you see
21 it on one and don't see it on the other one, doesn't
22 mean it's not there. It's sort of like the cameras
23 on a football field. Just because you don't see the
24 of bound foot on one camera doesn't mean that it's
25 not there when you see it on the other camera.

SW - S. JONES - DIRECT

1 Q Depending on the angle or what, the way the
2 pictures are taken?

3 A Yes, it can.

4 Q And that's the analogy you use to kind of
5 describe it. Did you review or give any further
6 testing?

7 A I reviewed after the fact the C-spine study from
8 Providence that was done on 5/23.

9 Q And what were your findings when you reviewed
10 that?

11 A There was no fractures of cervical spine itself;
12 those were the bones in the neck. But there was a
13 fracture of the left orbit, the floor of the left
14 orbit was fractured.

15 Q When you say left orbit, what part of the face is
16 that?

17 A Well, actually the orbit, this is -- the eye sits
18 in a bony socket that has basically like a cone, and
19 the floor of it, which I'm pointing to me where it
20 was, the floor of the orbit was fractured -- I'm
21 gonna say left. The floor of the orbit was
22 fractured.

23 Q The left?

24 A Uh-huh, uh-huh.

25 Q And that was noted in what image that you

SW - S. JONES - DIRECT

1 reviewed?

2 A That was in the cervical spine study. Even
3 though it was a study of the neck, it included the
4 eye; and so even though it's a study of the neck,
5 radiologists are responsible for reading everything
6 that you're given.

7 Q And in that were you able to note what stage of
8 healing if any it was in?

9 A That fracture to me looked like an acute
10 fracture. Again, there was no sign of healing.
11 There was no sign of repair. And there was also
12 some fluid actually in — the structure that's just
13 beneath the floor of the orbit is an open air space
14 called the sinus and there was actually some fluid
15 in the sinus. So many times when we see a fracture
16 of the orbit and fluid in the sinus, it's a sign
17 that this may very well be acute because a lot of
18 types that fluid is blood from the recent fracture.

19 Q Okay. So would that have been consistent with
20 the child having occurred that injury on the 23rd?

21 A Yes.

22 Q I'll get back to the mechanisms that can cause
23 that in a minute. Were there any other studies that
24 you reviewed in this case?

25 A I reviewed the head CT. There were, those were

SW - S. JONES - DIRECT

1 all the studies. There were some ICU chest x-rays
2 that were routine. Patients in ICU get daily chest
3 x-rays to kind of look at ones to see different
4 things so I looked at those, but I didn't see that
5 they were exactly pursuant to this case but I did
6 look at those too.

7 Q And were there any observations of the chest
8 cavity that you saw on any of the studies that were
9 significant?

10 A Yes. There were two other CT scans done. One
11 was done at Providence Hospital. The baby had a CT
12 scan of the chest, abdomen, pelvis, and then the
13 infant also had one later at Palmetto Richland. On
14 the study that I did not read at the time but
15 reviewed at Providence Hospital, there was
16 abnormality in the chest. That's called
17 pneumomediastinum. And basically what that means is
18 that there's some air that is actually in the chest
19 that shouldn't be there. It's obviously air in the
20 lungs, should be in the lungs, but this was actually
21 air in the center part of the chest beside the lungs
22 and air is not supposed to be in those parts of the
23 chest. And one of the causes of air where it's not
24 supposed to be in the chest is blunt trauma; and so,
25 at the Providence Hospital CT, there was

SW - S. JONES - DIRECT

1 pneumomediastinum and the patient also had a CT scan
2 at Richland later which showed abnormal air
3 pneumomediastinum also and that CT scan showed the
4 rib fractures of the left 8 and 9, rib fractures
5 that were seen on the skeletal survey but really
6 better shown on the CT scan.

7 Q Doctor, in preparation for trial did you
8 consolidate some of these images into a Powerpoint?

9 A I did. The cross-sectional imaging studies have
10 really hundreds of pictures so I did take the key
11 images and put them into a power point presentation
12 just to show the key images that show the
13 abnormality there.

14 Q And would this assist you in explaining to the
15 jury what we're talking about?

16 A I think they'll be able to look at radiology,
17 some of the injuries. They can see for themselves
18 and some of them they'll probably have to take my
19 word for it as abnormal.

20 MS. CAMPBELL: Your Honor, at this time we
21 offer State's Exhibit Number 113 into evidence.

22 MR. STRICKLER: Without objection.

23 THE COURT: All right, so admitted without
24 objection.

25 (WHEREUPON, State Exhibit No. 113 was

SW - S. JONES - DIRECT

1 admitted into evidence.)

2 MS. CAMPBELL: Can we just move the cart
3 over here so I can show it to the jury?

4 THE COURT: If you would like.

5 MS. CAMPBELL: I'll be quick.

6 THE WITNESS: Okay, let's have the next
7 slide. This is a coronal image. Basically that's
8 if you're looking at the patient. This image is
9 actually from the C-spine study that was done at
10 Providence Hospital on 5/23; and I brought it
11 because this is actually the bony orbit, the bones
12 that actually contain the eye. This is the eye ball
13 and this is the slide that shows that the floor of
14 the orbit is broken. I think everyone can see on
15 the other side it's intact. On the other side on
16 the right this is the left side and there's a little
17 fluid, this gray fluid. The black is air and this
18 one shows that there's a fracture of the floor of
19 the orbit.

20 BY MS. CAMPBELL:

21 Q Okay.

22 A Okay. These are the head, head CT from
23 Providence, and this is something that you I'll
24 probably have to take my interpretation because as
25 far as I know none of you are radiologists. But

SW - S. JONES - DIRECT

1 this is the head CT. And what, this is an example
2 of the fact that the head is very adept [ph].
3 Normally you can see a little bit of space and a
4 normal little bit of fluid sometimes around the
5 outside; but the head, the brain is actually
6 squeezed up against the skull. And then these
7 structures that you can barely see that are slit
8 like, normally you can see that they're being
9 squeezed by the swollen brain. And then I am -- I
10 put yellow arrows on -- well, actually, I didn't put
11 it, the radiologist, not myself, that read at the
12 time, put arrows where they thought there was some
13 bleeding in the brain. That's what they thought.
14 And I think that that is a reasonable
15 interpretation; however, when I did the brain CT
16 I -- when I do the brain MR, I didn't see them right
17 there, and one of the reasons is there's a normal
18 structure that has venous blood there or the fact
19 that it was done a few days later and the body was
20 orbit. I do not know why it was not on the next
21 study.

22 Next slide. This is a slice of the CT from
23 Providence Hospital. This is the chest. These are
24 lungs. This is the heart. This is lungs. And I'm
25 gonna show you, this air, this black oval shaped

SW - S. JONES - DIRECT

1 structure is normal air in the patient's esophagus.
2 What is abnormal air are these collections of air or
3 ab-- those are abnormal. That's abnormal. And
4 generally speaking, that can be due to trama, blunt
5 force trama, or sometimes other types of trauma.
6 This is the skull film from the pediatric bone
7 survey which is the x-rays of the entire patient
8 that were actually done at Prov-- I mean, at
9 Richland Hospital. And these are the spaces that
10 I'm showing you, the sutures, that's much wider than
11 normal. Normally they're very, very thin, pencil
12 think. So when I see that it tells me that there's
13 something that's causing the brain to, something
14 happening inside the head that's expanding those
15 sutures; they're much wider than they should be.
16 And in this case it was the actual brain swelling
17 that expanded those spaces.

18 Okay. I put up two of these side by side
19 because they're very hard to see. I will just say
20 this, that when you put a image from the high
21 resolution computers at work on to a jpeg image you
22 lose a little bit of resolution. I don't know if
23 you can see them, but there are fractures. These
24 arrows are pointing to fractures. I think they're
25 easier to see on the CT scan, linear non-displaced

SW - S. JONES - DIRECT

1 fractures of the ribs.

2 This is from the CT scan from Palmetto
3 Health and even though it was done a couple of days
4 later, it's still showing abnormal air where it
5 shouldn't be.

6 Next. Okay, so these are, these images are
7 from MR scan that was done on the 26th, and the very
8 first image is called a diffusion ADC map. We do
9 that to specifically look for stroke. And I brought
10 a normal image of a patient the exact same age just
11 so you could see how dramatic it is. Everywhere
12 that it's black, essentially the entire brain, means
13 the baby had a stroke, no oxygen, basically those
14 cells are dead. And this is what a normal one would
15 look like. So I think you can see the black is all
16 abnormal compared to this is a lighter grid.

17 Next slide. This is called a diffusion
18 study, another way of looking at the same thing.
19 And basically on this image, everything that is
20 white has gotten a lack of oxygen and you can see
21 that all of these white areas and some parts
22 centrally in the brain. And this is what a normal
23 one would look like of the same age patient. This
24 is what's called a titivated image. Not to get too
25 technical, I wanted to bring this to you to show you

SW - S. JONES - DIRECT

1 what the swelling looks like. You see this is a
2 normal same age patient. This is a normal
3 structure. And do you see how skinny that structure
4 is on the other side. That's getting squeezed in
5 because of the edema. The other thing is, this is
6 normal. You have a normal amount of fluid, a normal
7 amount of space between the edge of the brain and
8 the skull, and here you can see the brain is right
9 up against the skull, very little normal space. And
10 then the other finding is all of the brain substance
11 is on this particular image lighter, a lighter color
12 than it should be because of the edema. This is the
13 normal particular gray appearance of the brain.

14 Q When you said edema, what do you mean?

15 A Swelling, edema meaning swelling. Next. Okay,
16 this is a picture that is specifically picks up
17 blood and this -- and blood on this particular image
18 is black. So this one is showing, here's the normal
19 one where there shouldn't be any blood inside the
20 ventricles and here's one saying that there's some
21 blood inside the ventricles. And I will also say
22 that on this sequence the actual skull is black and
23 blood is black. So if you had a very thin subdural,
24 it would be very hard to pick this out because the
25 brain is right up, because it's swollen is right up

SW - S. JONES - DIRECT

1 against the black skull so this also shows you why
2 you might miss a thing subdural on this image
3 because this is, on this image you have a little bit
4 of white in between to maybe allow you to have some
5 contrast to see a thin black subdural, but on this
6 one you don't.

7 Okay, this is another. One of the things
8 about MR, we do lots of different types of pictures
9 and different types of pictures tell us different
10 things. This picture again, normal, and this is
11 showing that this structure should be about this big
12 at this age child; but it's very thin because of the
13 gray edema. And if you look at the color of the
14 brain it's much darker throughout the whole brain,
15 and that's what swelling does on this particular
16 scan. It gives you darker brain tissue on this
17 scan. I think it might be -- that's the last one.
18 These are the findings.

19 Q Thank you. Doctor, in your review in this case,
20 let me ask you first, do you have any specialized
21 training in the areas of child abuse and/or
22 mechanics of injury?

23 A Yes, I do. In my residency training and my
24 fellowship, particularly my fellowship I was at the
25 children's hospital, yes, we do get training in

SW - S. JONES - DIRECT

1 child abuse. And I also had been involved in
2 teaching programs, in teaching residents, and also
3 preparing them for their radiology board tests. So
4 I have gotten training and I also have been involved
5 from teaching residents and sometimes giving
6 lectures on abuse and the pediatric patient.

7 Q And in reviewing, and I'm gonna take them one by
8 one and then collectively at the end.

9 A Uh-huh.

10 Q In reviewing the trama to this child's brain ---

11 A Uh-huh.

12 Q ---can you tell them the exact mechanism, how
13 that trauma happened?

14 A I cannot say the exact mechanism. I can't say
15 the exact mechanism. I can say that there was
16 likely trauma that caused the child to stop
17 breathing, and there have been proposed mechanisms
18 of people that actually have done studies. Now can
19 I say specifically that this child had the mechanism
20 of the proposed studies, I can't say, but I can say
21 in this ---

22 MR. STRICKLER: I would object, Your
23 Honor.

24 THE COURT: I don't know what she's gonna
25 say.

SW - S. JONES - DIRECT

1 MR. STRICKLER: It's not gonna be about
2 the injury to this child. It's not gonna be about
3 this child.

4 MS. CAMPBELL: She's limiting herself to
5 what she can say about the injury.

6 THE WITNESS: No, I do believe that trama
7 causes injury.

8 THE COURT: I'm gonna to allow her.

9 MR. STRICKLER: I take no exception with
10 that, Your Honor.

11 BY MS. CAMPBELL:

12 Q And when we're talking about trama causes injury,
13 what type of trama, what type of force would be
14 necessary?

15 A In this injury the predominant finding is the
16 lack of oxygen to the entire brain, and generally
17 that is caused by hyperflexion and extension at the
18 brain/neck junction because that's where the
19 respiratory centers for breathing are, and it's felt
20 that injury to those centers cause a baby to stop
21 breathing and the lack of ---

22 Q Hypo-flexion?

23 A Yes, hypo-flexion and extension cause a baby to
24 stop breathing, and that's what causes the lack of
25 oxygen to the brain and ultimately brain death.

SW - S. JONES - DIRECT

1 Q The chest injuries, the ribs, and the trauma to
2 the chest?

3 A Okay, the ribs, there were two posterior rib
4 fractures. And posterior rib fractures, one in even
5 more two, are very highly associated with
6 non-accidental trauma, intentional trauma. It's
7 very difficult to get posterior rib fractures other
8 than intentional trauma.

9 Q And also the chest area I believe you saw some
10 would be consistent with trauma in the chest?

11 A Yes, there was pneumomediastinum air where it
12 shouldn't be, and that is related to trauma. And
13 can I specifically say what -- I will say blunt
14 trauma but I can't specifically say the etiology of
15 the trauma. I'm just gonna say blunt trauma.

16 Q And trauma, we're talking about all these
17 injuries, would it have been significant?

18 A I mean significant, yes, significant.

19 Q In looking at her injuries as a whole do you have
20 any opinion?

21 A I do. And I'd like to say one thing before that.
22 It's possible that each injury separately you could
23 come up with a rare cause that's not abuse,
24 separately. But collectively, the brain injury plus
25 the eye, plus the fracture of the eye, plus the

SW - S. JONES - CROSS

1 posterior rib fractures, I don't know of any other
2 thing that would cause the collective injury other
3 than abuse.

4 Q And in this case what was the injury that
5 actually caused her death?

6 A The brain injury.

7 Q Could she have survived that brain injury?

8 A No.

9 Q In your opinion was this, these, were these
10 injuries accidental or intentional?

11 A Intentional.

12 Q Thank you. I have nothing further.

13 MR. STRICKLER: Thank you, sir. May it
14 please the Court.

15 **CROSS-EXAMINATION**

16 BY MR. STRICKLER:

17 Q Good morning, Doctor.

18 A Good morning.

19 Q I'm Doug Strickler one of Antwan's attorneys.
20 I'd just like to ask you a few questions.

21 A Sure.

22 Q Thank you. Specifically as to the injuries
23 you've described to the two ribs.

24 A Uh-huh.

25 Q Okay, the fractures.

1 A Uh-huh.

2 Q You indicated in your direct testimony that you
3 found no signs of repair?

4 A Uh-huh.

5 Q Correct?

6 A Uh-huh.

7 THE COURT: You need to say yes or no
8 please, ma'am.

9 THE WITNESS: Yes.

10 BY MR. STRICKLER:

11 Q No signs that the bones were mending, healing?

12 A Correct.

13 Q Correct?

14 A Uh-huh.

15 Q Okay. And that's something that you would be
16 able to visualize through the studies that you've
17 referred to had it been occurring; is that correct?

18 A Yes, especially the CT scan. More difficult on
19 the plain film but especially the CT scan.

20 Q And I believe you characterized the fact those
21 fractures as acute in nature?

22 A Yes.

23 Q Correct?

24 A Uh-huh.

25 Q And in medical terminology that means recent?

SW - S. JONES - CROSS

1 A That means recent, within a few days like that
2 day or possibly the day before, but within a few
3 days.

4 Q Well, now your initial testimony was that they
5 were not very old, no more than seven to ten days
6 old?

7 A Well, they're definitely not -- they're not more
8 than seven to ten days. My initial, I don't recall
9 saying that.

10 MS. CAMPBELL: He's mischaracterizing what
11 she said.

12 THE WITNESS: I don't think I said seven
13 to ten days; I don't recall saying that.

14 BY MR. STRICKLER:

15 Q So not more than seven to ten days?

16 A Yeah, not more, not more, but I don't recall
17 saying seven to ten.

18 Q And now you say ---

19 A I said a few days.

20 Q A few days?

21 A Well, it's true that it's not more than seven to
22 ten, but it's also not more than, less than seven.

23 Q Okay. When -- if I understand what you're
24 saying, you say not more than seven to ten which
25 does not rule out the possibility that's it's less

1 than seven?

2 A Well I do think it is less than seven. I don't
3 recall saying seven to ten days.

4 Q Okay.

5 A I didn't say seven to ten days; I said a few
6 days. She asked me is it consistent with 5/23, and
7 said, yes, it's consistent with that and may be
8 consistent with a day before but I don't recall that
9 I specifically said seven to ten days.

10 Q Okay. So your testimony now is that they're
11 consistent with 5/23 or 5/22?

12 A Yes.

13 Q And not earlier than that?

14 A I will say it's very hard to one hundred percent,
15 but it could possibly be 5/21. I don't think it's
16 ten days.

17 Q Are they consistent with having occurred at
18 approximately 7:30 in the morning on 5/23?

19 A It could be.

20 Q Are they consistent with having occurred at
21 approximately 9:30 in the morning on 5/23?

22 A Possibly.

23 Q And the same question?

24 A I cannot tell you specifically a time on that
25 day, I cannot.

SW - S. JONES - CROSS

1 Q And how fast do fractures begin to demonstrate
2 resolution and repair on your studies?

3 A On my studies or just in general? Yeah, it's --
4 it varies, it varies.

5 Q Between when and when, how long?

6 A On some fractures you can see repairs early as
7 seven to ten days.

8 Q And what fractures can you see repairs occurring
9 within two days?

10 A On x-ray? I cannot see -- I probably couldn't
11 see it but a pathologist might be able to see some
12 changes.

13 Q Okay. How about within three days? I'm talking
14 about your field, yes, ma'am.

15 A Usually maybe not within three days.

16 Q You testified regarding a fracture to the left
17 orbit?

18 A Yes, uh-huh.

19 Q That you showed the jury.

20 A Uh-huh.

21 Q And again, you used the term acute --

22 A I did.

23 Q --in that regard?

24 A Uh-huh.

25 Q Same line of questioning, I'm interested in

1 learning.

2 A Sure. The reason why I think there's additional
3 evidence to say that was acute because there was
4 fluid in the sinus that was probably -- it's usually
5 fluid in the sinus when you have a fracture is
6 blood. And that usually is acute finding. Usually
7 the blood resorbs in a couple of days so there was
8 fluid in the sinus and the setting of a fracture
9 fluid is probably blood.

10 Q And which study was that that you ---

11 A That was the cervical spine.

12 Q That was done at Providence?

13 A It was done at Providence.

14 Q On the 23rd?

15 A On the 23rd, uh-huh.

16 Q Okay. And speaking to the cervical spine, the
17 non-finding you had was any fracture to the cervical
18 spine, correct?

19 A Fractures to the cervical spine are very rare in
20 most circumstances.

21 Q Right, but the non-finding ---

22 A Yes, there was no fracture to the cervical spine.
23 The bones of the neck were not fractured.

24 Q Okay, that's what I wanted to know. Cervical
25 spine is from where to where on the human body?

SW - S. JONES - CROSS

1 A The cervical spine, there's seven vertebral
2 bodies and there's one that's right beneath the base
3 of the skull.

4 Q Right.

5 A And the other one is at the -- number 7 is at the
6 base of the neck.

7 Q Okay.

8 A But I'd like to say that soft tissue injuries of
9 the cervical spine in child, children this age, are
10 much more common than bone fractures. So you can
11 have significant trauma to the cervical spine
12 without actually having a fracture of the bone of
13 the cervical spine in children.

14 Q And you testified also about finding of air in
15 the chest cavity. I don't know how you got that,
16 correct?

17 A Yes, the pneumomediastinum, yes, I did.

18 Q And you indicated that one cause of this is blunt
19 trauma?

20 A Yes.

21 Q What are some other potential causes?

22 A Sometimes vigorous coughing.

23 Q Uh-huh. So you can't tell us whether or not the
24 injuries that you've described -- well, first let me
25 ask you this, can you tell us whether the injuries

1 you described, specifically the fracture to the ribs
2 and the injury to the left orbit and the injury to
3 the brain, whether those all occurred at the same
4 time?

5 A When you say the same time do you mean like the
6 same minute? I will say this, they could have all
7 occurred in the same episodes of trauma.

8 Q Okay.

9 A They could have.

10 Q But you can't tell us whether they did?

11 A If you're saying that could I say that the rib
12 fracture occurred on the 22nd and the other things
13 occurred the next day, that is a possibility.

14 Q Right, okay.

15 A No, sir, I cannot specifically say that all of
16 those injuries occurred in the same episode.

17 Q Same incident, episode?

18 A Correct.

19 Q And you can't tell us when that episode from what
20 you have, from the studies you have, occurred at any
21 particular time on May 23rd, 2011, correct?

22 A I'm not sure of the question.

23 Q 7:30 in the morning?

24 A Oh, 7:30 in the morning, they could have. I
25 can't tell you a specific time.

SW - S. JONES - REDIRECT

1 Q Can't give a specific time?

2 A A specific time.

3 Q You can't indeed say specifically May 23rd, it
4 could be May 22nd I believe?

5 A Well, I actually think that the brain injury
6 probably did occur on the 23rd. I can't give you
7 6:30, 7:30, but I can say that I believe that did
8 occur on the 23rd.

9 Q Okay. And there's nothing that you know from
10 your looking at the pictures or the studies that you
11 refer to as to who was the external force involved
12 in this particular case?

13 A No, I cannot say that.

14 Q Thank you very much.

15 MS. CAMPBELL: Just a couple.

16 THE COURT: Don't wait on me.

17 MS. CAMPBELL: Thank you, sir.

18 **REDIRECT EXAMINATION**

19 BY MS. CAMPBELL:

20 Q Thank you, just a couple of questions. The
21 injury, specifically the broke ribs, would those
22 have been painful?

23 MR. STRICKLER: Objection, Your Honor,
24 it's improper redirect.

25 MS. CAMPBELL: He just went on ---

SW - S. JONES - REDIRECT

1 MR. STRICKLER: I didn't ask about pain
2 and all, Your Honor.

3 THE COURT: Well, you asked about rib
4 injuries. I'm gonna let her pursue it.

5 MS. CAMPBELL: Thank you.

6 BY MS. CAMPBELL:

7 Q Would those be ---

8 A Yes, definitely.

9 Q And the fracture to the left orbital socket,
10 would that have been painful?

11 A Definitely.

12 Q The injury to her brain which she could not have
13 survived?

14 A Uh-huh.

15 Q Would -- how long between the time the injury was
16 inflicted and there would have been symptoms?

17 A I'll say immediate.

18 Q Immediate?

19 A Immediate.

20 Q And when we say symptoms, what type of symptoms
21 are we talking about?

22 A Well, lack of oxygen to the brain basically
23 causes you to have a severe depression of all brain
24 function, particularly if it's prolonged, and will
25 cause you to further stop breathing and ---

1 Q And could she have survived ---

2 A You know, it's like suffocating. When you don't
3 have oxygen to your brain it's like suffocating.

4 Q And that would have been immediate?

5 A Yes, that would have been immediate.

6 THE COURT: All right, Mr. Strickler.

7 MR. STRICKLER: Nothing further.

8 THE COURT: Thank you, Ma'am. You may
9 step down.

10 Ladies and gentlemen, I think I need to
11 take up something with these lawyers before the next
12 witness testifies, and it may be that it's gonna
13 take a little bit of time but I'm gonna have to let
14 y'all go to lunch. How about, what I'm gonna do is
15 ask -- I'm gonna find out logistically if what, I'm
16 gonna have to let y'all step back to the jury room.
17 Please don't discuss the case while you're back
18 there. I'll get back with you just quicker as I can
19 and let you know what the question is, whether we'll
20 bring you back and go forward with more testimony or
21 send you to lunch. We'll resolve what we have to
22 revolver while you're at lunch.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 12:10 p.m., and the
25 following proceedings commenced in open

1 court.)

2 (WHEREUPON, State Exhibits Nos. 116, 117
3 and 118 were marked for identification
4 only.)

5 THE COURT: All right, this is where you
6 want to introduce those photographs for this
7 witness?

8 MS. CAMPBELL: Yes, Your Honor.

9 THE COURT: And that's Doctor Durso?

10 MS. CAMPBELL: Yes, Your Honor.

11 THE COURT: And her testimony is gonna be
12 how long?

13 MS. CAMPBELL: No longer than the previous
14 witness.

15 THE COURT: Well, I'm not sure -- you know
16 long that witness was? Why don't I let the jury go
17 for lunch, tell them to be back here about 1:30 and
18 we'll proffer what you want to make with respect to
19 we don't need to go into all her testimony, just
20 with respect to whether this has been corroborated,
21 anything she says, and it's helpful for her in
22 explaining and that shouldn't take 15, 20 minutes at
23 most so. Y'all mind if I go back and ask the jury,
24 to just tell the jury they can go to lunch, tell
25 them not to discuss the case, or you want me to

1 bring them back in here?

2 MS. MCDUFFIE: We have no objection with
3 you doing that.

4 MS. PINNOCK: I have no objection.

5 THE COURT: Come back at 1:30, is that
6 okay? All right, I will be back. You can get your
7 witness up here, get her ready, and I'll be back in
8 two minutes.

9 (Pause.)

10 THE COURT: I informed the jury they can
11 go to lunch, told them to be back at 1:30. I said
12 it may be a few minutes but if they have to wait
13 five, ten minutes when they get back, hopefully not,
14 didn't think so, but we'd be in a position to go at
15 1:30 so. I told them not to discuss the case, don't
16 do anything about the case while they're gone, have
17 a good lunch.

18 Ready to go?

19 MS. CAMPBELL: Yes, sir.

20 Doctor Durso.

21 WHEREUPON,

22 **AMY DURSO,**

23 having been duly sworn by the Clerk, justified as
24 follows:

25 THE CLERK: Thank you, please have a seat

SW - A. DURSO - PROFFER

1 in the witness stand. State your full name for the
2 record.

3 THE WITNESS: Doctor Amy Durso.

4 THE COURT: Y'all stipulate for purposes
5 of this hearing that she's an expert and as --
6 you're a pathologist?

7 THE WITNESS: Forensic pathologist.

8 THE COURT: Forensic pathologist?

9 MR. STRICKLER: For purposes of the
10 hearing, yes, sir.

11 THE COURT: And that we don't have to go
12 into qualifying her and under that that they can go
13 right to the point?

14 MR. STRICKLER: Yes, sir.

15 THE COURT: All right, so stipulated.

16 **P R O F F E R E X A M I N A T I O N**

17 BY MS. CAMPBELL:

18 Q Doctor Durso, did you perform an autopsy on
19 K.H. [REDACTED]?

20 A Yes, I did.

21 Q I want to show you two photographs. That's
22 exhibits 114 and 115. Do you recognize those?

23 A I do.

24 Q And were those photographs taken at the autopsy?

25 A Yes, they were.

SW - A. DURSO - PROFFER

1 Q Would those photographs help you in explaining
2 the cause of death and your findings to this jury?

3 A Yes.

4 Q And specifically how would those help you, if you
5 could just tell the judge briefly?

6 A So this one photograph shows the extensive scalp
7 hemorrhage.

8 MR. STRICKLER: If we could ask for the
9 numbers please, Your Honor.

10 THE WITNESS: 115, is that what it is?

11 THE COURT: Okay. I need you to lift it
12 up a little bit; you're blocking it. All right.

13 THE WITNESS: It shows the extensive scalp
14 hemorrhages that show the extent of blunt force
15 trauma she sustained to her head.

16 THE COURT: And you're gonna testify as to
17 the extent of injuries?

18 THE WITNESS: Yes.

19 THE COURT: And that corroborates your
20 testimony?

21 THE WITNESS: Yes.

22 All right, go ahead.

23 BY MS. CAMPBELL:

24 Q And then the second picture, State's Exhibit
25 Number 114.

1 A Yes, this is a picture of her brain. It shows
2 not only the swelling and edema that she sustained
3 as the brain injury; it also shows the subdural
4 hemorrhage as a result of the trauma to her head.

5 THE COURT: You got anything else you want
6 to ask?

7 BY MS. CAMPBELL:

8 Q And those will both assist you in explaining that
9 and corroborate your testimony to the jury?

10 A Yes.

11 THE COURT: Anything y'all want to ask
12 her?

13 MR. STRICKLER: May it please the Court,
14 sir.

15 **CROSS-EXAMINATION**

16 BY MR. STRICKLER:

17 Q Good afternoon, Doctor.

18 A Good afternoon.

19 Q Your conclusions indicated blood force trauma to
20 the head, correct?

21 A Yes.

22 Q And in your conclusions you describe a
23 subcutaneous hemorrhage over the left anterior
24 aspect of the scalp and the area measures 10 by 8
25 centimeters?

SW - A. DURSO - PROFFER

1 A Yes.

2 Q Is that one of the, reflected in one of the
3 pictures?

4 A Yes.

5 Q And on the right posterior or lateral scalp of
6 the area measuring, right, 8 by 5 centimeters,
7 correct?

8 A Yes.

9 Q So your report describes subcutaneous contusion,
10 correct?

11 A Yes.

12 Q Okay. And we can easily enough translate 8, 10
13 by 8 centimeters into 4 by 3 inches, something like
14 that?

15 A I don't have a calculator but...

16 Q 2.5 centimeters per inch so you can describe the
17 extent of that injury?

18 A I can do my best to describe the words to the
19 extent I believe the pictures are. I'm not an
20 artist. It's a lot easier sometimes to show things
21 than it is to describe it in words.

22 Q And then, again, the second photograph is of?

23 A It's of the brain.

24 Q Right. And what does it demonstrate?

25 A It shows the swelling of the brain as well as the

SW - A. DURSO - PROFFER

1 thin subdural hemorrhage underlying the dura.

2 Q And you would agree with me that both of the
3 those are described in some detail in your report

4 ---

5 A Yes.

6 Q ---correct? That's what you do when you do an
7 autopsy is describe as much detail as necessary what
8 you found?

9 A What's possible, yes.

10 Q Okay, thank you.

11 MR. STRICKLER: I just think there's no
12 reason for them, Judge.

13 THE COURT: All right.

14 MR. STRICKLER: Completeness.

15 THE COURT: Anything further from---

16 MS. CAMPBELL: No, sir.

17 THE COURT: Doctor, did you participate in
18 the review of these photographs to determine what
19 would be helpful to you?

20 THE WITNESS: Yes, I did. We narrowed it
21 down to these two photographs.

22 THE COURT: All right. Anything further?

23 MR. STRICKLER: Just, first of all,--- I
24 misstated myself. There is a reason for it and
25 that's to inflame the passion and prejudice of this

1 jury without any degree of assisting the jury which
2 outweighs the prejudicial. It falls under 403
3 analysis completely as far as I'm concerned and the
4 previous rulings of law in this state.

5 THE COURT: I'm sorry? And the previous
6 rulings what?

7 MR. STRICKLER: Previous rulings in the
8 case law of this state.

9 THE COURT: Okay. All right, I'm going
10 to, I'm gonna allow the photographs. I have had
11 several pretrial conferences with the State and the
12 Defendant. I'd indicated that -- at one point in
13 time they indicated, and I think the defendant
14 corroborated this, they had five hundred or six
15 hundred pictures and I told them that certainly we
16 weren't gonna do that, that I thought most instances
17 pictures were appropriate if they met the criteria
18 but there are in any circumstances I couldn't see
19 have more than five to six pictures were going to be
20 admitted and maybe less than that. And asked the
21 State if they felt like it was necessary they needed
22 to, if we weren't gonna inflame the jury we weren't
23 gonna try and prejudice the jury. The State came up
24 with these two pictures. The doctors indicated that
25 they would helpful in corroborating and explaining

1 her testimony regarding the various injuries
2 inflicted, including the swelling of the brain and
3 the blood on the brain and I think they are relevant
4 to prove child abuse and what they are and manifest
5 an extreme indifference to human life by caused by
6 an individual that were necessary to depict the
7 severity of the injuries resulting trauma which was
8 consistent with being intentional. While they
9 clearly, as most things are, prejudicial that they
10 prejudice is not outweighed by the, I mean, it's
11 probative value is not outweighed by it's prejudice
12 and it will be admitted.

13 All right, we going to go to lunch and be
14 back here at 1:30. Is there anything else we need
15 to take up?

16 MS. CAMPBELL: Nothing from the State.

17 THE COURT: All right, Doctor, you can
18 step down.

19 MR. STRICKLER: No, sir, not from here.

20 THE COURT: Apparently keep you today.

21 THE WITNESS: Yes.

22 THE COURT: Yeah, you can give those
23 photographs to the State.

24 THE WITNESS: All right.

25 THE COURT: I don't guess we need to mark

1 them for any purpose at this time. Mr. Strickler
2 I'm sure will make his objection although they've
3 been marked for identification.

4 MR. STRICKLER: Marked for I.D., Your
5 Honor. Hopefully ---

6 THE COURT: What are the Numbers?

7 MS. CAMPBELL: 114 and 115, and we're
8 gonna leave them with the court reporter.

9 THE COURT: Y'all have a good lunch. I'm
10 gonna make this note from the jury about taking
11 notes a court exhibit. Anybody have a problem with
12 it?

13 MR. STRICKLER: No, Your Honor.

14 MS. CAMPBELL: No, Your Honor.

15 (Court's Exhibit Number 5 was marked
16 and made a part of the record.)

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: All right, the State ready?

19 MS. CAMPBELL: State's ready, Your Honor.

20 THE COURT: Defense ready?

21 MS. PINNOCK: Yes, Your Honor.

22 THE COURT: All right, bring the jury in,
23 Mr. Dye.

24 THE BAILIFF: Yes, Your Honor.

25 (WHEREUPON, the jury was returned to the

SW - A. DURSO - DIRECT

1 courtroom at approximately 1:30 p.m., and
2 the following proceedings commenced in
3 open court.)

4 THE COURT: State ready to call its next
5 witness?

6 MS. CAMPBELL: May it please the Court,
7 the State will call Doctor Durso.

8 WHEREUPON,

9 **AMY DURSO,**

10 having been duly sworn by the Clerk, testified as
11 follows:

12 THE CLERK: Thank you. Please have a seat
13 in the witness stand. State your full name for the
14 record.

15 THE WITNESS: My name is Doctor Amy Durso.

16 **DIRECT EXAMINATION**

17 BY MS. CAMPBELL:

18 Q Doctor Durso, where are you employed?

19 A I'm employed as a forensic pathologist at
20 Professional Pathology Services.

21 Q And where do you do most of your business?

22 A At Palmetto Health Richland in the morgue there.

23 Q And as a forensic pathologist can you tell this
24 jury what your duties include?

25 A My main duty is to perform examination on people

SW - A. DURSO - DIRECT

1 after they have died, which includes an autopsy
2 which is a very thorough examination of the body
3 both outside, as well as inside, all the major
4 organs, the brain, and then documenting all of the
5 findings and coming up with a cause of death.

6 Q Can you tell the jury a little bit about your
7 training in the medical field?

8 A Yes. So I received a bachelors degree in
9 psychology from Emory University. I then got my
10 four year medical degree from the University of
11 North Carolina in Chapel Hill. After medical school
12 I went to Wake Forest University where I did a four
13 year residency program in pathology, and then I
14 stayed on there another year to do a fellowship for
15 more specific training in the field of forensic
16 pathology.

17 Q And are you Board certified in any areas of
18 pathology?

19 A Yes, I'm Board certified in anatomic pathology,
20 clinical pathology, and forensic pathology.

21 Q And what's the difference between anatomic
22 pathology, clinical pathology, and forensic
23 pathology?

24 A So anatomic pathology includes doing autopsies,
25 as well as looking at samples or biopsies any doctor

1 might take. So if you have a skin biopsy, a
2 pathologist would look at that under the microscope
3 and they could diagnose. Anything that's from
4 surgery we look at both with our bare eyes, as well
5 as under the microscope to make the diagnosis.
6 Clinical pathology is more laboratory work, you
7 know, blood transfusions, that sort thing. And then
8 forensic pathology is kind of a subset of anatomic
9 pathology, which includes doing autopsies and
10 determining cause of death.

11 Q And generally, most pathologists are clinical
12 pathologists?

13 A Anatomic pathologists.

14 Q Anatomic, I'm sorry, I was mixing that up. And
15 then you did additional training in order to become
16 a forensic pathologist?

17 A I did.

18 Q And you were Board certified in that area?

19 A Yes.

20 MS. CAMPBELL: And Your Honor, at this
21 time -- let me back up, I'm sorry.

22 BY MS. CAMPBELL:

23 Q How long have you been actively acting as a
24 forensic pathologist?

25 A I've been Board certified in forensic pathology

SW - A. DURSO - DIRECT

1 since 2010.

2 Q And prior to coming to Richland Memorial where
3 were you actually working?

4 A I was completing my training at Wake Forest
5 University.

6 Q And then you came directly here?

7 A Yes.

8 Q And you've been here since 2010?

9 A Yes.

10 MS. CAMPBELL: Your Honor, at this time
11 I'd offer Doctor Durso as an expert in forensic
12 pathology.

13 THE COURT: Mr. Strickler?

14 MR. STRICKLER: Without objection, sir.

15 THE COURT: All right, ladies and
16 gentlemen, scientific, technical, other specialized
17 knowledge will assist you, the trier of facts, in
18 understanding any evidence or any issues that may be
19 in controversy and a witness can be qualified as an
20 expert by virtue of his or her knowledge experience,
21 training, skill, and can offer opinions in his or
22 her areas of expertise. I'm gonna find that Doctor
23 Durso is qualified as an expert as a forensic
24 pathologist. Is that what you want her?

25 MS. CAMPBELL: Yes, sir.

SW - A. DURSO - DIRECT

1 THE COURT: As such, she can render
2 opinions in that area. You are to give her
3 testimony such weight and credibility as you deem
4 appropriate.

5 BY MS. CAMPBELL:

6 Q Doctor, how are cases referred to you typically
7 in a forensic field?

8 A The majority of our cases come from the Richland
9 County coroner's office.

10 Q The coroner's office?

11 A Yes.

12 Q And who is the coroner here in Richland County?

13 A Gary Watts.

14 Q Are there other people in your practice that also
15 are forensic pathologists?

16 A There's one other forensic pathologist, Doctor
17 Bradley Marcus.

18 Q And once a case is referred to you what are your
19 duties?

20 A So we get a, usually get a brief report from the
21 coroner's office as to what they're requesting,
22 basics about the age and the circumstances
23 surrounding the death, and then we actually perform
24 the autopsy.

25 Q Okay. When performing autopsy in the case of,

SW - A. DURSO - DIRECT

1 what are you looking to find, what are you looking
2 to determine?

3 A We're looking to determine the cause of death,
4 and we're also looking to the document just any
5 natural diseases, injuries, anything abnormal during
6 the course of the autopsy. We document everything
7 that we find that's not normal.

8 Q Back in May of 2011 did you perform an autopsy on
9 17 month old K.H. [REDACTED]?

10 A I did.

11 Q And what was her date of birth as reflected?

12 A [REDACTED].

13 Q And when did you actually perform the autopsy on
14 the little girl?

15 A May 26th, 2011.

16 Q You said that prior to doing the autopsy you got
17 some background information, and who actually
18 provided that information to you?

19 A Usually one of the deputy coroners refers to the
20 case to me.

21 Q During the course of this autopsy did you refer
22 or confer with anyone else there in the hospital or
23 ---

24 A Yes, I was told that this was a case suspicious
25 for child abuse so I had looked up her, the child's

SW - A. DURSO - DIRECT

1 records, the ones that were available on the
2 computer as medical records system at Palmetto
3 Health and I'd also spoken with Doctor Sheila Jones
4 about the radiological findings that they had done
5 prior to the child dying.

6 Q And why is it good for you to review those
7 records prior to you doing an autopsy?

8 A It's good background information; and if there's
9 anything special I need to look for, I can go back
10 and specifically look for the things that they
11 documented in their medical records.

12 Q In this case, so you reviewed the records just
13 from Palmetto Richland; is that correct?

14 A Yes, that's all that was available to me at the
15 time.

16 Q And you didn't have access to records from
17 Providence at that point, did you?

18 A I did not.

19 Q Once you reviewed some records did you then
20 perform the autopsy?

21 A I did.

22 Q And where did that take place, ma'am?

23 A It took place in the morgue at Palmetto Health
24 Richland Hospital.

25 Q And tell the jury what your observations were

SW - A. DURSO - DIRECT

1 when you initially started your autopsy?

2 A The injury, you want me to start with the injury

3 ---

4 Q The injuries you noticed just from observing the
5 body.

6 A She had several contusions. She had multiple
7 injuries to her body in general. Several
8 contusions, injuries to the head, as well injuries
9 to the torso and extremities.

10 Q And when you say the word contusion what do you
11 mean?

12 A I mean a bruise. So a bruise is, you know, we
13 all know what a bruise is. We hit with any kind of
14 blunt object the vessels underneath the skin break
15 and you see the bleeding underneath the skin.

16 Q And you mentioned that you noticed some bruising
17 to the body area?

18 A I did.

19 Q And did you notice any bruising to any other
20 areas?

21 A To the head, to the torso, to -- let's see. To
22 the neck, the scalp. There were quite a few
23 injuries, I'm sorry, if I may refer to my notes.
24 And there were also injuries, she was a darker
25 skinned child so there were other injuries that we

SW - A. DURSO - DIRECT

1 didn't find till after the autopsy that you consider
2 contusions or bruises that we didn't know. We
3 actually made incisions along her back, buttocks,
4 legs, and arms to look for additional bruising at
5 the end of the autopsy so we actually found more
6 bruising injury during the course of autopsy than we
7 initially observed when we first started.

8 Q And you said you didn't actually see the
9 manifestation of the bruise on the outer skin in
10 some areas?

11 A In some areas, no, we could not see it ---

12 Q And what causes a bruise to come up on someone's
13 skin, a darker colored?

14 A What causes a bruise?

15 Q What's the mechanism?

16 A Oh, it's blunt force injuries so, you know, as
17 opposed to a sharp force which would cut the skin.

18 A blunt object, which is flatter, actually crushes
19 the soft tissues underneath the skin and it would --
20 if it was gonna do anything to the skin, it would
21 tear it up instead of cut it, which is called
22 laceration and underneath it would break the blood
23 vessels and crush the tissue which would allow you
24 to see the bruise.

25 Q So the actually thing you're seeing when you see

SW - A. DURSO - DIRECT

1 a bruise is the actual blood underneath the skin?

2 A Yes.

3 Q And you mentioned that later on in autopsy, let
4 me get back to that, you actually cut up certain
5 areas and noted bruising that wasn't apparent on her
6 skin?

7 A Yes.

8 Q Was there any evidence of any kind of medical
9 intervention that had been done prior to your
10 autopsy?

11 A Yes. She was intubated so she had a tube down
12 her throat. She had a Foley caterer which drains
13 the urine. She had IVs, her fluid. She had a tube
14 in her nose. I think those were the basic
15 intervention I noted.

16 Q And did that correspond with the records you had
17 reviewed ---

18 A Yes.

19 Q ---as far as her stay at Richland Memorial?

20 A Yes.

21 Q And taking it in whatever order, how did you go
22 about doing the autopsy in this case, and then we'll
23 talk about the injuries.

24 A So after noting the external findings, the things
25 we could see without cutting into the skin, after we

SW - A. DURSO - DIRECT

1 finished documenting those, we actually make a Y
2 shaped incision from the shoulders down to the
3 sternum and then down along the abdomen. We're able
4 to reflect the skin back. We then can see the rib
5 cage. We actually use a saw in adult cases,
6 although she was a child, so we were able to cut the
7 ribs, they're not completely fused in the front. We
8 remove the front of the rib cage we're able to see
9 all the major organs in the chest and the abdomen
10 and then we remove them and examine them
11 individually.

12 Q Did anyone end up assisting you in certain parts
13 of this autopsy?

14 A There's an autopsy assistant that does some of
15 the initial incisions, the Y shape, but I'm
16 observing and guiding them the entire time.

17 Q And taking it in whatever order you think is
18 appropriate, tell the jury what your findings were
19 as you performed this autopsy.

20 A Well, we did note bruising -- or not bruising,
21 sorry. Well, as far as the ribs go, we did note two
22 posterior rib fractures which had been noted on the
23 radiological exams prior to the autopsy, but I was
24 able to visualize these directly. They were
25 non-displaced fracture which means that's a thin

SW - A. DURSO - DIRECT

1 fracture line in both the posterior left 8th and 9h
2 rib so along the back. Let's see. And the major
3 injuries were actually, the more significant
4 injuries are actually found within the head. So for
5 the head we actually make an incision along the back
6 of the scalp from ear to ear, and we actually are
7 able to peel back the scalp and this allows us to
8 look for any bruising or contusions underneath the
9 skin, especially with thick hair and dark skin. A
10 lot of times we can't see bruising to the head until
11 we remove part of the scalp and reflect it down. We
12 found significant bruising when we did this. She
13 had a very large area of bruising to this area of
14 the head, as well as to the back right side of the
15 head so in two opposite areas of the scalp and quite
16 large areas.

17 THE COURT: Hold on just as second, let
18 the record reflect she pointed to the left frontal
19 portion of her head to one side. She mentioned the
20 other side was on the back but.

21 THE WITNESS: The right posterior area.

22 BY MS. CAMPBELL:

23 Q And what area of the front, I'm sorry?

24 A The left frontal area. This is coming,
25 (indicating) left, right posterior, right back of

1 the head.

2 Q And continue.

3 A And then we could observe a skull. We saw the
4 sutures that kind of run between the bones in
5 infants that kind of bones are growing to allow for
6 growth, were kind of slated, which means you can see
7 they were stretched so we knew something was
8 definitely abnormal. After removed the top portion
9 of the skull we were able to observe a subdural
10 hemorrhage, which is bleeding between the dura which
11 covers the brain. It's kind of a, looks like a
12 sheath that's between the skull and the brain. We
13 observed bleeding between that sheath of dura and
14 the brain itself, and we also noticed she had marked
15 edema or swelling of the brain.

16 Q And when you say marked edema or swelling of the
17 brain, you mentioned earlier that the sutures were
18 stretched?

19 A Yes.

20 Q And what are sutures?

21 A So the sutures are the part of a skull that allow
22 the baby's head to grow so it's almost kind of like
23 the growth plate. So it's kind of where the bone
24 isn't completely fused (indicating) but allows the
25 head to grow so it's kind of a line that's supposed

SW - A. DURSO - DIRECT

1 to be there, but normally in a child that doesn't
2 have significant head injuries you would not expect
3 the sutures to be stretched so much so you could
4 tell that something was pressing against it.

5 Q And then when you removed the top of the skull
6 and examined the actual brain itself, was there a
7 reasonable explanation as to why the sutures had
8 been stretched?

9 A Yes.

10 Q What was that?

11 A Swelling of the brain as well as the subdural
12 hemorrhages were all taking up more space than just
13 the brain, an un-swollen brain would have. So it
14 was stretching the sutures, the brain's skull
15 cavities kind of a closed box so when the brain
16 swells it really has not many places to go so it was
17 pushing on the sutures.

18 Q Did you notice any injuries to the forehead?

19 A Yes, she actually before we even made an incision
20 there was bruise on the forehead, soft tissue
21 swelling, so you could tell there was at least one
22 contusion or bruise here. And when reflected the
23 scalp there was not just a bruise here. It
24 encompassed a large portion of the scalp in this
25 area.

SW - A. DURSO - DIRECT

1 Q And where are ---

2 THE COURT: Doctor, when you say here ---

3 THE WITNESS: I'm sorry, on the left kind
4 of frontal side (indicating) of the scalp.

5 BY MS. CAMPBELL:

6 Q Did you note any bruising to the cheek area?

7 A Yeah, there were two small bluish contusions or
8 bruises to each of the cheeks.

9 Q To each of the cheeks?

10 A Yes, so on both sides. There were two here and
11 two -- two on the right cheek and two on the left
12 cheek.

13 Q And what were the approximate size of those
14 contusions?

15 A Let me refer to my notes. So on the right cheek
16 they measured 1.5 by one centimeter so fairly small,
17 and 1 by 0.6 centimeters so.

18 Q And they were round in nature?

19 A And they were round in nature. On the left cheek
20 they were 2 by 1.5 centimeters so slightly larger,
21 and 2.5 by 1.5 centimeters, so the last one was
22 slightly larger than before.

23 Q And how were they located as far as on the face
24 in relation to each other on each cheek?

25 A There were separated by some space, I mean, like

SW - A. DURSO - DIRECT

1 right here and right here.

2 Q So about an inch apart?

3 A Yeah, at least an inch apart, yeah.

4 Q And the areas that you noted once you reflected
5 the scalp on the actual skull, what size contusions
6 were those?

7 A So the left side, (indicating) it measured 10 by
8 8 centimeters which encompasses quite a large area.
9 I don't know -- I don't have a ruler with me but.
10 And on the right (indicating) kind of back of the
11 scalp it was an area measuring 8 by 5 centimeters so
12 only slightly smaller but still a significant area
13 of bruising.

14 Q And what kind of -- again --

15 A These indicate blunt force impact so blows to her
16 head by some kind of flat, hard object either by her
17 being taken and impacted into the hard object or a
18 hard object coming and hitting her.

19 Q The swelling that you found in the brain, was it
20 significant ultimately to the cause of death?

21 A Yes.

22 Q And how is it significant?

23 A It is her cause of death. The blows to the head
24 caused the injury to the brain and caused her death.
25 These were significant blows to the head,

SW - A. DURSO - DIRECT

1 significant brain injury as noted from the swelling
2 of her head as well as of her brain, as well as the
3 subdural hemorrhages, the bleeding that we saw
4 around her brain, all came from these blunt blows to
5 her head and that was what killed her.

6 Q Did you also note any injury to her neck?

7 A There were some, there was kind of a scraped
8 contusion back kind of behind her right ear kind of
9 going back down towards her neck.

10 Q And was there any skull fracture present?

11 A I did not note any skull fractures, no.

12 Q In a child this age, could she have sustained
13 enough blunt force trauma that would have cracked
14 her head and actually caused swelling of her head?

15 A Yes.

16 Q At some point after looking at the brain did you
17 then remove it from the body?

18 A Yes, we removed it and because the brain is very
19 soft, especially in young children, it's also soft
20 because she has a global anoxic brain injury and
21 also would make her brain very, very soft we
22 actually removed it and placed it in a container
23 full of formalin, which is a kind of chemical that
24 fixes the brain, inflates it firmer, and that way at
25 a later date we could cut it and have more accurate

SW - A. DURSO - DIRECT

1 findings.

2 Q And did someone else actually perform those
3 tests?

4 A Yes, Doctor Bradley Marcus performed it because I
5 had to leave on maternity leave.

6 Q You had a child?

7 A I had a child several days after this, was unable
8 to do the brain cutting.

9 Q Did you also, in reference to the head, examine
10 the eyes?

11 A Yes. So we also removed both eyes, and again, we
12 do the same thing as we did for the brain is that we
13 place it in the formula, affix it in containers for
14 examination at a later date just so they get firmer
15 and that way we don't have so much artifact when we
16 cut them. So we save the eyes, we save the brain,
17 and we also removed several of the ribs. I believe
18 we removed sections of four ribs around the ones
19 that we noted to be broken, and these actually can
20 have the opposite effect. We wanted to make them
21 softer so we use a decalcification solution that
22 kind of takes the calcified part out of the bone so
23 we can actually cut them and look at them under the
24 microscope.

25 Q And did you do that?

SW - A. DURSO - DIRECT

1 A Removed them, yes.

2 Q And were they looked at under the microscope?

3 A Yes.

4 Q And what was the result of that examination?

5 A They were acute fractures so which means they
6 didn't really have any evidence of healing. There
7 was just kind of blood there. There was no evidence
8 that the fractures had any time to heal.

9 Q And when you're saying acute, what typically is
10 the time period?

11 A Usually you wouldn't see any healing under a
12 microscope until at least five days so they were
13 less than five days old.

14 Q Less than five days?

15 A Yes. And this was three days, I think, after she
16 initially presented to the hospital that we did the
17 autopsy.

18 Q And the ribs that were broken, what part of the
19 rib cage were they in and where were they broken?

20 A So it was on the left side posterior or back part
21 of the 8th and 9th ribs so kind of down from the
22 top, the 8th and 9th ribs. And these fractures
23 typically seen in child abuse victims and it's quite
24 specific for squeezing or grabbing very tightly of a
25 child.

SW - A. DURSO - DIRECT

1 Q You mentioned earlier that you also did some
2 cutting into the skin?

3 A We did.

4 Q To look for further, any further injuries?

5 A Yes.

6 Q And what were the results of those findings?

7 A We found large areas of hemorrhage. We found a
8 large area of hemorrhage that extended over her
9 right buttock extending down to her right thigh.
10 This measured 15 by 13 centimeters so even larger
11 than the area of hemorrhage in her scalp. This was
12 even larger. She also had areas of bruising and
13 hemorrhage within her lower right leg in an area
14 measuring 10 by 9 centimeters. She developed some
15 other different areas of bruising.

16 Q In doing the autopsy do you also look for any
17 type of disease or anything else that may contribute
18 or cause the death?

19 A Yes, we thoroughly examine all of the major
20 organs, and we look at them under the microscope as
21 well.

22 Q And was there any type of natural or disease that
23 caused this child's death?

24 A No.

25 Q You also draw blood and get it sent off to be

SW - A. DURSO - DIRECT

1 examined to toxicology?

2 A Yes.

3 Q And what is toxicology?

4 A Toxicology is looking for any kind drugs or
5 poisons that would be in the blood at the time of
6 her death. And I believe the coroner's office
7 actually obtained the blood that was drawn when she
8 first arrived at Providence Hospital and sent that
9 off for toxicology testing and it came back
10 negative. There were no substances identified.

11 Q So she wasn't poisoned?

12 A No.

13 Q You mentioned earlier that you removed several
14 ribs. I'm gonna show you what's been marked as
15 State's Exhibit Number 116. You recognize that?

16 A I do.

17 Q I'll put it up on the light in a minute.

18 A Yeah. Okay.

19 Q And is that one of the x-rays that would have
20 been taken?

21 A Yes.

22 Q And would this have been before or after the ribs
23 were removed?

24 A They were after the ribs were removed.

25 MS. CAMPBELL: Your Honor, at this time I

SW - A. DURSO - DIRECT

1 offer State's Exhibit 116 into evidence.

2 MR. STRICKLER: As to 116 no objection.

3 THE COURT: So admitted.

4 (WHEREUPON, State Exhibit No. 116
5 admitted into evidence.)

6 MR. STRICKLER: As to 116, subject to my
7 previous objection at pretrial last Friday.

8 THE COURT: Okay.

9 BY MS. CAMPBELL:

10 Q I'm gonna show you what's been marked State's
11 Exhibits Number 114 and 115. Do you recognize
12 those?

13 A Yes, I do.

14 Q And were those photographs taken during the
15 course of your autopsy?

16 A They were.

17 Q And were there hundreds of photographs taken?

18 A Hundreds, yes.

19 Q But do these show pictures of the brain area that
20 we've been talking about?

21 A Yes.

22 MS. CAMPBELL: Your Honor, at this time we
23 offer State's Exhibits 114 and 115 into evidence.

24 MR. STRICKLER: Subject to previous
25 objection.

SW - A. DURSO - DIRECT

1 THE COURT: So admitted.

2 (WHEREUPON, State Exhibits Nos. 114 and
3 115 were admitted into evidence.)

4 BY MS. CAMPBELL:

5 Q Will these photographs help you in showing the
6 jury what type of injuries we're taking about that
7 caused her death?

8 A Yes.

9 MS. CAMPBELL: Your Honor, may the witness
10 step down?

11 THE COURT: She may.

12 MS. CAMPBELL: Thank you.

13 (Witness steps down.)

14 BY MS. CAMPBELL:

15 Q And I notice there's some numbers on there. What
16 do those numbers represent?

17 A So these are the ribs we removed during the
18 course of the autopsy. This all -- the left ribs 6,
19 7th, 8th, and 9th ribs.

20 Q Okay. And you mentioned that you found and
21 during course of autopsy that two of the ribs were
22 actually fractured?

23 A Yes. So the 8th and 9th ribs, the 9th is a
24 little more obvious.

25 THE COURT: Doc, you need to speak up a

SW - A. DURSO - DIRECT

1 little bit 'cause you're talking down. I don't know
2 if you can turn around a little bit and -- turn.

3 THE WITNESS: So these 6th and 7th ribs
4 have no fractures in them. The 8th and 9th ribs
5 along the posterior portion back here, there's a
6 tiny little line here on the 8th rib and there's a
7 little fracture here on the 9th rib. And as you can
8 see there's these little translucent lines, and that
9 means they're acute fractures. There's no evidence
10 of healing.

11 BY MS. CAMPBELL:

12 Q Okay. And that was actually taken at your
13 autopsy?

14 A Yes.

15 Q And you say that they're in the back. Would this
16 have been -- I call it the backbone, the back of the
17 spine?

18 A The spine. So as they, you know, kind of like
19 taken right near the spine these two portions here
20 ---

21 Q Can you point on there to me where they would
22 have been?

23 A So around here.

24 Q Near the spine?

25 A Yes.

SW - A. DURSO - DIRECT

1 Q On that side. And in your expert opinion what
2 kind of trauma would cause that type of injury in a
3 child?

4 A Squeezing. So if you're squeezing a child you
5 would cause these fractures here.

6 Q I want to show you — Your Honor, may she step
7 down in front of the jury? I will put her on this
8 side.

9 THE COURT: All right.

10 BY MS. CAMPBELL:

11 Q State's Exhibit Number 115, what does that show?

12 A So like I described in the process of our autopsy
13 that we make incisions behind the ear and reflect
14 the scalp back. We actually peel it down so the, so
15 it's almost over the face. So this is the skull
16 here and this is the scalp, and this is showing the
17 extent of these two bruises. So even though this
18 looks like it's down on front, the right part is
19 actually the back right part of the scalp. The way
20 it's peeled down you can see these large areas of
21 bruising, and this is this area here and this,
22 again, is another large area of bruising.

23 Q When you say bruising is actually bleeding?

24 A It's bleeding underneath the skin so as a result
25 of blunt impact to her head.

SW - A. DURSO - DIRECT

1 Q You mentioned the swelling of the head. I show
2 you what's been marked as Stage's Exhibit Number
3 114.

4 A And this, again, you can see the bruising of the
5 scalp here, and this is what we saw when we removed
6 the actual skull. This is the dura, that sheathe I
7 said that overlies the brain, and underneath is the
8 hemorrhage. It was a thin layer of subdural
9 hemorrhage. You can see all that kind of bluish
10 looking stuff; that's actually brain. And her
11 brain, you know, the brain has lots of folds that's
12 so suci and ridges, called gyri.

13 Q Right.

14 A And it's almost completely flattened; that's how
15 swollen her brain is.

16 Q Thank you.

17 A (Resumes seat).

18 Q Doctor, during the course did you also do some
19 diagrams?

20 A I did.

21 Q And I show you what's been marked State's Exhibit
22 118 and 117. Are these diagrams prepared during the
23 course ---

24 A Yes.

25 MS. CAMPBELL: And Your Honor, at this

SW - A. DURSO - DIRECT

1 time we offer them into evidence. I need to show
2 you...

3 (Exhibits shown to Mr. Strickler.)

4 MS. CAMPBELL: Beg the Court's indulgence.

5 THE COURT: Pardon me?

6 MS. CAMPBELL: He wants to look at
7 something. I'm handing him the original.

8 (Pause.)

9 MS. CAMPBELL: We need to approach, Your
10 Honor. May we approach.

11 THE COURT: Show them now.

12 (WHEREUPON, counsel approached the Bench
13 for an off-the-record discussion.)

14 MS. CAMPBELL: Beg the Court's indulgence.
15 Your Honor, may I let him review what we got.

16 (Pause.)

17 MS. CAMPBELL: Thank you. We are
18 redacting one. We can go ahead and proceed with the
19 other. Any objection to 117?

20 MR. STRICKLER: No objection to 117, Your
21 Honor.

22 MS. CAMPBELL: We will proceed with 117
23 with Court's permission.

24 THE COURT: Go ahead. That's so admitted.

25 (WHEREUPON, State Exhibit No. 117

SW - A. DURSO - DIRECT

1 was admitted into evidence.)

2 BY MS. CAMPBELL:

3 Q Doctor, you mentioned that you noticed some
4 bruising that wasn't apparent to the eye?

5 A Yes.

6 Q State's Exhibit 117, what does that show?

7 A So, this is another diagram that I used to show
8 the bruising that I didn't see initially that I saw
9 only after peeling the scalp down, as well as making
10 incisions into the skin to look for more bruising.

11 And so here's the area of hemorrhage on the orbital
12 scalp that we've been talking here on the left front
13 side as well as here on the back of the scalp.

14 These are also small areas of bruising that I noted
15 as well. And this is a large area of bruising I
16 noted on the right buttocks and back of the thigh,
17 and as well as this top within extension of that and
18 this is another area of bruising seen on the right
19 leg here.

20 Q And how did you actually, were able to see this?

21 You actually cut ---

22 A Make incisions into the skin through the skin
23 subcutaneous tissue and look for blood basically so
24 you can see the actual bleeding into the tissues.

25 Q And that's what you found when you did that?

SW - A. DURSO - DIRECT

1 A Yes.

2 Q You can get back on the stand.

3 A (Resumes seat).

4 Q Doctor, I'll get back to your diagram with the
5 actual -- as far as this, you already testified
6 earlier that there was no natural cause or disease
7 that caused this child's death?

8 A No, there was not.

9 Q And there was no poison or anything else in her
10 system that caused her death?

11 A No.

12 Q Did you come to a determination as to the cause
13 of death with K.H. [REDACTED]

14 A Yeah, we -- or I decided the cause of death was
15 closed head injury due to non-accidental blunt head
16 trauma.

17 Q When you say non-accidental, we heard that word
18 before, what does that mean?

19 A It means it was abuse. It was intentionally
20 inflicted.

21 Q And what was significant in your findings that
22 made you come to the determination this was abuse?

23 A The severity of the head injuries are
24 inconsistent with any kind of fall. They're too
25 severe. And not only that but there are multiple

SW - A. DURSO - DIRECT

1 locations. So if a child would fall and hit their
2 head you'd expect one bruise maybe, not two large
3 ones on opposite sides of the head as well as the
4 other small bruises I noted, as well as the one on
5 the legs. So that's not consistent with any kind of
6 fall or accident.

7 Q In your assessment of this child were you able to
8 determine approximately how many points of trauma
9 there were?

10 A To the head?

11 Q To the head?

12 A I estimated 12.

13 Q When you say 12 what does that mean?

14 A She had at least 12 blunt blows to the head.

15 Q And the type of swelling that you saw to her
16 brain was there any way she could have survived this
17 injury?

18 A No.

19 Q No matter what the care?

20 A Severe, no.

21 Q Once the head injury was inflicted, how long
22 before it would have been obviously symptomatic?

23 A I think based on the severity of her head injury
24 I think it would have been almost immediately
25 symptomatic.

SW - A. DURSO - DIRECT

1 Q When you say symptomatic, what symptoms would
2 those be?

3 A The symptoms of severe head injury would be loss
4 of consciousness, decreased respiratory drive so she
5 might have had difficulty or even stopped breathing,
6 and seizure like activity.

7 Q And in your opinion could any kind of medical
8 treatment reversed this child's fate?

9 A No.

10 Q There's also been focus on the fact that this
11 child wasn't breathing. Was the not breathing the
12 cause of the head injury?

13 A No, the not breathing was a result of the head
14 injury so, you know, your brain causes you to
15 breathe and so if you have a massive head injury you
16 no longer have that respiratory drive and it affects
17 your breathing. It affects your temperature
18 inoculation. It affects many things, your levels of
19 consciousness. So with that degree of injury she
20 would have had problems breathing because of the
21 head injury.

22 Q And once this head injury happened would this
23 child have been able to eat?

24 A No.

25 Q Sit up?

SW - A. DURSO - DIRECT

1 A No.

2 Q Breathe?

3 A No.

4 Q Or any way act any way normal?

5 A No.

6 Q And once she had this head injury, if she had not
7 received intervention with the breathing would she
8 have died fairly rapidly?

9 A Yes.

10 Q Based on your view of this child's injury is
11 there anything other than child abuse to explain?

12 A No, it's absolutely child abuse.

13 Q Beg the Court's indulgence. There's also been
14 testimony today about an orbital fracture. Did you
15 actually note that in your autopsy?

16 A I did not note orbital fracture.

17 Q When you did your autopsy did you have access to
18 the radiologic exam or pictures from the other
19 hospital, Providence?

20 A No, I had no records from Providence and so
21 orbital fractures, you know, there's a lot of bones
22 around the eyes and face. We don't dissect into
23 those bones. I mean, we would have to disfigure the
24 person to get to some of those areas so unless we
25 know they're there, we don't go looking for them.

SW - A. DURSO - DIRECT

1 Q Is that unusual for there to be actual additional
2 injury that may not be noted in area you didn't
3 explore?

4 A That would be expected, yes.

5 Q And do all breaks and bones show up on every
6 scan?

7 A No.

8 Q Finally, you also mentioned that the eyes were
9 examined. What were the results of those findings?

10 A So the eyes were examined at a later date and I
11 actually was not present for the cutting of the eyes
12 because they had to wait two weeks and I was on
13 leave at that time so they were cut by Doctor
14 Marcus. I did review the findings afterwards. I
15 reviewed the slides where he took sections, but
16 there were bilateral retinal hemorrhages.

17 Q And is that that significant in child abuse
18 cases?

19 A It's noted in many child abuse cases. It's noted
20 in any kind of -- it's noted in many cases of blunt
21 trauma to the head and any kind of situation where
22 there's swelling of the brain, you can see them.

23 MS. CAMPBELL: Beg the Court's indulgence.
24 I apologize, Your Honor.

25 THE COURT: Ladies and gentlemen -- you

SW - A. DURSO - DIRECT

1 about finished other than that other document?

2 MS. CAMPBELL: Other than that other
3 document I'm about finished.

4 THE COURT: All right, ladies and
5 gentlemen, we'll take about a five minute break and
6 let you step back in the jury room while we wait for
7 this other document to get here. Please don't
8 discuss the case and don't get too comfortable.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 2:15 p.m., and the following
11 proceedings commenced in open court.)

12 THE COURT: We'll give you five minutes to
13 see if you can get it. If you can't...

14 MS. CAMPBELL: I apologize, Your Honor.

15 THE COURT: When it comes in let
16 Mr. Strickler look at it.

17 Doctor, you can step down. Don't talk
18 about your testimony while we break.

19 (WHEREUPON, a recess was taken from the
20 proceedings.)

21 THE COURT: Did -- have you looked at it,
22 Mr. Strickler?

23 MR. STRICKLER: Yes, I have, sir.

24 THE COURT: Let's bring the jury in.

25 MS. CAMPBELL: Thank you, Your Honor.

SW - A. DURSO - DIRECT

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 2:25 p.m., and
3 the following proceedings commenced in
4 open court.)

5 THE COURT: All right, Ms. Campbell.

6 MS. CAMPBELL: Thank you, Your Honor. At
7 this time we offer State's Exhibit 118 into
8 evidence.

9 MR. STRICKLER: It's without objection,
10 sir.

11 THE COURT: So admitted.

12 (WHEREUPON, State Exhibit No. 118 was
13 admitted into evidence.)

14 MS. CAMPBELL: May the witness step down
15 one more time, Your Honor.

16 THE COURT: Yes, ma'am.

17 BY MS. CAMPBELL:

18 Q Doctor, is this a diagram you also prepared
19 contemporaneously with the autopsy?

20 A Yes.

21 Q And what does this show?

22 A It shows generally whenever I do an autopsy I
23 have a diagram consisting of the body, and this is
24 where I go along with my notes and I mark, you know,
25 body weight, length, temperature, all of my, the

SW - A. DURSO - DIRECT

1 nature of my external findings on the outside of the
2 body. So this also shows some of the medical
3 intervention, ETI, endotracheal tube, Foley catheter,
4 the IVs; and then it also shows the injuries I can
5 see from the outside of the body.

6 Q Okay. And when you go through these injuries in
7 whatever order that's best for you, just note that
8 is you've noted on this diagram.

9 A Okay. So these are the two faint contusions I
10 noted on the right cheek. Here are the two faint
11 contusions noted on the left cheek. There is the
12 area of bruising and swelling I saw on the left
13 forehead from the outside of the body. This is a
14 medical intervention vascular access line. There
15 were several healed or healing abrasions that I
16 noted along the torso side of the body and scars.
17 Areas of scarring here and here. There was a
18 healing abrasion here in the abdomen. Some purple
19 contusions noted here on the lower abdomen on the
20 right side. And again, I just have numerous noted
21 here. This is the abraded contusions, kind of a
22 scrape and a bruise in the same spot located here on
23 the back of the head kind of behind the right ear.
24 Again, more scarring noted in this area. These are
25 my going spots which is not an injury, kind of a

SW - A. DURSO - DIRECT

1 birth mark that a lot of children have. And some of
2 this is also medical intervention puncture marks.

3 Q So that at least, it looks, show some of the
4 injuries that were shown?

5 A Yes.

6 Q Okay. Thank you, Doctor, you can sit back down.

7 A (Resumes seat.)

8 Q Doctor, the bruising that you saw in this child,
9 the bruises to the other area as well as to bruises
10 to the head, how did they appear to you?

11 A They were very reddish in color and so as
12 bruises age they go from a yellow -- sorry, from a
13 red to a yellow color as they age. These are all
14 mostly red areas of contusion or bleeding underneath
15 the soft tissues so I would consider these fairly
16 acute injuries.

17 Q Okay. And about -- do they appear to have been
18 inflicted around the same time period?

19 A Yes, they all -- you can't really date a bruise
20 specifically to a certain day or time, but you can
21 say that they all appear to be around the same age.
22 They all had the same coloration in them.

23 Q And finally, Doctor, did you also consult with
24 Doctor Marcus in this case?

25 A I did.

SW - A. DURSO - CROSS

1 Q And he's the one that actually did some of the
2 followup work on your autopsy?

3 A He did.

4 Q Thank you. I don't have anything further.

5 THE COURT: Pardon me?

6 MS. CAMPBELL: I don't have anything
7 further, Your Honor.

8 THE COURT: All right, Mr. Strickler, it's
9 you.

10 MR. STRICKLER: Thank you, may it please
11 the Court.

12 **CROSS-EXAMINATION**

13 BY MR. STRICKLER:

14 Q Good afternoon, Doctor.

15 A Good afternoon.

16 Q I take it from your testimony that neither you
17 nor Doctor Marcus traveled to the scene where this
18 is alleged to have occurred?

19 A We did not, no.

20 (Phone sounds off.)

21 THE COURT: What was that? Get that
22 phone.

23 (Phone tendered to the Court.)

24 THE COURT: Sorry, Mr. Strickler.

25 MR. STRICKLER: Yes, sir, my apologies.

1 BY MR. STRICKLER:

2 Q Now you described a number of injuries in this
3 case?

4 A Yes.

5 Q I'm not gonna go through them in detail 'cause
6 Ms. Campbell did. I'd just like to ask you a few
7 things. You described the fractures to the two ribs
8 ---

9 A Yes.

10 Q ---as being acute, correct?

11 A Yes.

12 Q As we have all learned, in medical parlance that
13 means recent, right?

14 A Yes.

15 Q And if I understood your testimony on direct it
16 was to the effect that you wouldn't see any healing
17 of fracture like that for about five days; is that
18 right?

19 A Correct.

20 Q Okay. Let's say, I guess, at least five days was
21 your testimony. When you talk about time periods in
22 medicine, ---

23 A Uh-huh.

24 Q ---is it fair to say that often they can't be
25 completely precise as far as dating?

SW - A. DURSO - CROSS

1 A As far as dating, considering the very hour they
2 occurred, that's not possible with most of these
3 injuries.

4 Q Often the best you can do is a range of a date,
5 range of days, right?

6 A Yes, that's correct.

7 Q That's why you say you wouldn't observe any
8 healing until at least five days after ---

9 A That's correct.

10 Q ---correct? Okay. And the last thing you
11 testified about, I believe, before Ms. Campbell
12 rested was the bruising, various bruises that you've
13 testified about associated with both the head and
14 torso, the body?

15 A Yes.

16 Q And you indicated that those were reddish in
17 color?

18 A Yes, the ones that we cut into, yes.

19 Q Okay. The ones you cut into were the two areas
20 that you described on the right or on the ---

21 A Right, on the right buttock and thigh, the right
22 leg, as well as the ones that we observed by
23 reflecting the scalp.

24 Q You didn't cut into any of those, only the torso
25 itself?

1 A No.

2 Q Right. And that as bruises resolve themselves
3 the color changes?

4 A Yes.

5 Q Goes through a process to change. It's fair to
6 say that you can only get date ranges as far as when
7 those sort of occurrences will happen also?

8 A Correct.

9 Q So that it would be fair to say that you cannot
10 date the bruises to the torso with any degree of
11 accuracy, correct?

12 A No, I cannot.

13 Q Okay. How about the bruises that you cut into on
14 the buttocks and the calf, can you date those?

15 A I cannot, only to say they did not have a lot of
16 yellow discoloration so they were fairly recent. I
17 cannot not give you a specific date or time when
18 they occurred.

19 Q Okay. And even if you were able to say these
20 occurred on May 23rd, 2011, you couldn't tell us
21 whether they occurred at 7:30 in the morning,
22 correct?

23 A No, I could not tell you specific time they
24 occurred.

25 Q As opposed to 9:30 or 11:30---

SW - A. DURSO - CROSS

1 A Correct.

2 Q ---correct? All right. If you would please help
3 me, your final anatomical diagnoses?

4 A Yes.

5 Q Include a finding of diffuse anoxic changes to
6 cerebrum and cerebellum. What's anoxic, I'm sorry?

7 A Anoxic means lack of oxygen so basically the
8 neurons start to die. So when you look at under the
9 microscope, that's part of the reason the brain is
10 swollen as well is that the neurons are dying, the
11 cells that make up the brain. We can actually see
12 that under the microscope so after we did cut the
13 brain, sections were looked at underneath the
14 microscope and you could see the damage to the
15 neurons.

16 Q Okay. You also noted and we didn't talk about
17 it, the presence of acute pneumonia?

18 A Yes.

19 Q Bilateral in both lungs?

20 A Yes.

21 Q Correct? Which could be an artifact of her stay
22 in the hospital, correct?

23 A Right. We almost always see a little bit of
24 patchy pneumonia. Anyone that's been on a
25 ventilator for any prolonged period of time and my

SW - A. DURSO - CROSS

1 understanding, she was on a ventilator for three
2 days so I would have been surprised to not see a
3 little bit of pneumonia in her lungs but that is not
4 the main cause of death.

5 Q You can't rule out the presence of pneumonia
6 prior to whatever incident put her in the hospital
7 though?

8 A I didn't see any changes to indicate that.

9 Q Now again, you can't indicate to us that as far
10 as bruising to the external body ---

11 A Uh-huh.

12 Q ---that they were all, they all occurred at the
13 same time, correct?

14 A So the ones that I cut into looked like they
15 occurred at the same time, the same coloration. The
16 ones I did not cut into, I cannot state
17 specifically, no. Is that what you're asking?

18 Q Yeah, sort of. When you look at two bruises that
19 have relatively similar colorations I suppose you
20 could say they appeared to occur at the same time,
21 or would it be better to say that they appeared to
22 have occurred in the same general time frame?

23 A 'Cause you could say the same general time frame.
24 I couldn't tell the difference between a bruise that
25 happened you know, ten minutes from each other. I

SW - A. DURSO - CROSS

1 mean, there's, you can't date them that accurately.

2 Q Well, you can't tell the difference necessarily
3 between a bruise that occurred a day apart?

4 A Not necessarily, no.

5 Q Even several days apart, right?

6 A Several days I would think they would look a
7 different color from one another.

8 Q The -- beg the Court's indulgence, Your Honor.
9 Specifically, Doctor, you dissected the posterior of
10 the neck, correct?

11 A Yes.

12 Q And that did not reveal any hemorrhage within the
13 musculature of the posterior of the neck, correct?

14 A No, it did not.

15 Q And so, by that I mean there was no bruising to
16 the muscles in the back of the neck, correct?

17 A Correct.

18 Q Why would you look for that?

19 A In any child abuse case we try to do a very
20 thorough examination and we do look for bruising in
21 the back of the neck.

22 Q Okay. And you further found no evidence of
23 hemorrhage within the cervical spinal canal, right?

24 A That's correct.

25 Q So there was no bruising to the musculature of

1 the neck or within the cervical spinal canal?

2 A That's correct.

3 Q And we've already heard testimony that there were
4 no fractures to the spine, right?

5 A Yes.

6 Q Okay. Now as to, if I understand you correctly,
7 at whatever point in time the injuries to the head
8 happened to the brain ---

9 A Yes.

10 Q ---happened, the child would have been profoundly
11 ill almost immediately?

12 A Yes.

13 Q Is that a fair summation of your testimony?

14 A Yes.

15 Q Okay. Such would not be the case for the various
16 bruises that you described in other areas of the
17 child's body, correct?

18 A Can you ---

19 Q She wouldn't have experienced the loss of
20 consciousness ---

21 A Oh, no.

22 Q ---abuses to the torso or ---

23 A No.

24 Q ---laceration or anything?

25 A Huh-uh.

SW - A. DURSO - CROSS

1 Q So it's entirely possible that the bruises to
2 other areas of her body can be independent of the
3 bruises or the injuries to the head?

4 A You mean independent as in?

5 Q Having occurred at a different point in time?

6 A I believe they occurred close together because of
7 the coloration of bruises and the legs were similar
8 to the ones in the head.

9 Q Okay, well, tell me please, how do you determine,
10 I mean, there's not some chart that you can look at
11 ---

12 A No, I can't date to when exactly the bruise
13 happened. I can just say that they appeared to have
14 occurred in the same general time vicinity.

15 Q And same general -- let me ask you this, I take
16 it that once you're not living anymore, that the
17 process of the bruises changing colors as you
18 described, that's ceases at that point; is that
19 right?

20 A That ceases after all life support and blood flow
21 ceases. So even if you're brain dead and kept alive
22 on a ventilator there will be some evidence of
23 healing.

24 Q Okay. Now Doctor, when did you first discuss
25 your conclusions with the Prosecution in this case?

SW - A. DURSO - CROSS

1 A I really, I mean, I, my conclusions were always
2 given in my report to the coroner's office, and the
3 coroner's office usually releases the report to the
4 Solicitor's Office so I don't know, I don't have any
5 record since it did not go directly through me as to
6 what point they receive my report.

7 Q Okay. And I understand that, but that's not my
8 question. But my question is, when did you discuss
9 them with the representatives of the Solicitor's
10 Office?

11 A I believe that the case was originally supposed
12 to go back in the fall at some time, and I believe
13 we had a meeting a few months ago I would say. I
14 don't have the exact date with me.

15 Q Well, do you remember meeting with myself and
16 other attorneys?

17 A I do.

18 Q August 16th?

19 A Was it August? Okay.

20 Q That's what my notes reflect anyway. Had you
21 discussed the case with the Prosecutor's office
22 before then?

23 A I tell you, I honestly, actually, we did I
24 believe the week before. We were, we had a brief
25 meeting, yes.

SW - A. DURSO - CROSS

1 Q Okay. And when you discussed the case, you and
2 Doctor Marcus discussed the case with our office
3 August 16th, there was a member of the Prosecutor's
4 Office present at that point in time, Ms. McDuffie,
5 correct?

6 A Yes.

7 Q How did that come about?

8 A How did that come about that she was there?

9 Q Yes, ma'am.

10 A I believe the week before we had mentioned that
11 we were having a meeting with Defense as well the
12 following week.

13 Q Okay. So she was invited?

14 A Our meetings are open so the Defense and
15 Prosecution, whoever would like to come, so I didn't
16 specifically invite her. I believe she asked if she
17 would mind if she could sit in, and I said I did not
18 mind.

19 Q Did you contact us about your meeting with the
20 Prosecution?

21 A No, I generally don't contact unless people find
22 out about it.

23 MR. STRICKLER: Your Honor, beg the
24 Court's indulgence. Thank you very much.

25 THE COURT: Anything on redirect?

1 MS. CAMPBELL: Yes, sir, just a few.

2 **REDIRECT EXAMINATION**

3 BY MS. CAMPBELL:

4 Q You mentioned and he asked you about when you met
5 with the Prosecutor's Office versus the Defense
6 attorneys.

7 A Yes.

8 Q You met with both people, right?

9 A I did.

10 Q And prior to meeting with anybody you issued your
11 report in this case; is that correct?

12 A That is correct.

13 Q And this report is, I believe, about eight pages?

14 A Six pages.

15 Q Six pages, I'm sorry. And that is your account
16 of findings in this case?

17 A Those are my findings, yes.

18 Q And when the Defense wanted to meet with you, you
19 were more than happy to meet with them?

20 A Of course.

21 Q He asked you about pneumonia in this child?

22 A Yes.

23 Q Did he ask you specifically was there any
24 indications this child had pneumonia prior to being
25 put on a ventilator to make her breathe?

SW - A. DURSO - REDIRECT

1 A No, the pneumonia, areas where it was, were very,
2 very typical of a child that had been on a
3 ventilator basically brain dead for several days.

4 Q Did pneumonia have anything to do with this
5 child's death?

6 A No.

7 Q Did pneumonia cause this child's brain injury?

8 A No.

9 Q He asked you about day and asked you a lot of
10 cases about the bruises. Again, the bruises that
11 you observed on the head from blunt force trauma ---

12 A Yes.

13 Q ---How did those appear in reference to the rest
14 of the bruises you saw that you cut into?

15 A They were all very red in color, and none of them
16 had much of the yellow discoloration we look for to
17 see if it's an older bruise. They all looked like
18 they were around the same time.

19 Q And as far as the dating of the bruises and the
20 trauma to the head which were similar in nature,
21 would those have been consistent with having
22 happened on the morning of May the 23rd?

23 A Yes.

24 Q The fractures to the two ribs you mentioned, he
25 asked you about those, that it was a squeezing

1 mechanism?

2 A Yes.

3 Q Would that be consistent also with some type of
4 shaking? Could it be?

5 A Yes.

6 Q The cause of death in this case was what?

7 A Blunt force injury to the head.

8 MS. CAMPBELL: Thank you.

9 MR. STRICKLER: Please the Court.

10 **RECROSS-EXAMINATION**

11 BY MR. STRICKLER:

12 Q Ms. Campbell asked you about injury to the ribs
13 being consistent with shaking?

14 A Well, consistent with when you shake a child
15 normally you squeeze them by the ribs so in children
16 where they're shaking you off and see fractures.

17 Q Is your finding here that the child died as a
18 result of shaking?

19 A No.

20 Q Your finding is blunt force trauma, correct?

21 A Yes.

22 Q Okay. Now are you acquainted with forensic
23 pathology by the Di Maioes, father and son?

24 A Yes, I've -- I don't think I've read the whole
25 thing. I read more in depth books but, yes.

SW - A. DURSO - RECROSS

1 Q Would you -- would it be fair to characterize
2 this as a widely accepted treatise in the area of
3 forensic science?

4 A I honestly, like I said, there are books that I
5 read in lieu of that book, but I know a lot of
6 people that reference it so.

7 Q Tell me if you disagree please with the following
8 statement. This is regarding aging of bruises.

9 A Okay.

10 Q "Unfortunately the rate of change is quite
11 variable, not only between persons but in the same
12 person from bruise to bruise." Would you agree or
13 disagree with that statement?

14 A I think as far as coming up with a specific time,
15 then yes, but I think generally you can say that
16 bruises happen in general same time frame. I'm not
17 saying when I can say that they happen, but even
18 within the same hour. I'm saying that they -- you
19 can't date a bruise to say what date that it was,
20 that it occurred on.

21 Q Would you disagree with the Di Maioes when they
22 say, "In the same individual one can have two
23 bruises that occurred at the same time and one will
24 go from blue to violet to yellow and disappear while
25 the other is still violet"?

SW - B. MARCUS - DIRECT

1 A I have not done the study.

2 Q So you would disagree with the Di Maioes?

3 A I would disagree, yes.

4 Q That's fine. Thank you.

5 THE COURT: Thank you, Doctor. You may
6 step down. You are free to leave if you'd like.

7 Are you ready?

8 MS. SIMPSON: Yes, Your Honor, the State
9 calls Doctor Bradley Marcus.

10 WHEREUPON,

11 **BRADLEY MARCUS,**

12 having been duly sworn by the Clerk, testified as
13 follows:

14 THE CLERK: Thank you. Please have a seat
15 in the witness stand and state your name for the
16 record.

17 THE WITNESS: Doctor Bradley J. Marcus,
18 M-A-R-C-U-S.

19 **DIRECT EXAMINATION**

20 BY MS. MCDUFFIE:

21 Q Doctor Marcus, where are you employed?

22 A I work for Professional Pathology Services here
23 in Columbia, South Carolina.

24 Q And what is your position there?

25 A I'm a pathologist, I also work as a chief deputy

SW - B. MARCUS - DIRECT

1 medical examiner for our Richland County.

2 Q And what do your duty -- first of all, what is a
3 pathologist?

4 A A pathologist studies disease, the cause of
5 disease, diagnose disease, in a gross level that's
6 looking at through your eye and at the microscopic
7 level. Also, that they diagnose disease through
8 various tests, flow tests, and at a molecular level
9 nowadays.

10 Q And with respect to your licenses, are you
11 actually licensed in different areas of pathology?

12 A Yes. I -- I'm a pathologist. I went to medical
13 school. After medical school went to the Medical
14 University of South Carolina where I studied
15 anatomic pathology, clinical pathology, forensic
16 pathology, and cytopathology. And after I studied
17 all four of those specialties I got a Board
18 certification in all four specialties so I'm Board
19 certified in anatomic pathology, clinical pathology,
20 syda pathology, and forensic pathology. From there
21 I came here to Columbia and I've been working as a
22 pathologist and as a forensic pathologist, clinical
23 pathologist, and cytopathologist since 2008 here. I
24 have a South Carolina medical license. I also have
25 a North Carolina medical license and a Georgia

SW - B. MARCUS - DIRECT

1 medical license.

2 Q So you're actually, I guess, licensed to practice
3 or Board certified in several different areas of
4 pathology?

5 A I am.

6 Q Tell the jury a little bit about your education
7 and training with respect to forensic pathology.

8 A Again, I have a MD degree and I did most of my
9 training down at the Medical University of South
10 Carolina. That's where I did my fellowship in
11 forensic pathology. And I've -- there I did my
12 fellowship there and then from there I came here.
13 I've done approximately two thousand forensic
14 autopsies in my career. I've been doing forensic
15 cases for about 12 years now.

16 Q What exactly -- we heard a little bit from Doctor
17 Durso, but what exactly is forensic pathology?

18 A Forensic pathology, the main goal of forensic
19 pathology is having a body and determining the cause
20 of death. The cause of death is the disease or
21 injury that brings about death, the sensation of
22 life, okay. And by definition the cause of death,
23 for example, a cause of death can be broken down
24 into a natural death versus an unnatural death. For
25 instance, a natural death would be complications of

SW - B. MARCUS - DIRECT

1 metastatic breast cancer; that's completely natural
2 disease. Complications of pulmonary emphysema. An
3 unnatural death, for instance a homicide, which is
4 death at the hands of another person, would be
5 gunshot wound to the head, suicide, taking of one's
6 life, self-inflicted gunshot wound to the head.
7 That's what we kind of do in forensics; we determine
8 the cause of death. In Richland County the coroner
9 determines the manner of death which is the
10 circumstances surrounding the death, what brings it
11 about. And in South Carolina there are five manners
12 of deaths: Natural death, accidental death,
13 suicide, homicide, and then the last one is
14 undetermined where you just don't know the
15 circumstances. Pretty much that is body found in
16 the woods, decomposed, you just can't know the
17 circumstances of it.

18 Q So your primary goal is to determine cause of
19 death but you work closely with the coroner's office
20 who actually investigates in determining its manner?

21 A That's correct.

22 Q As chief medical examiner for Richland County
23 what do your duties include?

24 A My duties include working with the coroner's
25 office on suspicious deaths that get referred to the

SW - B. MARCUS - DIRECT

1 coroner's office, that they refer to our practice
2 for autopsy. Doctor Durso and I are the only two
3 people in our practice that are Board certified in
4 forensics that actually do the autopsies so me and
5 her work together on pretty much -- we split up the
6 service and we do all the autopsies and all Richland
7 County cases. So if somebody dies in Richland
8 County on a sudden unexpected death it's either me
9 or her that are gonna do the autopsies.

10 Q And do you actually belong to any specialized
11 medical groups or organizations?

12 A Yeah, I belong to many of them. National
13 Association of Medical Examiners, National Society
14 of Pathologists, College of American Pathologists,
15 American Society of Clinical Pathologies, many
16 different societies I have, you know, to continue
17 with my training. I am part of the group that has
18 to re-certify all my Board specialities every ten
19 years. Unfortunately I have to do that so.

20 Q And have you testified as an expert before?

21 A Yes, I have.

22 Q About now many times would you say you testified?

23 A Probably about 30 times.

24 Q And that would be in the field of pathology
25 specifically forensic pathology?

SW - B. MARCUS - DIRECT

1 A Yeah, specific forensic pathology.

2 MS. SIMPSON: Your Honor, at this time I
3 would like to offer Doctor Bradley Marcus as an
4 expert in the field of pathology to, specifically to
5 include forensic pathology?

6 MR. STRICKLER: I have no objection at
7 this point, Your Honor.

8 THE COURT: Well, you're gonna have some
9 at some point?

10 MR. STRICKLER: No, sir.

11 THE COURT: All right, ladies and
12 gentlemen, again, scientific, technical, or other
13 specialized knowledge will assist the trier of fact
14 in understanding any evidence, determine any fact in
15 issue and this witness can be qualified as an expert
16 by virtue of his or her knowledge, skill, training,
17 experience, or education and as such can offer
18 opinion in his expert area of expertise. I'm gonna
19 find that Doctor Marcus is a, qualified as an expert
20 in the field of forensic pathology and such can
21 offer opinions to that area of expertise. You are
22 to give his opinion such weight and credibility as
23 you deem appropriate.

24 MS. SIMPSON: Thank you, Your Honor.

25

SW - B. MARCUS - DIRECT

1 BY MS. SIMPSON:

2 Q We just heard from Doctor Durso. Were you, as
3 far as becoming involved in this case, were you
4 consulted or were you actually assisting in the
5 performance of this autopsy?

6 A I was, I was present when this case was -- when
7 Doctor Durso was notified about this case I happened
8 to be at Richland that day working my other service
9 so she notified me about the case and because it was
10 involving a possible child abuse case, I came down
11 to the autopsy room during, during when Doctor Durso
12 did her autopsy to observe parts of the autopsy so I
13 can observe the body and what I could see, went it,
14 because I had a feeling if it went to trial I wanted
15 to be available and I knew that if there was any
16 type of injuries, which we had known that based on
17 the medical record, that there was a brain injury,
18 that the brain was gonna have to be fixed in
19 formalin and cut at a later time, that I knew Doctor
20 Durso was going to be out on maternity leave so I
21 was gonna be the one doing it. So I figured I best
22 be part of that so I basically was in the room when
23 she did her external exam, you know, cut into the
24 body. And then during the pertinent parts of the
25 autopsy I came back down and I reviewed the findings

SW - B. MARCUS - DIRECT

1 with her and then when she opened the skull I was
2 there. And then when the brain was removed, t he
3 eyes removed, I was there. And then after the case
4 we sat down together, went over everything. And
5 then basically after that she went on maternity
6 leave. And then approximately, I believe it was on
7 June 15th, let me check my notes. On June 15th,
8 2011, is when I examined the brain, cut the brain,
9 cut the eyes, put them into we call them cassettes
10 where they make them into glass slides. That's when
11 I examined the brain and cut them and then I believe
12 several days later, then I looked at them under the
13 microscope and dictated my findings and into the
14 report. And in addition to that, I also, the ribs,
15 the ribs, they were four ribs that we had removed.
16 I think you looked at them on the last, on the
17 x-rays. You saw you had four ribs, there were two
18 ribs that were broken. There was a question whether
19 two other ones were broken or not so we actually
20 removed, she removed four of the ribs and we
21 actually have to put them in a special solution to
22 make them real soft so we can cut them. And then to
23 confirm they're really broken we cut them, put them
24 into glass slides, look at them under the microscope
25 to confirm that it's broken and then to try and age

1 the fractures. So that was my part of the case.

2 Just finishing it off, tying up loose ends.

3 Q But you were present and you all consulted and
4 talked throughout the entire process with respect to
5 this victim K.H. [REDACTED]?

6 A I did.

7 Q And did you ultimately concur in her findings and
8 agree with her findings in this case?

9 A I do.

10 Q As far as your actions and I want to focus just a
11 little bit, you mentioned dissection of the brain.
12 Can you tell us what the purpose of that is and
13 exactly what the process is that you go through to
14 do that?

15 A Sure. Well, basically because of the injury that
16 K.H. [REDACTED] had received to her brain, the brain was
17 very, very swollen; and when the brain gets swollen
18 you have lack of oxygen. So when you have lack of
19 oxygen to the brain, it actually starts to
20 decompose, okay, and the brain is soft to begin
21 with, okay. So for three days it sat, you know,
22 she's in the ICU, the pediatric ICU. She's actually
23 brain dead and the brain is actually decomposing,
24 okay. So when we remove the head the brain is very,
25 very soft so if I had taken that -- if Doctor Durso

SW - B. MARCUS - DIRECT

1 had taken that brain, put it on to the table and
2 started cutting it to make sections, the whole brain
3 would have completely fallen apart and it would have
4 been, it would have been a complete mess on the
5 table and we wouldn't have been able to make sense
6 of anything. So the proper standard protocol for,
7 you know, for cases like this is, you know, you
8 document the injury there. You have to take it very
9 gently, put it into a formalin and the formalin
10 fixes the tissue, hardens the brain up. And then
11 about two weeks later actually I think I -- this was
12 on May 23rd, June 15th, so I actually waited three
13 weeks. What I do is, a little trick I learned, is
14 you change the formalin several times during, you
15 change it like every week to actually put fresh
16 formalin in, actually fixes it, makes it much, fixes
17 it, makes it much harder and you get a lot better
18 sections when you cut the brain. You get better
19 sections and it's -- the brain program that is
20 preserved; that's the key here. And basically I
21 make my slides out of that. In other words, I'm
22 gonna cut the brain, it's gonna fall apart, and I'm
23 not going to be able to make sense of anatomical
24 structures or anything and I'd be doing Ms. K.H.
25 a disservice with that.

SW - B. MARCUS - DIRECT

1 Same with the eyes. The eyes get fixed.
2 And we cut them, we coat them in water, cut them,
3 make sections, then we're able to get, we're able to
4 get the best sections we can on them and we look at
5 them under the microscope to confirm our gross
6 findings from our naked eye. That's basically what
7 we do.

8 Q And so the formalin doesn't necessarily affect
9 anything with respect to the brain itself or the
10 findings and examination? It just enhances your
11 ability to be able to conduct the examination,
12 correct?

13 A Right.

14 Q Okay.

15 A That's correct.

16 Q And did you actually examine the brain and make
17 any findings upon ---

18 A Yeah, I just basically looked at the brain under
19 the microscope.

20 Q And what did you find, or what did you observe?

21 A So first we'll start with the eyes, okay, 'cause
22 I examined the eyes, the ribs, and the brain, okay.
23 I examined the left eye in grossly. I saw retinal
24 hemorrhage in the back of the eye, the retina, which
25 are the nerve cells of the eye. There was grossly,

SW - B. MARCUS - DIRECT

1 we saw hemorrhage there. So under the microscope I
2 also saw hemorrhage confirming that. Also around
3 the left optic nerve around the eye is a globe.
4 Think of a globe and then the nerve comes into the
5 back of the eye, there's a sheathe, a sheathe that
6 comes around the nerve. There was hemorrhage also
7 around the sheathe of the eye okay. And again, that
8 can be caused by the brain swelling, okay. That was
9 also confirmed under the microscopic sections.

10 On the right eye, grossly I saw retinal
11 hemorrhage and microscopically I confirmed those
12 findings. Again, in the optic nerve, fiberoptic
13 tissue surrounding the optic nerve I saw hemorrhage
14 confirming my gross findings. I removed -- Doctor
15 Durso removed the left rib number 6, left rib number
16 7, left rib number 8, and left rib number 9. She
17 was worried about ribs number 6 and 7 being
18 fractured, but grossly and microscopically those
19 ribs were not fractured. And that's what I ---

20 Q The 8th and 9th were fractured?

21 A Now I'm going to 8th and 9th. The 8th and 9th
22 rib, she said that those ribs were fractured. They
23 were fractured both grossly and microscopically they
24 were fractured with no evidence of any type of
25 healing so they were considered as acute fractures.

SW - B. MARCUS - DIRECT

1 Q And when you observed it did you agree with her
2 findings in that respect as well?

3 A Yes, I agreed with those findings and
4 microscopically they are confirmed. On the brain
5 Doctor Durso and I both saw a subdural hemorrhage,
6 that tough layer over the brain (indicating), under
7 that there was blood. Microscopically that was
8 confirmed. It was called an acute subdural
9 hemorrhage without any evidence of organization,
10 which means it was very recent. In the areas of the
11 cerebral, the cerebellum, the mid brain, the neurons
12 which is the brain cells, they were pink in color.
13 And we've been talking about all these terms today:
14 ischemic changes to the brain, anoxic changes, that
15 all means lack of oxygen to the brain. That's the
16 finding you see. Normally the neurons in the brain
17 are nice and gray in color like a steel gray color;
18 but when they turn pink, that's microscopically
19 that's the sign that the brain has had lack of
20 oxygen, okay, so that's what you see. So that's
21 confirmed microscopically.

22 Cerebral edema is noted. We've heard that
23 term probably 50, 60 times today. The brain
24 swelling, microscopically that is confirmed, okay.
25 Possible axonal bulbs that are red in color noted

SW - B. MARCUS - DIRECT

- 1 consistent with diffuse axonal injury, okay.
- 2 Another -- that's a term that you can see in any
- 3 type of head injury. The neurons in the brain can
- 4 tear (indicating). They can tear like this and what
- 5 you get is the nerve -- since the nerves are like
- 6 cables (indicates), okay, and when they tear they
- 7 restraighthen. You get these bulbs that form and
- 8 that's a sign of diffuse axonal injury. You can get
- 9 that in any type of brain injury. The problem is,
- 10 though, you also see them in ischemic changes to the
- 11 brain so I can't differentiate between the two; it's
- 12 impossible. And we know she had ischemic changes to
- 13 her brain. So all my findings concur with Doctor
- 14 Durso's.
- 15 Q And as far as the injuries, again, the main
- 16 points of impact I believe she stated were to the
- 17 head?
- 18 A That's correct.
- 19 Q And would those points of impact be consistent
- 20 with the bleeding and things that you noted around
- 21 the brain?
- 22 A Yes, they absolutely are consistent with that.
- 23 Q And as far as the fractured ribs I believe she
- 24 demonstrated a squeezing motion to the child?
- 25 A Yes.

SW - B. MARCUS - DIRECT

1 Q Which would have been consistent had the child
2 been squeezed and shaken as well?

3 A It's certainly consistent.

4 Q And as far as the impact points on her head, if
5 the child were shaking and either hit its head
6 against something or something hit the child's head,
7 that will be consistent with the findings in your
8 autopsy as well?

9 A That is consistent, yes.

10 Q Again, what did Doctor Durso list as the cause of
11 death in this case?

12 A Doctor Durso listed the cause of death as a
13 closed head injury due to non-accidental blunt head
14 trauma.

15 Q And again, non-accidental blunt head trama, what
16 does that mean to you all?

17 A It means intentionally inflicted.

18 Q And what types of things do you consider as far
19 as to determine whether they were intentional? Is
20 it the severity, the multitude of injuries, things
21 of that nature?

22 A The severity, multitude, the multiple impact
23 sites.

24 Q As well as where certain injuries had occurred on
25 the ribs?

SW - B. MARCUS - DIRECT

1 A Yes.

2 Q And things of that nature?

3 A Yes.

4 Q Some discussion has been had with respect to the
5 timing and dating of the head injuries. What is
6 your opinion with respect to the timing of the head
7 injury and whether or not that could be different
8 ages?

9 A To me they look the same and very recent. The
10 subdural hemorrhage is recent; it's acute. The
11 problem with the subdural hemorrhage is it's -- the
12 brain had no blood flow to it over the last three
13 days and blood flow helps with the healing process
14 and there was no blood flow to the brain so it's
15 very, it wouldn't have healed. It wouldn't help
16 heal it and help time it so that's the problem we
17 have with, you know, this is an acute subdural
18 hemorrhage.

19 Q So while no specific minute, hour, these are
20 fresh, very acute injuries?

21 A In my opinion, yes.

22 Q And again, I believe we also talked a little
23 bit -- or what is your opinion with respect to which
24 head injury or impact point may have actually caused
25 the death? Can you actually make that determination

SW - B. MARCUS - DIRECT

1 based on your findings?

2 A No, I can't say which one. I think it's a
3 combination of the multitude of them. I can't say
4 which exact one.

5 Q And there were a number of impact points?

6 A Right, there were.

7 Q And a significant amount of bleeding on the
8 brain?

9 A Yes.

10 Q And that her injuries were actually caused by
11 what?

12 A They were caused by blunt head impact.

13 Q Blunt force trauma. And -- beg the Court's
14 indulgence one second. Is there any way in your
15 opinion that this child could have survived for any
16 period of time based on the head injuries that she
17 received?

18 A Not in my opinion, no.

19 Q And based on the impact points and the head
20 injuries would she have become symptomatic quickly?

21 A I believe she'd probably be symptomatic almost
22 immediately.

23 Q And by symptomatic, again, what do we mean?

24 A Problem with decreased respirations, possible
25 altered mental status, seizure.

SW - B. MARCUS - CROSS

1 Q So she wouldn't have been up moving around,
2 walking, talking, eating?

3 A I highly doubt it.

4 THE COURT: Anything, Mr. Strickler?
5 You got more?

6 MS. MCDUFFIE: Oh, no, I was finished with
7 this witness, Your Honor.

8 THE COURT: Anything, Mr. Strickler?

9 MR. STRICKLER: Yes, sir.

10 **CROSS-EXAMINATION**

11 BY MR. STRICKLER:

12 Q Good afternoon, Doctor.

13 A Hey, Mr. Strickler.

14 Q There is nothing in your findings that can tell
15 us whether-- I'm gonna concern myself with the blunt
16 force trauma to the head 'cause that's the operating
17 cause here, right? There's nothing in your findings
18 that can tell us whether that trauma, or those
19 traumas, occurred at 7:30 in the morning on May
20 23rd, 2011, as opposed to 8:30, correct?

21 A Not in this report, no.

22 Q Or 7:30 in the morning on May 23rd, 2011, as
23 opposed to 9:30, correct?

24 A Correct.

25 Q Or 10:30?

1 A Correct.

2 Q Or 11:30?

3 A Correct.

4 Q Correct, okay. Timing of, timing of a death and

5 I'm not talking about calling a brain dead in the

6 hospital. I'm talking about the event that led to

7 these injuries. The timing of that is often only

8 able to be accomplished by determining when the

9 person was last seen alive and when they were

10 discovered with the injury so that you can say

11 occurred sometime in that time frame, correct?

12 A Yes.

13 Q Despite what people may see on TV, it's very hard

14 to take a stop watch and determine precisely,

15 precisely when some injury occurred, correct?

16 A Yes, sir.

17 Q Likewise, there is nothing in a medical finding

18 that can help us determine who caused the injuries,

19 correct, nothing in medical finding here?

20 A That's correct.

21 Q Nothing from the autopsy, right?

22 A That's correct.

23 Q We don't know exactly when, we don't know who as

24 a result of the findings. Just, really just a

25 couple of things. You indicate in your report

SW - B. MARCUS - CROSS

1 microscopically that sections of the cerebellum
2 demonstrate numerous pink neurons consistent with
3 anoxic change within the white matter possible
4 axonal bulbs that are red in color. And I believe
5 that was your testimony here today?

6 A That's correct, sir.

7 Q You used the term possible. Were you not able to
8 determine whether they were axonal bulbs or?

9 A They're extremely, extremely difficult to see.
10 They're very difficult to see so I like to give the
11 benefit of the doubt if I'm wrong; but you know,
12 they're extremely difficult to see, sir. This is
13 not something that just jumps out at you there it's
14 a lot easier said than done. These are extremely
15 difficult to actually see axonal bulbs.

16 Q Yes, sir. And for that matter or for that reason
17 you're not able to go ahead and come down one way or
18 another as to whether the diffuse axonal injuries
19 present in this case?

20 A I said they're possibly there. I do believe
21 they're there, but I didn't put it -- I left the
22 door open if they're not. If they're not I left the
23 door open, sir, okay.

24 Q And towards the end of your testimony on direct
25 you indicate that the head injuries looked to be --

1 just my paraphrasing -- looked to be the same age
2 and recent?

3 A That's correct.

4 Q Is that fair on my part? Okay. And which head
5 injuries were you referring to? The ones which were
6 revealed when the scalp was reflected, that are
7 fairly extensive in nature?

8 A Yeah, those are the ones that I'm talking about.

9 Q You're talking about ---

10 A These, those are the ones I'm talking about,
11 these real.

12 Q Have you -- and those were the ones which would
13 be associated with the blood force trama ---

14 A Yes.

15 Q ---in this case?

16 A Yes, sir.

17 Q In your opinion, right?

18 A Yes, sir.

19 Q Okay. You weren't referring to the various
20 bruises found on the torso of the body when you made
21 that statement?

22 A No, I was -- she didn't ask me about those. I
23 thought she was asking about the head ones.

24 Q Okay. Now...

25 THE COURT: That it?

1 MR. STRICKLER: Yes, sir.

2 THE COURT: All right, anything other than
3 redirect?

4 MS. CAMPBELL: Your Honor, may this
5 witness ---

6 THE COURT: Thank you, Doctor, you may
7 step down. Ladies and gentlemen, we're gonna go
8 ahead and take a break at this time, let you step
9 back to the jury room about 15 minutes. Please do
10 not discuss the case while you're back there. We'll
11 be with you in a few minutes.

12 (WHEREUPON, the jury was removed from the
13 courtroom at 3:20 p.m., and the following
14 proceedings commenced in open court.)

15 THE COURT: Ma'am, is that a phone?

16 UNIDENTIFIED PERSON: No. Well, yes, sir,
17 I'm sorry, yes, sir.

18 THE COURT: You want to lose that?

19 UNIDENTIFIED PERSON: Well, no, I'm just
20 trying to ---

21 THE COURT: We don't have phones in this
22 room.

23 UNIDENTIFIED PERSON: Oh, I'm sorry, sir,
24 I'm just trying to let my patients know where I am.

25 THE COURT: Well, you need to step out if

1 you want to use the telephone. Don't use it in the
2 courtroom.

3 All right, we're gonna take a break.

4 (WHEREUPON, a recess was taken from the
5 proceedings.)

6 THE COURT: Who is your next witness?

7 MS. MCDUFFIE: Doctor Rosa right there.

8 THE COURT: All right. Let's bring the
9 jury in please, Mr. Dye.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 3:37 p.m., and
12 the following proceedings commenced in
13 open court.)

14 THE COURT: Solicitor.

15 MS. CAMPBELL: May it please the Court,
16 the State calls Doctor Olga Rosa.

17 WHEREUPON,

18 **OLGA ROSA,**

19 having been duly sworn by the Clerk, testified as
20 follows:

21 THE CLERK: Thank you. Please have a seat
22 on the witness stand and state your full name for
23 the record and please spell your first and last
24 name.

25 THE WITNESS: My name is Olga, O-L-G-A

SW - O. ROSA - DIRECT

1 Rosa, R-O-S-A.

2 **DIRECT EXAMINATION**

3 BY MS. CAMPBELL:

4 Q Doctor Rosa, where are you employed?

5 A I'm employed by the University of South Carolina
6 School of Medicine, Department of Pediatrics.

7 Q And what do you do at the Department of
8 Pediatrics at the USC School of Medicine?

9 A I'm the chief of the division of forensic
10 pediatrics for the School of Medicine. I am also
11 the consulting physician for Palmetto Health
12 Children Hospital for cases of child abuse. I am
13 also the physician supervisor for the Pediatric
14 Forensic Nurse program for the Palmetto Health
15 Richland Hospital.

16 Q And can you tell this jury a little bit about
17 your education and your training?

18 A I did my undergrad at the University of Puerto
19 Rico. I did my school of medicine as well as my
20 residency in pediatrics and general pediatrics at
21 the University of Puerto Rico School of Medicine, an
22 affiliated children's hospital. After that I
23 practiced as a general pediatrician. I am, I was at
24 the time, and I still are a Board certified general
25 pediatrician. After a few years on general

SW - O. ROSA - DIRECT

1 pediatric practice I went to Brian University School
2 of Medicine, Department of Pediatrics to complete a
3 fellowship, which is a super specialty in child
4 abuse pediatrics. After that I returned to Florida
5 as the chief of the division for the child
6 protection team for the southeast coast of Florida,
7 and there I was recruited by the University of South
8 Carolina School of Medicine in October 2004 to come
9 and direct their forensic pediatric program, as well
10 as to build a statewide medical response to child
11 abuse of which I am the director.

12 Q I'm sorry, I didn't hear that last part.

13 A I was also recruited to come and build the
14 statewide system for medical response to child abuse
15 for the State of South Carolina which I am the
16 director since the inception in 2004.

17 Q So you actively participate in training other
18 people in the field of protecting child abuse?

19 A That is correct.

20 Q And have you been Board certified in any areas of
21 forensic pediatrics?

22 A I'm double boarded which means I have a Board
23 certification in general pediatrics, and I have a
24 Board certification in child abuse pediatrics.

25 Q In child abuse pediatrics?

SW - O. ROSA - DIRECT

1 A Yes, ma'am.

2 Q And is that also come interchangeable with
3 forensic pediatrics?

4 A It's the same.

5 Q And you testified before as an expert in the area
6 of child abuse or forensic pediatrics?

7 A Yes, ma'am.

8 MS. CAMPBELL: Your Honor, at this time
9 I'd offer her as an expert in forensic pediatrics.

10 MS. PINNOCK: No objection.

11 THE COURT: All right. Ladies and
12 gentlemen, again, it's scientific, technical, or
13 other specialized knowledge to assist you, the trier
14 of fact, in understanding any evidence or any issue
15 that may be in controversy. And a witness qualifies
16 as an expert by virtue of his or her knowledge,
17 skill, experience, training, or education may offer
18 opinions in his or her areas of her expertise. I
19 find Doctor Rosa to be qualified as an expert in the
20 field of forensic pediatrics, and as such, she can
21 offer opinions in that field. You are to give her
22 testimony such weight credibility as you deem
23 appropriate as you will with all witnesses in this
24 case.

25 MS. CAMPBELL: Thank you, Your Honor.

SW - O. ROSA - DIRECT

1 THE COURT: Please.

2 BY MS. CAMPBELL:

3 Q Doctor, as part of your training in the field of
4 forensic science what types of things are you
5 trained to observe that perhaps like a regular
6 pediatrician might not have as much knowledge about.

7 A We get trained in trauma assessment, both, all
8 type of trauma, not only, you know, abusive head
9 trauma or abuse, trauma caused by abuse, but also
10 accidental trauma because we need to know the
11 difference so we get training that. We get trained
12 expanding the knowledge about burns and skin
13 injuries, bruises, hematomas, which is a collection
14 of blood. We also get trained on, you know, and we
15 deal with sexual abuse, accidental injuries so we
16 cover all the spectrum of medical diagnoses of child
17 abuse as well as what else could it be.

18 Q Okay. So when you're assessing a child that may
19 or may not have been abused, you can make -- you
20 help guide them as far as the assessment of whether
21 the child has suffered abuse of an intentional abuse
22 versus an accidental trauma?

23 A That is correct.

24 Q And I want to turn your attention to this case.

25 Back on May 23rd of 2011 did you become, were you

SW - O. ROSA - DIRECT

1 consulted in this case?

2 A Yes, ma'am.

3 Q How does that work?

4 A The way it works is, if a child arrives to our
5 children hospital through the emergency room or in
6 this case she arrived transfer, hospital transfer
7 from the community hospital, in the case, in the
8 case of K.H. she needed, you know, critical care
9 so she's admitted to the intensive care unit. And
10 on she's admitted intensive care unit you have to
11 remember that she came already with certain imaging,
12 you know, results like a CT scan, etc., that raise
13 already the suspicion. When she was admitted to the
14 intensive care unit the attending physician, in this
15 case Doctor Elizabeth Mack, makes a call to my
16 office and indicates we have a 17 months old
17 toddler, female toddler, and we came up with these
18 findings, can you come and assess the possibility if
19 this child has been a victim or not of abuse.

20 Q And in this case do ---

21 THE COURT: Excuse me just a minute,
22 Doctor, I'm gonna ask you if you'd just slow down
23 ---

24 THE WITNESS: Slow down?

25 THE COURT: ---just a little bit if you

SW - O. ROSA - DIRECT

1 could 'cause the court reporter has to take down
2 what you say.

3 THE WITNESS: Sorry, my apologies. I go
4 too much fast. I promise.

5 BY MS. CAMPBELL:

6 Q Did you actually respond to the pediatric
7 intensive care unit on the 23rd?

8 A Yes, ma'am.

9 Q And approximately what time was it when you got
10 there to do your assessment?

11 A Ooh, let's see. I'm not sure I recorded the time
12 so I have to apologize for that.

13 Q I show you -- I want to make sure I'm showing you
14 the right notes 'cause this may not be yours.

15 A Oh, thank you.

16 Q Are those your notes?

17 A Yes, they are. That was at 3:35 p.m. on
18 May 23rd, 2011.

19 Q And you actually were with the child for a period
20 of time that day?

21 A Yes, ma'am.

22 Q And how long were you actually there assessing
23 this child?

24 A I was assessing this child from 3:35 p.m. in the
25 afternoon to 7:40 p.m. in the evening.

SW - O. ROSA - DIRECT

1 Q And when you first came in contact wit K.H.
2 and -- the attending physician, Doctor Mack, did she
3 give you some background information?

4 A Yes, she did give me background information.

5 Q And in the course of doing this is it also
6 important for you to get history?

7 A Yes, it's very important.

8 Q Explain to the jury what a history is and why
9 it's important as far as your assessment?

10 A Well, all of us has been to a physician before.
11 So your physician don't jump on you immediately and
12 put the stethoscope on your chest so basically they
13 will take a medical history. So that is part of a
14 complete medical assessment that we do. You take a
15 medical history from the caregivers. You talk to
16 the physicians that are in the care of that, you
17 know, that are caring for that child. You request
18 medical records of the transferring hospital, and
19 you try also to get your hands on the EMS or fire
20 department, EMS report, of how this child was found
21 at the scene so you get a complete view of how this
22 child was before it landed in the critical care
23 unit.

24 Q And at the same time you're getting this
25 information, I guess it comes in bits and pieces

SW - O. ROSA - DIRECT

1 somewhat?

2 A Yes, ma'am.

3 Q Are you also doing your own assessment of the
4 child's injuries?

5 A Yes, ma'am.

6 Q And taking it in whatever order that you did it
7 that day, can you walk us through your assessment of
8 K.H. [REDACTED] on May the 23rd of 2011?

9 A The first thing I did was when the consult and
10 the request for consult came in I talked to
11 attendant physician and the resident physician
12 because we are a teaching institution, and then I
13 gathered the information. Then I review the medical
14 chart that at the time, at that time at 3:35 was
15 available in our computerized record system, and
16 also take a look at the imaging and discuss the
17 imaging with pediatric radiology. Then I go to the
18 critical care unit room and I ask who is the
19 caregiver of the child that can give me a complete
20 history starting with when she was born all the way
21 to that day on May 23rd. And then after that I
22 do — I also take, you know, her assessment past
23 medical history, the family history just to make
24 sure there's no medical condition in there that
25 could support any findings that I have, that I have

SW - O. ROSA - DIRECT

1 find, that I will find during assessment. So a
2 family history, past medical history, her
3 pediatrician, whoever has been seeing her during the
4 first months of life or years of life, I also get,
5 you know, their records and try to reach them to
6 talk to them. Then after all that collection of
7 information I proceed with my physical assessment
8 which is the physical exam starting with how much
9 this child weighed, what is her length, what is her
10 appearance at the time that I'm seeing her at the
11 critical care unit room. And then I proceed through
12 the skin exam, then you know, basically my full
13 physical exam of checking head, neck, ears, nose,
14 throat, including mouth, teeth, any injury to that
15 area of the mouth. I proceed for auscultation,
16 chest, heart, lungs, abdominal examination, and then
17 extremities to see if there's any injuries to the
18 extremities, and also genitalia and anal area and
19 I — and that completes the physical exam.

20 Q When you got there that day did you consult with
21 Doctor Mack?

22 A Yes, we talked, yes.

23 Q And did you also review the records?

24 A Yes, ma'am.

25 Q And you also mentioned that in this case you

SW - O. ROSA - DIRECT

1 would have met with the radiologist?

2 A Yes, ma'am.

3 Q And who would that have been?

4 A At the time who was on-call at the time was
5 Doctor Jones.

6 Q Doctor Jones?

7 A Yes, ma'am.

8 Q And once you gathered up that information I
9 believe you said then you would proceed to get a
10 history on this child?

11 A Yes, ma'am.

12 Q Who did you make contact with that day to get a
13 history?

14 A The caregiver who was present at bedside was
15 K.H. 's mother, Miss Miller.

16 Q Miss Miller?

17 A Yes, ma'am.

18 Q And what information did you -- were you able to
19 get from her that day?

20 A I asked her to walk me, you know, through all the
21 way back to almost a week of life of this, you know,
22 before the 23rd to that evening prior to May 23rd,
23 to the morning, and then before then she lands into
24 the Providence Northeast when EMS comes.

25 Q And what information did she actually give you?

SW - O. ROSA - DIRECT

1 A Miss Miller told me that she -- I asked first, I
2 asked first how she been doing. So basically for
3 about a week, week and a half, she has had a caught
4 a cold, a little bit of stuffy nose but no fever
5 whatsoever. She's been eating well, playing with
6 her twin brother **K.H.2**, involved in the daily life.
7 She was basically what we call in medical terms a
8 baseline. She was healthy except for the common
9 cold which, you know, is viral. So that evening
10 that, the day the May 22nd, she played with her, you
11 know, with her brother, her you know, her older, you
12 know, sister, the 13 year old at the time. She ate
13 well and she went to sleep around midnight that
14 evening, doing fine. She, she was seemed to be fine
15 also the next morning. You know, she was, she sleep
16 in the -- she slept in the same room as her 13 year
17 old sister sibling. There was nothing, you know,
18 amiss or nothing wrong with her. She was healthy
19 during that time. The next thing that we get on the
20 story is that the child around 10:30, 11, she is --
21 been fed a jelly sandwich and then that she was not
22 acting right, and then the next thing that happened
23 is the call to Miss Miller about that she's not
24 doing well and she's not breathing.

25 Q Who was it that was indicating they fed her a

SW - O. ROSA - DIRECT

1 jelly sandwich?

2 A Mr. Gaddist.

3 Q Mr. Gaddist?

4 A Yes, ma'am.

5 Q And who was relating this information to you?

6 A Miss Miller.

7 Q And did she also relate whether or not when she
8 had left for work that day the condition of the
9 child?

10 A She said that she was well when she left for
11 work.

12 Q She mentioned that Mr. Gaddist indicated he had
13 given the child a sandwich?

14 A That -- if I may read directly from my final
15 report on this case. That K.H. [REDACTED] has gotten up
16 and a jelly sandwich has been prepared for her, that
17 she -- and then that, that was at the time that then
18 it was noticed that she was not acting right and
19 then the next thing that happens is the call.

20 Q And who made call?

21 A Mr. Gaddist to Miss Miller.

22 Q Okay. And did Miss Miller indicate what was said
23 during that call?

24 A Yes, ma'am. She said that she was informed
25 something is wrong with her, something with her

SW - O. ROSA - DIRECT

1 breathing, I do not think she's breathing.

2 Q And at that point did she indicate what she did?

3 A At that point she indicated that she said, you
4 need, you know, 9-1-1 is to be called. And
5 emergency operator connected a three way call with
6 Mr. Gaddist and Miss Miller and to assess the
7 situation at the home.

8 Q And in getting, talking to Miss Miller that day
9 as far as the past medical records and history that
10 she was able to give you, was there anything
11 abnormal in K.H. 's past that was noted as far as
12 her history, her medical history?

13 A She was a healthy, she was a healthy toddler and
14 infant even to be in a twin pregnancy which we
15 always get worried about twin pregnancies because
16 they can be born small for age or have some
17 difficulties. She was, she was a 36 weeker which
18 means that she was born four weeks before her, you
19 know, her due date of 40 weeks. But in spite of
20 that, she was, she went home, you know, well, with
21 mom at the time of discharge. K.H. 2 was the only
22 one who stayed a little bit longer. But she was
23 healthy, she didn't have no respiratory issues when
24 she was born. They just want to watch her weight
25 and she, you know, and that was ail.

SW - O. ROSA - DIRECT

1 Q Okay. After getting the medical history as well
2 as the history in order to help you with your
3 diagnosis, did you also reviews EMS records at the
4 Providence Northeast records?

5 A Yes, ma'am.

6 Q And in EMS records, in your review of those, was
7 anything unusual about the treatment that she
8 received prior to arriving at, once you got with
9 EMS, prior to arriving at Providence?

10 A No, she, she received a pre-hospital, the correct
11 standard pre-hospital treatment. The
12 recommendation, the start recommendation is not to
13 intubate this children in the scene. It's as well
14 as effective to do the bi-op mask, which is
15 basically you have a very tight mask over your nose
16 and mouth and then you receive ventilation using,
17 you know, a big, you know, balloon, and that is
18 connected to a source of oxygen, is done at one
19 hundred percent oxygen. So that, when you do that
20 you are also moving the chest of the child because
21 the seal is so good that does that; and that when
22 she's transport and to the community hospital where
23 she is intubated, which is the standard of care
24 because you can lose precious time if you try to
25 intubate a child on the scene. So ED standard of

SW - O. ROSA - DIRECT

1 care to do that pre-hospital for children and then
2 in the hospital intubate them.

3 Q So that was all done with proper procedure?

4 A Yes, ma'am.

5 Q And in fact, during the course of the treatment
6 by EMS what was K.H. 's condition when EMS first
7 came in contact with her?

8 A When EMS came in contact with her she had no
9 heart rate and she was not breathing. Basically,
10 you know, she has no vital functions at the time
11 that she came in contact at the scene with EMS.

12 Q And by the time they were able to turn her over
13 to emergency room at Providence Northeast had her
14 concern at least improved somewhat?

15 A They have been able to recover heart rate.

16 Q Okay. And was she breathing though at that
17 point?

18 A No, ma'am, no breathing.

19 Q In your review of the Providence Northeast
20 records was there anything significant that you
21 noted?

22 A Well, you know, what I just said that she
23 basically at the scene she was no pulse, which means
24 as I say, no heart rate, no pulse, no voluntary
25 breathing for. She was extremely cold. They

SW - O. ROSA - DIRECT

1 weren't able to gather, you know, to take a
2 temperature; and the reason is, if you look at your
3 regular thermometer, it doesn't go that low as it's
4 finally, you know, finally that temperature was
5 registered on her when she finally make it to
6 Providence Northeast. So she was hypothermic, very
7 low temperature, very cold at touch, no pulse, no
8 voluntary respirations. They, she gets, you know,
9 given dilatory support by the mechanics that I just
10 explained. And she also received epinephrin and,
11 you know, we're all familiar with that. It's
12 adrenaline, you know, like my heart is really
13 pumping right now because all the stress, I'm sorry.
14 My heart is really pumping right now because of all
15 that adrenaline that sitting here costs me. So
16 basically we use artificial, adrenaline or
17 epinephrin, give it to the children to see if we can
18 jump start the heart again. And it took two rounds
19 of epinephrin to at least recover some heart rate to
20 about 109, which in a child that was so hypothermic
21 it was still bradycardic, which is low rate.

22 Q The child was so hypothermic you say?

23 A Yes, ma'am.

24 Q And what does hypothermic mean?

25 A Hypothermic means low temperature, below your

SW - O. ROSA - DIRECT

1 normal temperature.

2 Q And ---

3 A Even temperature.

4 Q And later on the temperature and her low
5 temperature, was that consistent with her brain
6 injury?

7 A Yes, ma'am.

8 Q And explain that to the jury, what mechanism
9 causes the temperature to drop so quickly?

10 A We have centers on the brain that regulates our
11 temperature the same way that the regular, our --
12 they regulate, they regulate our heart rate and our
13 respiration. There are respiratory and thermal
14 respiratory centers, big names. But basically what
15 they do is that, they try, you know, if they're
16 saying -- like for example, I was just pretty cold
17 this afternoon here so my thermal regulatory center
18 is going to kick in just to try to keep my
19 temperature at 37-degrees centigrades or Celsius.
20 So those centers do that for you. But also, if you
21 have massive head injury, an injury that is
22 profound, take those centers, you lose that ability
23 to regulate your temperature as well as you lose
24 that ability to breathe.

25 Q Okay. I want to back up just a little bit. Your

SW - O. ROSA - DIRECT

1 history you indicated that she had given you
2 information that Mr. Gaddist said he had given her a
3 sandwich and stuff?

4 A That he has prepared jelly sandwich to give it to
5 her---

6 Q There was ---

7 A ---so she's awake and sitting and about to have
8 her jelly sandwich.

9 Q And would that have been before or after Ms.
10 Miller left for work?

11 A That was after Ms. Miller left for work.

12 Q After?

13 A After, yes, ma'am.

14 Q Once you reviewed the records what, if any,
15 assessments did you make about this child on that
16 first day on your physical examination?

17 A You ask, I'm a little confused. Are you asking
18 about my final, you know, my -- well, at the time of
19 this assessment my medical assessment as to what is
20 the cause of all this child representations and
21 injuries and the diagnostic imaging and, okay, so
22 that is -- all the symptoms, the current
23 representation of this child, the clinical findings,
24 the injuries of serve, the injuries documented, were
25 secondary to inflicted trauma.

SW - O. ROSA - DIRECT

1 Q Inflicted trauma?

2 A Yes, ma'am.

3 Q That child abuse?

4 A Yes, ma'am.

5 Q And what finding specifically leads you to that
6 determination as far as the different injuries, the
7 ribs, the different areas?

8 A Yes. First of all, you know, by this time I
9 think you have heard about the brain injury. The
10 trama, this child suffered trauma and trauma is the
11 reason that we see the result of the swelling of the
12 brain and also the thick films of blood on the
13 brain. Trauma is also the reason that she has the
14 rib fractures, the 8th and 9th left rib fractures
15 posteriorly located. It's also the reason that she
16 has the bleeding on the eye, and the bleeding on the
17 eye was quite extensive. You know, we call it
18 retinal hemorrhages. And of course, you know,
19 people are gonna say, well, there are different
20 causes of retinal hemorrhages. Yes, that is
21 correct; however, in children less than three years
22 of age where you have retinal hemorrhages that
23 extend through all the layers of the retina and they
24 not only are located in the retina which is the back
25 of the eye, but they also extend to the forward

SW - O. ROSA - DIRECT

1 front of the retina. And they are also accompanied
2 by these ischemia or ischemia, what's called retina
3 ischemia. This is like splitting. The split is
4 like you split the retina and then blood gets in
5 there. Those are called retina ischemia. All that
6 together, it is supported by a diagnosis of child
7 abuse.

8 Q That alone?

9 A That alone.

10 Q And there's more in this case?

11 A Yes.

12 Q Let's talk about the rib fractures.

13 A The rib fractures are, they have explained
14 before, on the left 8 and 9 rib posteriorly located.
15 And you have to think about children. Children are
16 not small adults. We -- children, that's what,
17 that's why pediatrics exist, okay; otherwise, it
18 would be internal medicine. So children's bones,
19 particularly young children, toddlers, infants,
20 their rib cage is more pliable, more flexible, so it
21 requires a substantial amount of force just to
22 squeeze that chest and make a break because the
23 chest, the ribs will accommodate because they have
24 -- remember, they have to come through the vaginal
25 canal. You don't want a kid that has just been born

SW - O. ROSA - DIRECT

1 full of fractures so it has, it's more flexible to
2 allow some degree of squeeze. But to create a
3 fracture on the children, therefore, you need to
4 have substantial force of squeezing, what we call
5 compression of that rib cage to cause the rib. And
6 we know that rib fractures posterior located have
7 been identified in infants to have very highest
8 specificity for abuse.

9 Q Okay. There's also some indication that this
10 child was administered CPR. Could that have caused
11 the posterior rib fractures in this case?

12 A Not the posterior rib fractures, no, ma'am.

13 Q And in fact, would it have caused rib fractures
14 in the front necessarily?

15 A There have been some report in children that
16 there have been some anterior fractures.

17 Q Anterior is front?

18 A Front, yeah. Anterior is front.

19 Q This is back.

20 A This is back. That's what, again, let's go back
21 to adults and pediatrics, and that's the major
22 difference. If you get CPR, some of those are gonna
23 have fractures. Why? Because well, sadly, we are
24 getting old. Those points are not flexible anymore.
25 You know, we have lost that flexibility and that

SW - O. ROSA - DIRECT

1 extract cartilage content that the ribs on children
2 have. So yes, you are more brittle on your bones
3 so, therefore, adults, when some, you know, rib
4 fractures have been described in adults but they are
5 very, very, very rare from CPR in children.

6 Q And then only ---

7 A In the front.

8 Q Never to the back?

9 A Huh-uh, no, ma'am.

10 Q And the mechanism that would cause this child to
11 have two rib fractures would be what kind of force
12 to the rib cage?

13 A It's a squeezing compression. It's that child is
14 grabbed by the chest and pressure continues, you
15 know, it's applied continuously to that chest.

16 Q And would that be condition -- would it be
17 consistent with someone picking up, say, a 17 month
18 old and squeezing it, say, if he were trying to
19 shake it.

20 A It has been described with patients that are
21 victims of shaking, yes.

22 Q And as far as the retinal hemorrhages, is that
23 consistent with some type of shaking as well as
24 blunt force trauma?

25 A Yes, ma'am.

SW - O. ROSA - DIRECT

1 Q But in this case let's talk about the head
2 injury. In addition to the ribs, in addition to the
3 others, you've got multiple injuries to the head?

4 A That's correct, yes.

5 Q And specifically there was, I believe, an injury
6 to the eye, the socket?

7 A That's correct, ma'am.

8 Q What type of blunt -- or you tell me. What type
9 of, what would cause that?

10 A That's a direct impact to the orbit of the eye.

11 Q To the orbit of the eye?

12 A Yes, exactly to the eye socket.

13 Q And what type of force is necessary to break that
14 child's orbital socket?

15 A Substantial force. You know, an object has to
16 strike the child to sustain that fracture.

17 Q And is that one impact point in and of itself?

18 A That's an impact point of itself, yes, ma'am.

19 Q And in this case were -- you also reviewed, I
20 believe, the autopsy as well in this case?

21 A That's correct.

22 Q And all the records now, right?

23 A Yes, ma'am.

24 Q And were there any other significant findings as
25 far as what caused this child's brain to swell which

SW - O. ROSA - DIRECT

1 then caused her to quit breathing and die?

2 A Just at the beginning of the autopsy when the
3 scalp is basically removed from the back to the
4 front, you can see multiple impact, evidence of
5 multiple impact by the bruising under, you know, and
6 they are separate. You can see, I think you were
7 shown possibly an autopsy photograph. So you can
8 see clearly the distinct, discrete impacts that this
9 child's scalp suffered as part of the head trauma
10 that she suffers.

11 Q And can you tell which blow, the one on the
12 front, the back, the eye, or the other ones caused
13 the actual ---

14 MS. PINNOCK: Objection, Your Honor. I
15 believe that's outside the scope of what she ---

16 THE COURT: I'm sorry, what?

17 MS. PINNOCK: I believe it was outside the
18 scope of what she can testify to as an expert
19 witness.

20 THE COURT: What's the question?

21 MS. CAMPBELL: Can she tell which blow
22 actually caused the extent of the swelling.

23 THE COURT: All right, overruled.

24 MS. CAMPBELL: Thank you.

25

SW - O. ROSA - DIRECT

1 BY MS. CAMPBELL:

2 Q You can go ahead.

3 A No, you cannot really say, okay, this X over here
4 was the little blow or this X was the little blow,
5 or this X is the combination of all the blows.
6 Remember, one, you know, you receive one blow it's
7 like if you get, you receive one blow to your arm
8 and you know, you may still be okay; but you know,
9 you may sustain a fracture to the arm. But let's
10 say you receive multiple blows to your whole body,
11 you know, so therefore, at some point one of the
12 blows will be, you know, it's like you're
13 augmenting, increasing the degree of injury as many,
14 as the blows continue to be given to you. So as you
15 augment degree of blows, the same way you augment
16 the type of, the amount of injuries that you're
17 going to sustain, and one of them is going to
18 finally kill you.

19 Q Once the trauma to the head caused this injury
20 could this child have survived?

21 A I'm sorry?

22 Q With these injuries to this child's brain, could
23 she have survived?

24 A No, ma'am.

25 Q Under any circumstance?

SW - O. ROSA - DIRECT

1 A That is correct.

2 Q And how soon would she have been noticeably
3 symptomatic and explain what the symptoms would be?

4 A Symptoms, you know, the interesting thing about
5 the range, abusive head trauma is a spectrum of
6 clinical presentation. You have the mild abusive
7 head trauma, which and even my own physician call it
8 coming to my knees 'cause it could present vomiting,
9 or you know, kind of the kid is not acting well,
10 he's throwing up, he's gonna be cranky. That's the
11 mild side. But as you increase the number of, you
12 know, injuries to the child's brain, then you go to
13 the other side which is the severe abusive head
14 trauma which is what this child had. And this
15 severe abusive head trauma will give you very
16 quickly symptoms. This is not a kid that will sit
17 down and talk to you or eat or have a jelly
18 sandwich. You know, this kid is gonna basically,
19 you know, cease respiration and have seizures; and
20 therefore, that was gonna bring lack of oxygen and
21 blood flow to the brain because you are actively
22 ceasing. That's what, you know, we don't like
23 anybody ceasing, you know. And then because that is
24 going to be more injury, the kid has already been
25 injured by the blow impacts; but now that lack of

SW - O. ROSA - DIRECT

1 oxygen add more injury, metabolic, metabolic
2 injuries, like a cascade that you can't stop.

3 Q So she would stop breathing?

4 A Yes, ma'am.

5 Q Seizures?

6 A Yes, ma'am.

7 Q And at the same time her temperature would have
8 started ---

9 A Exactly.

10 Q And that would be immediate?

11 A Yes, those immediate onsets of symptoms.

12 Q And in children, is their body set up a little
13 differently, they try to hang on to life? I mean,
14 and she's not breathing she's not getting oxygen,
15 that would cause the temperature to go down because
16 what's happening? Explain that.

17 A Yes, we -- when a body suffers major trauma the
18 action of the body is to protect, try to protect the
19 vital structures so basically, that's why your
20 extremities become cold because you want to give
21 that temp, the core temperature of your body and
22 preserve the function to the brain so basically you
23 will become cold on your extremities and there's no
24 resuscitation yet, that temperature is going to
25 continue to plummet. Where you also have to

SW - O. ROSA - DIRECT

1 remember that the massive injury, brain injury on
2 this child also affected the regulate already the
3 centers of regulations of her brain so you have one
4 thing on top of the other way.

5 Q Okay. There's also been questions, this child
6 didn't suffer a skull fracture?

7 A That is correct.

8 Q And it did not suffer an actual fracture of the
9 spine?

10 A That is correct.

11 Q However, did it have injuries that were in its
12 neck here?

13 A There were no bleeding in the muscles of the
14 neck, but there was bleeding on the soft tissues of
15 the posterior neck. So when you, so on the autopsy
16 report there's an area where Doctor Durso is
17 reflecting, has reflected the scalp, and she's
18 looking at all the blood impact to the scalp; but as
19 she goes back she's also seeing the area on the
20 right posterior neck, as well as the right posterior
21 scalp that there is, you know, blood. But also, it
22 has blood on the soft tissue and the soft tissue
23 basically is where your fat and other blood vessels
24 are. It's basically underneath your skin.

25 Q And we've heard a lot about dating these injuries

SW - O. ROSA - DIRECT

1 and everything. Significantly, in your assessment
2 were these injuries consistent with having happened
3 May the 23rd?

4 A Yes, ma'am.

5 Q What was your final diagnosis as to the cause of
6 death of K.H. [REDACTED]

7 A Child abuse, physical abuse.

8 Q Could this have been accidental?

9 A No, ma'am.

10 Q And if it had happened hours before, say 7:30,
11 8:30, 9:30 that morning, could EMS have re-started
12 her heart at 12:40 that afternoon?

13 A If it had happened at 7:30? Oh, gosh, no. I'm
14 sorry. The massive injury that she -- she had
15 sustained that massive injury at 7:30 and no
16 resuscitation would have happened until 12:30, no
17 resus-- they would not have been able to bring her
18 back into heart rate. She has been dead, you know,
19 she will have been dead for five hours.

20 Q Because her symptoms would have been immediate?

21 A Immediate, yes.

22 Q Thank you.

23 MS. CAMPBELL: I don't have anything
24 further.

25 THE COURT: All right, Mr. Strickler --

1 I'm sorry, Ms. Pinnock.

2 MS. PINNOCK: Please the Court, Your
3 Honor.

4 **CROSS-EXAMINATION**

5 BY MS. PINNOCK:

6 Q Doctor Rosa, what was the extent of your
7 responsibilities in this entire case? From May
8 23rd, what was everything that you were asked to do?
9 Assess K.H. [REDACTED], were you asked to do anything else?
10 A My responsibilities as a child abuse pediatrician
11 or as a physician consultant as a team exactly, that
12 assess the child.

13 Q How many children did you assess in this case?

14 A K.H. [REDACTED].

15 Q You didn't assess her brother?

16 A I recommended to the Department of Social
17 Services to get assessment for the brother.

18 Q Okay. And you did that, right?

19 A No, I did not.

20 Q You didn't speak with K. H. 2 [REDACTED] and ---

21 A I saw K.H. [REDACTED]. I didn't see K. H. 2 [REDACTED].

22 Q On May 24th, 2011, you didn't do an exam on
23 K. H. 2 [REDACTED]?

24 A You are most probably talking about my partner
25 Doctor Lugeroff at the Assessment Resource Center.

SW - O. ROSA - CROSS

1 If you look down ---

2 Q Okay.

3 A Thank you very much.

4 Q So you did order that happen? Did you ---

5 A I ordered --I recommended to the Department of
6 Social Services to have the twin examined, yes.

7 Q Okay. Did you get that information back?

8 A No, ma'am.

9 Q You never saw it again?

10 A No, ma'am, no **K.H.2**, no, 'cause I didn't see
11 him the first time either.

12 Q You said you testified how many times as an
13 expert?

14 A I don't think Ms. Campbell asked that question.
15 She just asked if I have testified before and the
16 answer was yes.

17 Q How many times?

18 A Let's see, I've been practicing child abuse
19 pediatrics full time since 2000. I've testified
20 about two, usually two times a year in criminal
21 court so that's about 20 times.

22 Q Okay. Have you ever testified for the defense in
23 a criminal case?

24 A No, I have not in a criminal case but I have done
25 cases for the defense, medical opinions.

1 Q You never testified in court?

2 A I have not been asked to.

3 Q Okay. And you did say -- did you say that you
4 organized state wide child abuse, is it reporting
5 system or management system? I missed what you said
6 that you had organized here.

7 A The system is called the South Carolina
8 Children's Advocacy Medical Response System. It's a
9 collaborative effort between the three major
10 children hospitals and the children of focusing
11 centers. And what we do is -- what I do basically
12 is build a system of support to give, to provide
13 qualify standards for the delivery of child abuse
14 pediatric services.

15 Q Okay. And with everything, you train people on
16 how to deal with suspected child abuse cases,
17 suspected neglect cases, you train other people on
18 how to do that?

19 A I do educational workshops, yes, ma'am.

20 Q It's a mandatory report; isn't it?

21 A Child -- as a physician and any other, you know,
22 any medical provider, health care provider, we are
23 mandated reporters.

24 Q Are you only supposed to report to law
25 enforcement or special services? Who are you

SW - O. ROSA - CROSS

1 supposed to report to?

2 A The law here in the State of South Carolina,
3 which is Chapter 63, require the mandated report to
4 the Department of Social Services if there is
5 reasonable suspicion of abuse or neglect on the
6 child, and we report to the county DSS office or law
7 enforcement or both.

8 Q Okay. Now on May 23rd, 2011, do you remember who
9 exactly everybody you spoke to that day? Do you
10 have your report, your notes in front of you from
11 that day?

12 A Yes, I do. I hope I, yes.

13 Q I think you said you spoke to Doctor Mack. She
14 gave you the initial information and she consulted
15 with you?

16 A Yes. On May 23rd, 2011, at 4:30 p.m., case
17 discussion with Palmetto Richland Children Hospital
18 critical care, attending Elizabeth Mack and
19 pediatric resident Karen Surgy (ph).

20 Q Okay. You also spoke to Ms. Miller?

21 A Oh, yes, definitely.

22 Q And at some point on that day you spoke to
23 Investigator Carter and Investigator Preston at the
24 Sheriff's Department, right?

25 A Yes. I spoke with Richard Carter and Kevin

SW - O. ROSA - CROSS

1 Preston at 6:30 p.m. on May 23rd.

2 Q Okay. Now when you were called in you were going
3 to your initial assessment you said you had records
4 from Providence Hospital?

5 A I have partial records for Providence Hospital,
6 not all the records. I got the records later.

7 Q You had some from them?

8 A Yes, ma'am.

9 Q Did you have the EMS report or did you get that
10 later?

11 A I got the EMS report was on the medical chart for
12 this child, yes.

13 Q So you're aware that Ms. Miller said that she had
14 gotten up at 10:20, 10:30 in the morning?

15 A Yes, I am.

16 Q Okay. And she left the house at about 11, 11:20,
17 11:30?

18 A That is correct. I took that history.

19 Q And that she said she got the call from Antwan
20 about 12:30, right?

21 A That is correct. Sometime around 12:30 in the
22 afternoon.

23 Q Do you know how much [K.H.] weighed when she
24 was admitted to Providence?

25 A I don't recall, but I can look if you need that

SW - O. ROSA - CROSS

1 information.

2 Q 17 to 18-pounds?

3 A Well, I know she weighed 7.9 kilos so give or
4 take, it's one kilos 2.2 pounds so.

5 Q Okay. And before you did your assessment, your
6 physical assessment when you're still talking to
7 Ms. Miller, she did tell you that 9-1-1 was called,
8 rescue efforts were made at the house before EMS got
9 there. right?

10 A Yes, ma'am, that's correct.

11 Q And Antwan was the one trying to do the CPR?

12 A In the three way call with the operator, yes,
13 ma'am.

14 Q Did you ever review that tape?

15 A No, ma'am.

16 Q You just testified tha **K.H. [REDACTED]** arrived at the
17 hospital markedly hypothermic; she was very cold?

18 A Yes, ma'am.

19 Q Do you know what her temperature was when she was
20 admitted at Providence?

21 A The temperature at Providence was not registered
22 until 2:44 that afternoon.

23 Q Okay. You recall what that was?

24 A Yes, 86.7 Fahrenheit.

25 Q And do you remember how, do you remember what her

1 height was? I don't remember if I saw it. I don't
2 think you mentioned it earlier.

3 A Seventy-six centimeters.

4 Q Okay. And according to your document your, you
5 know, your math and your comparison to growth
6 charts, that would put her in fifty percentile for
7 weight and second percentile for weight?

8 A The weight of 7.9 kilos put her on a percentile
9 of fifth. Remember, she was a 36 weeker before the
10 two years of age. We have to correct for
11 gestational age.

12 Q Right, and you did that?

13 A Exactly.

14 Q She would be in the fifth percentile?

15 A She would be in the fifth percentile for weight
16 and on the 25th percentile for height. The weight
17 for height percent I put her on the second
18 percentile.

19 Q Okay. And you reviewed the initial CT scan from
20 Providence?

21 A I have that later, yes.

22 Q So you were not aware of what the readings were
23 on that before you did your assessment?

24 A Well, I have the information from, with Doctor
25 Jones, yes.

SW - O. ROSA - CROSS

1 Q Okay. So you're aware that there was at that
2 point she said -- she tell you it was severe ---

3 A I already know. I saw -- what I'm saying is that
4 I saw the films with Doctor Jones.

5 Q Okay.

6 A Because they get put into our digital system.

7 Q And you would classify this swelling as severe?

8 A Yes, ma'am.

9 Q You mentioned in your findings that there was a
10 low total protein, and is it albumin?

11 A Albumin, yes.

12 Q Albumin. And that caused -- that made you have a
13 little bit of concern, right?

14 A Yes, it does. Remember, her body is in shock
15 from the major trauma so all the perimeters are
16 gonna be skewed.

17 Q Uh-huh, but you wrote down in your report you
18 have concerns of malnutrition that need to be
19 reported?

20 A Yes, exactly.

21 Q So that concerned you because of her ---

22 A Yes.

23 Q ---growth?

24 A Her weight for -- when I look at the pediatric
25 growth charts from the pediatrician there was a dip

1 on her gain weight, etc.

2 Q Right.

3 A About a few, I think six or eight weeks before
4 she came to our, on, before May 23rd.

5 Q Right. And you mentioned the pediatric records.
6 So there was a decline in her growth rate through
7 her pediatrics?

8 A She, the last visit that -- she was due for a
9 visit, her two year old visit on June on 2011 with
10 her pediatrician, and she was seen before that on
11 January 2011 and she was doing well at the time.
12 And then when you look at her -- give me just a
13 second, too much paperwork. Basically you start
14 seeing, when they see her, you know, in January
15 which is basically around the time, you know, that
16 she's about a year old, give or take. She's doing
17 well. She's gaining weight. She's doing -- she's
18 having a nice growth, velocity in growth rate. Then
19 around the 15 months mark then we notice, you know,
20 that she has dropped, you know, a curve down. Of
21 course, that is also toddler time, you know, they
22 get a little more picky, etc., etc. However, by the
23 time she gets to us, you know, she has dropped
24 basically, you know, to the fifth percentile from
25 previously being close to the 25th.

SW - O. ROSA - CROSS

1 Q Right. Doesn't that drop actually happen when
2 she was about 9 months old? There's a significant
3 drop, significant drop from the 25th percentile
4 where she was steadily going? She hit the 9 month,
5 she was at the doctor, and she gets dropped from
6 that percentile down to third percentile?

7 A Then if you look at 11 months visit ---

8 Q Just the first drop?

9 A Okay, first, yeah. The question had -- well,
10 it's not a drop because if you correct for her
11 gestational age you will notice that at the first
12 measure at the four months old, she's on the second
13 percentile. She still is at the 9th percentile.
14 Remember, she was a 36 weeker and she was born with
15 about four pounds and something so you got to have
16 some catch of growth; but then by the 9 months, 11
17 months, she's doing very well.

18 Q But that drop when she was 9 months, that caused
19 concern to you; that's why you documented it, right?

20 A Well, no, it not the drop of 9 months old.

21 It's -- the drop, okay. If you look at her growth
22 chart, you put her growth chart from the
23 pediatricians from the moment she starts seeing the
24 pediatrician you will notice that she was
25 parallelling the second percentile, you know,

SW - O. ROSA - CROSS

1 corrected for age on to t he 9 months. And then as
2 she's approaching the year, then we notice that
3 she's finally getting the catch up growth that is
4 suspected with premature babies. So by the 11 month
5 is when she has nicely now showing growth close to
6 the 25th percentile. But then when she comes back
7 to the 15 months of age, that's when she has dropped
8 then now to the fifth percentile which is, you know,
9 what she persists with when she comes to us for the
10 visit for, you know, for her May 23rd visit.

11 Q Okay. Beg the Court's indulgence. I'm gonna
12 hand you a letter that was sent to Lakesha Brisbon,
13 June 13th, 2011. Do you recognize that letter?

14 A Yes, ma'am.

15 Q Did you write it?

16 A Yes, ma'am.

17 Q Talked about the exam you did wit K. H. 2 ?

18 A I'm sorry?

19 Q Does it talk about the exam that you did on

20 K. H. 2 ?

21 A Yes, it does. Do I have this letter? Okay, here
22 we go. Uh-huh.

23 Q The exam o K. H. 2 was done on May 24, 2011,
24 correct?

25 A Yes, ma'am.

SW - O. ROSA - CROSS

1 Q You sent a letter to DSS about these injuries on
2 K. H. 2, May 24th, 2011?

3 A At the Assessment Resource center, yes, ma'am.

4 Q Okay, so you did that?

5 A Okay, yes, I -- sorry, I don't have that. For
6 some reason I don't have assessment here, my
7 apologies.

8 Q What is a loop pattern, Doctor?

9 A A loop pattern?

10 Q Yes, when you see a loop pattern on a child.

11 A A loop pattern is basically made by an object
12 that, you know, has a curvature to it.

13 Q Uh-huh.

14 A Like a belt.

15 Q Like a belt?

16 A Yes, ma'am.

17 Q Leaves a mark?

18 A Yes, ma'am.

19 Q Okay. Do you have a copy of the exam that you
20 did on K. H. 2, May 24th?

21 A No, I don't unfortunately. For some reason I
22 don't, my apologies.

23 Q I'm trying to find you a clean copy.

24 MS. CAMPBELL: Your Honor, may we
25 approach.

1

2

(WHEREUPON, counsel approached the Bench
for an off-the-record discussion.)

3

4

5

6

THE COURT: Ladies and gentlemen of the
jury, let me let you step back. Please don't
discuss the case while you're there.

7

8

9

10

(WHEREUPON, the jury was removed
from the courtroom at 4:30 p.m., and the
following proceedings commenced in open
court.)

11

12

THE COURT: All right, Ms. Campbell.

13

14

MS. CAMPBELL: Your Honor.

15

16

17

18

19

20

21

22

THE COURT: There's some objection to ---
MS. CAMPBELL: To the relevancy of this,
going into assessment on a child which is not the
subject of this matter. And I'm not sure for what
purpose or how it will be relevant as far as any
injuries or non-injuries to that child. It may be
something I can stipulate to, I don't know, but I
just don't know where she's going with this unless
she's trying -- I just don't know what she's doing
with this, and I don't know how it's relevant.

23

24

25

THE COURT: Well, you want to ask this
doctor about a letter she wrote concerning another
child?

1 MS. PINNOCK: About a letter that was
2 sent -- the twin brother was sent to the Assessment
3 Resource Center the day after the deceased child was
4 admitted to the hospital. It was a product of her
5 being admitted. Doctor Rosa examined the child as
6 part of the investigation of this case. She did an
7 examination, and she sent a letter to DSS about the
8 examination on that child. DSS was in contact with
9 Sergeant Faust for the DSS hearing, the DSS abuse
10 that was going on. My client has been charged with
11 abuse. They have to establish that he's the person
12 that was doing the abuse in the house, and this
13 testimony is relevant about abuse that was going on.

14 THE COURT: Your client ---

15 MS. PINNOCK: That might ---

16 THE COURT: Your client has been charged
17 with abuse on a deceased child, not on anybody else.

18 MS. PINNOCK: Yes, sir. It goes to the
19 integrity of the investigation. If this information
20 had been provided ---

21 THE COURT: What investigation?

22 MS. PINNOCK: Richland County.

23 THE COURT: The police investigation?

24 MS. PINNOCK: Yes, sir.

25 THE COURT: How does it go to the

1 integrity of the police investigation?

2 MS. PINNOCK: If -- because there is
3 potential, potential evidence of abuse on another
4 child that was not explored further.

5 THE COURT: So if Mary Smith who is a ten
6 year old out in Saint Andrews is abused by somebody,
7 and you don't like the way the investigation was
8 done, that would have some effect on this case?

9 MS. PINNOCK: I'm sorry? I don't think I
10 understand your question.

11 THE COURT: You are saying because another
12 child may have been abused and you apparently think
13 there was some defect in the investigation on the
14 second child; is that correct?

15 MS. PINNOCK: With the totality of all of
16 the circumstances with child abuse, there is an exam
17 done that shows evidence of possible abuse going on
18 in that house in a different time and I think we
19 have a right as part of our defense to go into that
20 because it does go to the integrity of the
21 investigation if the investigators knew about it and
22 didn't look into it further.

23 THE COURT: You can attack the
24 investigation that was done on this child. Whether
25 the police department did or did not do an adequate

1 investigation about another child that where there's
2 potential child abuse, doesn't have anything to do
3 with whether this investigation was appropriate.
4 Just because some other investigation wasn't, tell
5 me how that affects this child investigation.
6 Unless you're gonna show me where that defect in the
7 investigation is that is consistent with both of
8 them.

9 MS. PINNOCK: The defect in the
10 investigation, Judge, is part of what we were
11 discussing in pretrial, we have not put up our case,
12 but part of what we've been discussing is the jump
13 to make a decision to focus on one person. That was
14 addressed with the investigators. The investigation
15 was not done, and that's part of our -- that we have
16 a right to attack the integrity of this
17 investigation. There was no investigation. This
18 case was ended that Tuesday afternoon without doing
19 a full investigation, and that's what we've done.

20 THE COURT: You certainly can make that an
21 issue but ---

22 MS. PINNOCK: We are ---

23 THE COURT: But another child
24 investigation, whether it was sufficient or
25 insufficient is not relevant in this case. That's

1 what they're objecting to.

2 MS. PINNOCK: Your Honor, it goes to our
3 right to put up a full and complete defense. We
4 have that right as part of the theory of our case.

5 THE COURT: Look, you got a right to put
6 up what the rules provide you to put up. You don't
7 have a right to put up anything you want to put up.

8 MS. PINNOCK: I'm not arguing that we have
9 the right to put up anything that we want. I know
10 we're bound by the rules. It's my position, it's my
11 argument, this is relevant testimony because it goes
12 to prove material fact in the case because who is
13 causing abuse in this case.

14 THE COURT: All right Well, I sustain the
15 objection. All right, bring the jury in.

16 MR. STRICKLER: Beg the Court's indulgence
17 one moment, Your Honor.

18 MS. PINNOCK: Your Honor, before the jury
19 comes back we'd like to proffer the testimony just
20 for the record.

21 THE COURT: All right.

22 **P R O F F E R E X A M I N A T I O N**

23 BY MS. PINNOCK:

24 Q Doctor Rosa, you did do the examination o **K.H. 2**

25 **██████** May 23, 2011, right?

1 A Yes, I did. Sorry about that.

2 Q It's okay. It's a long time ago, I understand.

3 And in that examination it's not, it was not a

4 normal physical exam. It was a forensic pediatric
5 exam?

6 A Well, it's a full medical assessment, you know.

7 Q Okay.

8 A Yes.

9 Q It's more in depth than a regular ---

10 A Exactly. We, we do a full medical assessment
11 just like I did for K.H. [REDACTED], you know. We check
12 everything, uh-huh.

13 Q You documented everything that you found in this
14 report?

15 A Yes, ma'am.

16 Q And at the conclusion of this report that's when
17 you sent the letter to DSS regarding your findings,
18 right?

19 A That'd be correct.

20 Q Okay. You indicated that a loop pattern is
21 injury that's possibly caused by an item such as a
22 belt?

23 A That's correct.

24 Q Okay. Did K.H. 2 [REDACTED] have loop patterns?

25 A Yes, he had two, two scars in a loop pattern,

1 that's correct, in the left leg.

2 Q Okay. And your opinion of those injuries was
3 that they were not something that was normal of
4 toddler play?

5 A That is correct.

6 Q Okay, so they would be inflicted?

7 A That is correct.

8 Q And that was your concern?

9 A Yes, ma'am.

10 Q And you put that in your letter to DSS?

11 A Yes, ma'am.

12 Q You also noted that he had no speech production?

13 A Yes, that -- at the time of the visit she -- he's
14 almost, you know, he's 17 months so there was some
15 delay. You know, I expect like at least, momma,
16 poppa, da da, something like that.

17 Q You were concerned about that; is that right?

18 A I was concerned in the since that, you know, we
19 should have wait just to make sure that he's not
20 because he's nervous at the office and he doesn't
21 want to talk to me.

22 Q Okay. And one of your concerns with the speech
23 delay is that -- didn't your letter say that
24 children with speech delays are typically those
25 suffering from neglect?

1 A Yes, children that suffer from neglect do have
2 speech delay; but not all children that have speech
3 delay has been neglected.

4 Q I'm sorry?

5 A Neglected children, the most common delay that
6 they have is speech delay; but not all children that
7 are speech delay are neglected.

8 Q Right, but you want to look more into that to
9 make sure?

10 A Exactly. I was making recommendations to a
11 general pediatrician of things to look for?

12 Q Did you ever get those pediatric records to
13 review them?

14 A I can't remember because I don't have the full
15 record for **K. H. 2**.

16 Q And that letter you sent DSS, that was on
17 June 13th?

18 A That's correct.

19 Q And that went to Ms. Brisbon?

20 A That is correct.

21 Q All right. That letter concerned, you expressed
22 your concerns about possible inflicted injuries on
23 **K. H. 2**?

24 A I expressed concerns about the loop marks.

25 Q Okay. And you expressed your concerns about his

1 delayed speech?

2 A That's correct, that it needed further
3 investigation.

4 Q Did you also express your concerns about him
5 being malnourished?

6 A Yes, that he was not gaining weight as well as,
7 you know, his sibling.

8 Q Okay.

9 A Her twin.

10 Q You reviewed his pediatric records before you
11 made your findings?

12 A I cannot recall because I did not review, you
13 know, I did not review this case for this trial of
14 **K. H. 2**.

15 Q Okay. You indicated your overall medical
16 assessment after that exam was abuse undetermined?

17 A Let me see the page here.

18 Q It should be on the last page of this.

19 A Yes, that is correct.

20 Q Okay. But you don't know if anymore
21 investigation was done into that, right?

22 A You mean medical workup because, you know,
23 there's two different things. You know, I don't
24 know, I can't recall if I had more information
25 regarding further medical work done in this child.

1 As I said, I have not, you know, I did not review
2 this case for this trial.

3 Q Okay. But you never contacted law enforcement
4 about it?

5 A I'm sorry?

6 Q You never contacted law enforcement about this
7 exam?

8 A I can't recall.

9 Q Beg the Court's indulgence. And you do recognize
10 that report as the one you filled out on May 24th,
11 2011, right?

12 A Yes, yes.

13 Q And that is the letter that you sent over to DSS?

14 A That is correct.

15 MS. PINNOCK: Judge, I would like to make
16 these part of the record please.

17 THE COURT: Well, we'll make it a court
18 exhibit.

19 MS. PINNOCK: Yes, a court exhibit.

20 THE COURT: You have anything you want to
21 ask this witness?

22 MS. CAMPBELL: Yeah, I just wanted to
23 finish up what she left out.

24 THE COURT: Go ahead.

25 (WHEREUPON, Court Exhibits Nos. 6 and 7

1 were marked and made part of the
2 record.)

3 **CROSS-EXAMINATION**

4 BY MS. CAMPBELL:

5 Q Doctor, you noted in this diagnosis paragraph you
6 talk about some findings of some superficial
7 scratchers and things. Can she have her page back?

8 A I'm gonna have to read these though.

9 THE COURT: We'll let you read whatever
10 you need to read.

11 THE WITNESS: Thank you.

12 (Pause.)

13 THE WITNESS: Yes. What's the question?

14 BY MS. CAMPBELL:

15 Q In that you note that these abrasions may have
16 been sustained accidentally during normal activity and
17 play?

18 A That's correct. The little, the superficial
19 abrasions to the face and the head and the, you
20 know, the extremities, necks and arms.

21 Q Then you also talk about the presence of the two
22 patterned loop marks?

23 A That's correct.

24 Q And the residual of a healed human bite mark?

25 A That's correct.

1 Q Did you also note human bite marks on the other
2 child which have been excluded from this trial---

3 A That's correct.

4 Q ---at the request of the defense?

5 A That's correct.

6 Q And you also say as to who inflicted the bite
7 mark, bite mark cannot be determined?

8 A Not at this time with what we have, you know, the
9 voracity of the bite mark.

10 Q And you go on to say that the injuries do not
11 confirm abuse?

12 A No, it's their concern, they're not
13 complimentary. That's what the assessment is
14 undeterminate.

15 Q She also asked you whether or not you actually
16 turned this information to any law enforcement
17 agency. You wrote a letter to DSS?

18 A I did, except it went to Department of Social
19 Services.

20 Q As you're supposed to do by law?

21 A That's -- yes, ma'am.

22 THE COURT: Anything further?

23 MS. CAMPBELL: No, sir.

24 THE COURT: All right. I've ruled. I
25 find that it's not relevant. Involves a child

SW - O. ROSA - CROSS

1 that's not part of this case, nor any of the
2 allegations produced or related to anything in this
3 case. All right, let's bring the jury in please.

4 (WHEREUPON, the jury was returned to the
5 courtroom at approximately 4:44 p.m., and
6 the following proceedings commenced in
7 open court.)

8 MS. PINNOCK: Thank you, Your Honor. May
9 it please the Court.

10 BY MS. PINNOCK:

11 Q Doctor Rosa, I do want to back up just a second.
12 You did ultimately review the initial CT scan from
13 Northeast?

14 A That is correct.

15 Q Okay. Did I ask you already if it was severe
16 swelling at that point?

17 A Yes, ma'am.

18 Q Okay. And going back again when you were talking
19 to Ms. Miller, she told you that K.H. had gone
20 to bed about 12:00 that night?

21 A Around midnight, that's correct.

22 Q From the records that you reviewed there was no
23 fractures to the skull, none of that?

24 A There was no fracture to the skull; that's
25 correct.

SW - O. ROSA - CROSS

1 Q And the bruises that you observed, you don't know
2 when that happened. Do you?

3 A We assess bruises based on medical history so I
4 can't, you know, if you desire I can talk about the
5 history that I collected related to those bruises.

6 Q No, I'm just -- from looking at the bruises
7 nobody provided any information about when they
8 happened, right?

9 A No. In the sense -- well, again, there's a
10 medical history and information, as I said, with
11 those bruises that I collected from doing my medical
12 assessment. But if your question is, if I can go to
13 patient K. H. 2 without no medical history and
14 say, okay, that bruise occurred on May 23rd at 10:15
15 a.m. in the morning, the answer is no.

16 Q Okay, that was my question.

17 A Okay.

18 Q The injuries that she did, that she sustained
19 before she got to the hospital, there's no way to
20 pinpoint it happened at 7:00, 8:00, 9:00, 10:00,
21 right?

22 A You can pinpoint based on the history that I
23 just, which I started with when Ms. Campbell was
24 taking my testimony. You can build the his-- using
25 the history you can time the injuries. You cannot

1 time the injuries in a vacuum just by looking, you
2 know, at a film.

3 Q So it's medically possible to pinpoint when
4 something happens?

5 A Nothing -- again, nothing point -- I know what
6 you're asking. You asking May 23rd at 12:30 or
7 11:20 a.m. The answer, if that is your question
8 pinpoint, like I say, ---

9 Q Yes.

10 A ---May 23rd, 2011 at 11:20 a.m.---

11 Q Uh-huh.

12 A The answer is no.

13 Q Okay. And your testimony has nothing to do with
14 who caused the injuries, right? You can't say who
15 did these injuries?

16 A No, I don't witness. I was not a witness, yeah,
17 no.

18 Q Beg the Court's indulgence. That's all I have.
19 Thank you.

20 THE COURT: Anything?

21 MS. CAMPBELL: Just a couple of questions.

22 **REDIRECT EXAMINATION**

23 BY MS. CAMPBELL:

24 Q She was very specific about how she phrased that
25 last question. Can you based on -- using history.

1 and your information and knowledge as a medical
2 expert, what was the time period when these injuries
3 occurred?

4 A The time period of these injuries occurred around
5 the time that that call went to 9-1-1 because that
6 child became symptomatic from massive head injuries
7 that will not have allowed her to be happy playing
8 with her twin brother or eating.

9 Q Or breathing?

10 A Or breathing.

11 Q Thank you.

12 THE COURT: Anything?

13 MS. PINNOCK: One question, Your Honor.

14 **RECROSS-EXAMINATION**

15 BY MS. PINNOCK:

16 Q In the history you got time wise was from
17 Ms. Miller, right?

18 A That is correct.

19 Q Okay, thank you.

20 THE COURT: All right, thank you very
21 much, ma'am. You may step down. You are free to
22 leave.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Call your next witness.

25 MS. MCDUFFIE: Your Honor, may we

1 approach.

2 (WHEREUPON, counsel approached the Bench
3 for an off-the-record discussion.)

4 THE COURT: Ladies and gentlemen of the
5 jury, they're going to recess for the afternoon. Do
6 not do anything to jeopardize all your hard work and
7 attentiveness and so don't discuss this case with
8 each other or with anyone else while you're gone.
9 Don't read about it, watch anything about it, listen
10 to anything about it, don't get on the internet,
11 don't go investigate anywhere, don't examine your
12 children, if you have any children. So y'all have a
13 nice evening. We'll start tomorrow morning at 9:30
14 and y'all are free to leave. Thank you very much.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 4:47 p.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: All right, so we got
19 assurances from Ms. McDuffie that we will have three
20 witnesses and finish by lunch.

21 MS. MCDUFFIE: That's correct.

22 MS. CAMPBELL: You want us to provide a
23 list to the Court?

24 THE COURT: Ma'am? They gave a long list
25 today. I don't know what, apparently that was a

1 list of everybody that potentially could testify in
2 this trial. I don't know how much help that was to
3 the defendants, but they probably do the same thing
4 so.

5 MS. MCDUFFIE: Your Honor, I already
6 informed Ms. Pinnock of the three witnesses.

7 THE COURT: Ma'am?

8 MS. MCDUFFIE: I all ready informed Ms.
9 Pinnock of the three witnesses we intend to call
10 tomorrow.

11 THE COURT: Well, I'm not holding anybody
12 to anything, but I want them to have some idea what,
13 I mean, they may in presentation of their evidence
14 may want to add or delete somebody so they have a
15 right to do that.

16 MS. PINNOCK: And Your Honor ---

17 MS. CAMPBELL: The only thing that we
18 would request, lay witnesses if they can provide us
19 insofar as dates of birth, run wrap sheets so we
20 don't cause a delay.

21 MS. PINNOCK: And Judge, we're working on
22 rounding people up. We were planning on Friday so
23 we're trying to figure out who we can get here by
24 tomorrow afternoon. As soon as I get the birthdays
25 I'll provide them to the solicitor.

1 THE COURT: Even if you hadn't been able
2 to -- you have any information about them now that
3 you can give them.

4 MS. PINNOCK: There was ---

5 THE COURT: Even if you hadn't been able
6 to give them notice.

7 MS. PINNOCK: I believe there was two
8 birthdays I had on the original witness list. I
9 remember adding those, at least two people.

10 THE COURT: Well, anything y'all got go
11 ahead and try and get ---

12 MS. PINNOCK: I'll go ahead and get those.

13 MS. CAMPBELL: I'm just saying additional
14 lay witnesses. There are a number of lay witnesses.

15 MS. PINNOCK: Yeah, I'll -- as soon as I
16 get them I'll send them on over.

17 THE COURT: I've seen their witness last.
18 I assume that's all of them. I mean, they got 28 of
19 them and the number of them are not -- or either
20 investigators or.

21 MS. PINNOCK: Judge, I'm sorry, there is
22 another witness I'm gonna have to add based on some
23 of the information that came out through State's
24 case. I can provide her the name. I don't have her
25 birthday yet but...

1 THE COURT: I'd like for you to give it to
2 me early so I can voir dire the jury about it.

3 MS. PINNOCK: Okay. I can give it to you
4 now or first thing in the morning or I'll email it
5 to you.

6 MS. CAMPBELL: Can we get it tonight?

7 MS. PINNOCK: Email it tonight if you
8 like.

9 THE COURT: You're gonna do what with it?

10 MS. PINNOCK: Email it.

11 (Name was provided to Ms. Campbell.)

12 (WHEREUPON, the proceedings were concluded
13 for the day at 4:51 p.m. and reconvened
14 on February 6, 2014.)

15 MS. CAMPBELL: Judge, I did turn over to
16 defense this morning -- we met with the guardian
17 yesterday, or the day before. I have this
18 information that she had met with the defendant in
19 this case and she ---

20 THE COURT: Wait a minute, let's back up
21 again.

22 MS. CAMPBELL: I met with the guardian ad
23 litem who handled the case in family court, and she
24 told me what she remembered about meeting with the
25 defendant and I turned that over to the Defense and

1 I don't believe it was in her report. In addition
2 to that, the Defense indicated they didn't have a
3 report and I've provided them another copy of that.
4 There's also information in that report that the
5 indictment, the defendant made the statement that he
6 said that the fire fighters or something -- it's in
7 the statement -- were the ones that caused the
8 injuries to the child. And I just corrected that to
9 say that my information in talking to the guardian
10 is that that information was told to the deputy. We
11 don't know what deputy and we're looking into that
12 and we don't have a name, just to clarify that.

13 In addition, Your Honor, we also met with
14 defense earlier in the week. They indicated that
15 Mr., Doctor Plunkett might have a report at some
16 point, and I just wanted to clarify. At this point
17 I don't think there is a report and one may not be
18 forthcoming.

19 MR. STAGGS: That's correct.

20 MS. CAMPBELL: Thank you.

21 MR. STAGGS: Your Honor, and just based on
22 the anticipated testimony from the State this
23 morning, the Defense wants to renew its motion to
24 suppress the second statement, the statement taken
25 on the 24th and the calls based on the -- the

1 statement based on our motion under ailment and/or
2 14th amendment, the phone calls we'd like to renew
3 our motion on jurisdiction. That's it. And just
4 have our objection noted now.

5 THE COURT: Okay. Well, did you want to
6 say something?

7 MS. MCDUFFIE: No, Your Honor.

8 THE COURT: We had a Jackson v. Denno
9 hearing and after the hearing I ruled, and I'm not
10 going to change my mind. On the jurisdiction issue
11 I, it's my belief that the Court didn't have
12 jurisdiction and I advised y'all if you wanted to go
13 ahead and file some motion with the Court of
14 Appeals, that we would advise them it was coming and
15 we would give you the opportunity to do so. I think
16 the statute says if you'd done so the matter would
17 have been stayed pending the resolution of that
18 matter. And y'all elected not to do that, I think
19 it was your client's decision not to do that. That
20 still doesn't give me jurisdiction to hear the case.
21 And y'all, I assume, made a tactical decision you
22 didn't want to do that and so I don't have
23 jurisdiction. That's the way I understand the law
24 is, and I can't do anything about it so. All right.

25 MR. STRICKLER: Your Honor, if I may

1 please, before the jury comes in?

2 THE COURT: About what?

3 MR. STRICKLER: I have a motion.

4 THE COURT: On another matter?

5 MR. STRICKLER: Yes, Your Honor. At this
6 point in time, Your Honor, with all due respect and
7 begging your pardon in advance, I move for mistrial
8 in this matter and specifically regarding testimony
9 as to injuries to the ribs in this case and the
10 testimony during this trial regarding bruising. And
11 Your Honor, the basis for that is that, you know,
12 went in some detail with all the doctors who
13 testified in this matter as to their ability to time
14 the infliction of those particular injuries. I
15 think it's very clear from their testimony that the
16 injuries to the head, which clearly were the cause
17 of death in this matter, were such that K.H. [REDACTED]
18 [REDACTED] would have been symptomatic immediately so she
19 was a very sick and dying child within a few minutes
20 at the time of the infliction of those injuries.

21 There is no testimony from which a trier
22 of fact could conclude beyond a reasonable doubt
23 that the rib injuries and the bruises to the child
24 occurred contemporaneously with the injury which
25 this -- with which Mr. Gaddist is charged which led

1 to the child's death. There's simply no evidence
2 and no testimony that you can conclude that from
3 because they can't date them, that specifically so,
4 then those become prior bad acts, 404(b) analysis.
5 They're clearly prejudice, clearly outweighs
6 whatever probative value they have. They're
7 irrelevant to the trial in this case. They fail
8 under 401, 402, 403, and 404(b). They're
9 specifically analogous to the situation in State
10 versus Henry Fletcher, which is 379 SC 17 664
11 Southeast Second 480, a case from 2008, which I
12 happened to have tried at trial level and managed to
13 have Mr. Fletcher convicted. But, in that case
14 among other things the child, there were allegations
15 that the child was handcuffed in an attic for a
16 period of time and abuse occurred in that fashion.
17 That was admitted at trial. The case was reversed
18 because she could not link those actions to Mr.
19 Fletcher and it was reversed under 404(b) analysis.
20 I submit this is precisely the same situation.

21 Your Honor, when they ruled, when they
22 began, when the State raised the issue of bruises,
23 that they can go into it, then they need to link it
24 up. They haven't linked it up. So instead of being
25 evidence in the case, it's now prejudicial 404(b)

1 prior bad acts; and on that basis, I'd submit that
2 we need to go ahead and stop this trial now. I'm
3 making the motion now 'cause I had to let, in my
4 opinion, had to let the State have an opportunity to
5 introduce all the relevant evidence prior to Your
6 Honor being in a position to make a decision in this
7 matter. I don't think there are anymore doctors to
8 testify from a medical standpoint as to what
9 evidence they have in this regard so I'm making the
10 motion at this point in time, sir.

11 THE COURT: Anything in response?

12 MS. MCDUFFIE: Your Honor, I believe that
13 this case is very distinguishable from Fletcher. In
14 Fletcher, first of all, those weren't injuries to
15 the child. They were acts that had been committed
16 weeks prior. I think it was two weeks prior, or at
17 least the one Mr. Strickler is talking about was two
18 weeks prior and they couldn't be attributed to the
19 defendant. Here there's testimony that the rib
20 fractures, the -- in the doctor's opinions -- the
21 rib fractures, the orbital fracture, and the trauma
22 to the head were all made at the same time. Doctor
23 Durso testified that when she actually cut in, that
24 you can't date a bruise by visually looking at, you
25 know, whether it's the color of it. But when she

1 actually cut through the skin into the actual
2 bruise, she was able to tell that the hematoma and
3 the state of healing on the bruise was the same in
4 general character as the hematoma in the head; and
5 based on that she opined that the injuries were made
6 contemporaneously or within a short period of time.
7 I think she said, you know, she didn't, she couldn't
8 tell whether it was ten minutes or two minutes
9 after; but she believes that they were all inflicted
10 in a short period of time to each other.

11 Further, other doctors testified that one
12 injury alone, one injury alone is one thing; but
13 taken as a whole, the totality of circumstances of
14 the injury of this child, the doctors believed that
15 the injuries were all inflicted contemporaneously.
16 Further, Doctor Sheila Jones testified that the
17 fractures to the ribs had no healing, no healing, no
18 calcification, and that they were acute. And
19 further, the air in the lungs also indicated that
20 they were done around the time of the CT scan, which
21 I think was taken two hours after this incident
22 occurred, Your Honor. And further, the blood and
23 the orbital fracture and things like that. I'd also
24 like to point out I don't think Mr. Strickler or the
25 defense objected when this testimony was offered.

1 MR. STRICKLER: Which, Judge, I'm sorry,
2 Your Honor.

3 THE COURT: I'm not sure either, but they
4 clearly objected to testimony relating to bruises
5 ---

6 MS. MCDUFFIE: They did ---

7 THE COURT: ---at some point in time.

8 MS. MCDUFFIE: ---object to the responding
9 officer's testimony.

10 THE COURT: All right, I will deny the
11 motion. With respect to the fact that the, some of
12 the injuries may not have been life threatening or
13 caused the life, I mean the death of the child, I
14 think taken as a whole, considering those injuries
15 as well as the injuries that ultimately did cause
16 the death of the child, that they could be evidence
17 to show a manifestation of extreme indifference to
18 the, to the human life, and could be considered by
19 the jury in doing so with respect -- I think there's
20 ample evidence that indicates that, from these
21 doctors, well, they can't say it occurred at 9:30 in
22 the morning or 10:30 in the morning or 11:30 in the
23 morning. They do believe they all occurred within
24 immediate time of each other, but that certainly is
25 something that the jury can consider. And some of

1 the injuries, some of which were life threatening,
2 the bruises, some of which weren't, one of the
3 physicians testified that the coloration was
4 similar, that they thought they occurred at the same
5 time relating to bruises, relating to broken ribs.
6 They did say they were acute which, means that it
7 happened almost on immediate basis with the injuries
8 being reported, and I'm denying your motion.

9 MR. STRICKLER: Yes, sir, I understand.
10 Thank you very much, sir.

11 THE COURT: All right, let's call your --
12 let's bring the jury in.

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 9:40 a.m., and
15 the following proceedings commenced in
16 open court.)

17 THE COURT: Good morning, ladies and
18 gentlemen, nice to see you this morning. I hope you
19 had a nice evening and you're prepared to go back to
20 work, but I need to ask you the same questions I've
21 asked you each morning. Anybody had any
22 conversation about this case with each other or with
23 anyone else or been approached by anyone to discuss
24 anything about the case since we left yesterday
25 afternoon?

1 (There was no response.)

2 THE COURT: Anybody read anything about
3 it, listen to anything about, it watch anything
4 about it, or do any independent inquiry or
5 independent investigation about anything related to
6 this case since we left yesterday?

7 (There was no response.)

8 THE COURT: All right, good, thank you
9 very much. And as you are aware, we're still in the
10 process of the State putting up its evidence in its
11 case in chief so I'll call on the Solicitor.

12 If you will call your next witness please,
13 ma'am.

14 MS. CAMPBELL: Thank you, Your Honor. The
15 State calls Doctor Avery Amick.

16 MS. PINNOCK: Your Honor, I'm sorry, can
17 we ---

18 THE COURT: We've just been in here the
19 last 15 minutes doing, working, and now you ---

20 MS. PINNOCK: Yes, sir, we didn't know she
21 was calling that person first.

22 (WHEREUPON, counsel approached the Bench
23 for an off-the-record discussion.)

24 THE COURT: Ladies and gentlemen of the
25 jury, let me let you step back into the jury room,

1 and it may be some time before we. Don't discuss
2 the case while you're back there please.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 9:43 a.m., and the following
5 proceedings commenced in open court.)

6 THE COURT: All right, side bar -- and let
7 me tell you something, I don't like side bars. If
8 you got an issue about something that's gonna come
9 up this day and any day in the courtroom let's bring
10 it up in the beginning to deal with it rather than
11 deal with it on an incremental basis. It is my
12 understanding now that chain of custody is an issue
13 in this case with respect to the DNA, that the
14 Defendant is raising that as an issue. Ms. Campbell
15 believed that that had been waived and was not gonna
16 be an issue. What is the status?

17 MS. MCDUFFIE: Your Honor, when we had
18 Investigator Holt up here on Tuesday when we
19 intended to introduce the buccal swab from the
20 victim in this case **K.H. [REDACTED]**, I showed the
21 marked items of evidence to Ms. Pinnock. She said
22 they had no objection to that so we let Investigator
23 Holt go because the only other thing he did was go
24 to the autopsy; and since we weren't introducing
25 those pictures or the rape kit like we had discussed

1 and she told me there was no objection to this, we
2 let the witness go.

3 The other item of evidence is the buccal
4 swab from the defendant which was taken after he
5 consented to a Smerber hearing by Investigator
6 Faust. We provided a chain of custody to the
7 Defense, it is complete, there's no holes in it. I
8 don't know what their objection is to chain, but
9 when we ---

10 THE COURT: Well, I'm more concerned did
11 they consent to that not being an issue?

12 MS. MCDUFFIE: Yeah, when we showed them
13 the marked items she told me there was no objection
14 to them so.

15 MS. PINNOCK: And Your Honor, I honestly,
16 I do not remember saying we weren't objecting to
17 chain. I do not recall saying that. I do remember
18 looking at the buccal swabs. I just don't remember
19 having that conversation with her. So in all
20 honesty, I can't say if I did or I didn't.

21 THE COURT: But now you're raising that as
22 an issue?

23 MS. PINNOCK: I think, I mean, she needs
24 to establish chain for the DNA, yes.

25 MS. MCDUFFIE: Your Honor ---

1 MS. PINNOCK: I just don't remember.
2 That's all I can say about it.

3 THE COURT: Look, I understand that you're
4 right, but if you tell them that you're not gonna
5 make that an issue and you're gonna consent to this
6 person being testifying and then you change your
7 mind without having told them, that I don't
8 understand.

9 MS. PINNOCK: And Your Honor, I would
10 never, I just really, I can't remember having that
11 conversation. I would not tell Ms. McDuffie or Ms.
12 Campbell something and then change my mind. I have
13 no reason to do that. I just really do not remember
14 that, having that conversation about challenging
15 chain.

16 THE COURT: Well, we'll sit here until
17 next Friday if we have to to allow them to get their
18 witnesses up here.

19 MS. PINNOCK: Judge ---

20 THE COURT: All right, is that your next
21 witness?

22 MS. CAMPBELL: It was.

23 THE COURT: How long is it gonna take you
24 to get your chain witnesses here?

25 MS. MCDUFFIE: Your Honor, Investigator

1 Oates works nights which is why we have him up
2 Tuesday morning. I guess we're gonna have to get
3 him out of bed to get him here. And then ---

4 MS. CAMPBELL: And then we need,
5 basically, everything that we agree he's already
6 testified as to his part of the chain that he's
7 admitted into evidence. At that point everything is
8 sealed so at this point the only other witness we
9 would need is Crystal Barrickman who actually did
10 the cuttings before the testing is actually done.

11 MS. MCDUFFIE: And our paralegal is trying
12 to get her now.

13 THE COURT: So how long is it -- do I need
14 to turn this jury loose?

15 MS. CAMPBELL: It would take us 30
16 minutes.

17 THE COURT: I'm not gonna have this jury
18 sit in the jury room for hours and hours and hours?

19 MS. CAMPBELL: I agree. It could take us
20 from 30 minutes to an hour to get the people here,
21 and I apologize. And if there are any other people
22 in the chain, if they can just tell me who they are
23 I'll get them here. But I think the testimony has
24 been that Investigator Oates -- everything that's
25 processed, Your Honor, is from the scene. And in

1 addition to that, they're just some swabs,
2 non-buccal swabs, so if they're willing to agree
3 that Investigator Oates doesn't need to come back
4 then ---

5 THE COURT: I wouldn't count on them
6 agreeing to anything.

7 MS. CAMPBELL: Okay. We'll get
8 Investigator Oates back.

9 MS. MCDUFFIE: Your Honor, if they can
10 identify specifically which items they're contesting
11 chain on so we can get those witnesses here.

12 THE COURT: I think they're ---

13 MS. CAMPBELL: Everything.

14 THE COURT: ---disagreeing on everything.
15 They're making you go through probably a unnecessary
16 act on your part, but that's their right. All
17 right, well, I will tell the jury -- how about we
18 come back here 1:30 this morning?

19 MS. CAMPBELL: Yes, sir. Is that
20 necessary, Mr.?

21 MR. STRICKLER: If I may, Your Honor, I
22 mean, one item which I don't, haven't heard anything
23 about as far as chain goes, is, and which is
24 necessary to prepare us to testify about, is the
25 blood sample from K.H. [REDACTED]

1 MS. CAMPBELL: The blood sample from
2 K.H. [REDACTED] is what we just talked about. It was
3 shown to Ms. — we had Investigator Holt up here.
4 He's the one that collected that at autopsy as part
5 of the rape kit. Of course, we weren't going into
6 the rape kit, and that's the sample. The sample
7 from your defendant was collected by Investigator
8 Faust who will be testifying today. If that's
9 sufficient for y'all, we can proceed but if it's not
10 just, we'll stay now.

11 THE COURT: All right, let's bring the
12 jury in, I'll turn them loose.

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 9:49 a.m., and
15 the following proceedings commenced in
16 open court.)

17 THE COURT: Y'all come here a minute.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 THE COURT: All right, ladies and
21 gentlemen, apparently we're having a situation with
22 witnesses' availability that did not know they were
23 gonna have to be here today so we're gonna have to
24 take a break and allow us to locate these witnesses.
25 And it's gonna be a long break so I'm gonna ask

1 y'all to, I'm gonna let you go and ask you to be
2 back here at 1:30 this afternoon and we will pick up
3 at that time. But we -- I don't want you sitting in
4 the jury room until we can, I mean, you'll get bored
5 in there and it's very confining and so I'm just
6 gonna ask you be back here 1:30 this afternoon. I
7 ask you not to discuss the case, not do to anything
8 about the case while you're gone. Maybe it will
9 give you a chance if you need to run by your office
10 or do something you need to do or run personal
11 errand, I don't know, but I apologize. This was
12 unforeseen and we're gonna turn you loose. You be
13 back here at 1:30 and we'll pick up at that time.
14 Y'all have a nice morning.

15 (WHEREUPON, the jury was removed
16 from the courtroom at 9:50 a.m., and the
17 following proceedings commenced in open
18 court.)

19 THE COURT: I teach a class in law school.
20 I tell -- the first thing these people need to do
21 when making an opening statement is the lawyers try
22 to establish some credibility with the jury.
23 Credibility is very important in every case, not
24 only the credibility of witnesses, credibility of
25 the parties, credibility of the lawyers is important

1 with respect to the jury and the judge and everybody
2 else involved in this case. I am amazed we've
3 gotten to this point this morning and there becomes
4 an issue at this point in time so, but it's always a
5 learning experience. See you at 1:30.

6 (WHEREUPON, a recess was taken from the
7 proceedings and court resumed at 1:15
8 p.m.)

9 (WHEREUPON, State Exhibits Nos. 119
10 through 123 were marked for
11 identification only.)

12 THE COURT: All right, Ms. Hedgecoe was
13 notified earlier that y'all wanted, the State had
14 some matters of law they wanted to take up at 1:15
15 and 1:00, it's 1:15, either one, we could do 1:15
16 but I understand y'all have resolved those issues?

17 MS. CAMPBELL: We just want to put on the
18 record, Your Honor, we did email them the chain
19 witnesses we were anticipating putting up in this
20 matter. They do agree these are all witnesses
21 necessary for the issue of chain. They let us know
22 that. And in addition to that, Your Honor, and the
23 next witnesses as far as Doctor Amick's testimony on
24 the DNA, there is some blood evidence from the scene
25 that matches K.H. [REDACTED] and Antwan Gaddist.

1 There's some blood evidence that matches mother and
2 there's some blood that matches K.H. 2. I've asked
3 the Defense if they want us to not go into the blood
4 involving K.H. 2 because I don't want to make an
5 inference that the defendant was also beating K.H. 2
6 that day or at some time prior to that under a prior
7 bad act so I don't want that to come back to us.

8 Also, I don't want to, if we go into that,
9 open the door to them getting into a whole separate
10 unfounded investigation on K.H. 2. They assure me
11 that they just want everything out there, which
12 we're more than happy to do and we're anticipating
13 doing, and that would not open the door to anything
14 else as far as they're concerned in that matter as
15 far as taking it much further with the second child
16 that's ---

17 THE COURT: You gonna have somebody name
18 the donors of that blood as opposed to just say
19 there was other blood from somebody besides -- I
20 don't know who ---

21 MS. CAMPBELL: That's what I asked them if
22 they wanted us to do that or they wanted us to
23 handle it. And I talked to Ms. Pinnock and she
24 indicated she just wanted it to come forth as
25 because basically buccal swaps are gotten from the

1 twin brother, from the mother, from the sister, and
2 from the child, as well as Mr. Gaddist.

3 THE COURT: If y'all are agree on it and
4 I'll assume you've reviewed this with your client.

5 MS. PINNOCK: The conversations I've had
6 with Antwan about the DNA report, we've always --
7 everything is gonna be in so he was aware of that we
8 were preparing for trial.

9 THE COURT: I just don't want there to be
10 a PCR issue you elected to do something. All right,
11 so y'all have resolved all that?

12 MS. PINNOCK: That issue, yes, sir.

13 THE COURT: Now, also was she on an email
14 that I don't know who -- oh, you did, Mr. Staggs.

15 MR. STAGGS: I sent that, Your Honor.

16 THE COURT: I'm not sure what the purpose
17 of that email was but.

18 MR. STAGGS: The purpose was to let the
19 State know that we intended to explore -- based on
20 yesterday's medical testimony about the orbital
21 fracture and the fluid in the sinus, in addition to
22 how bruises happen, we feel like we need to explore
23 with Investigator or Sergeant Faust and perhaps
24 other people with permanent information more about
25 K.H. [REDACTED]'s eye injury specifically. Basically---

1 THE COURT: Well, I mean, what's the issue
2 there? I think they have a right to ask anything
3 they want. If it's not irrelevant ---

4 MS. CAMPBELL: Anything they want,
5 however, not about the bruise, the eye, because
6 their motion to exclude any mention of that bruise.

7 MR. STAGGS: And Your Honor, we have no
8 issue with withdrawing that motion at this time. We
9 feel the door's been opened ---

10 THE COURT: Wait a minute, wait a minute,
11 wait a minute, wait a minute, wait a minute.

12 MR. STAGGS: Yes, sir.

13 THE COURT: The door's been opened about
14 her black eye?

15 MR. STAGGS: The door's been opened about
16 bruising and about a fracture and about the timing
17 of those, about the timing of the black eye
18 basically, absolutely. There were at least two
19 witnesses yesterday that discussed the orbital
20 fracture, the timing of it, and the fact that there
21 was blood in the sinus cavity. That's, you know ---

22 THE COURT: And you -- I don't have any
23 problem with your asking that, but if they object to
24 your asking about the black eye, y'all specifically
25 requested that they not be able to go into that and

1 they have based on what I observed, made every
2 effort to avoid the term black eye.

3 MR. STAGGS: And that's fine, Your Honor,
4 but the State's also not prejudiced by us further
5 exploring that at this point.

6 THE COURT: Except they couldn't — so
7 we're gonna bring, allow them to bring witnesses
8 back to go into that issue?

9 MR. STAGGS: If they felt it was necessary
10 I wouldn't have a problem with that. My feeling,
11 Your Honor, is they elicited testimony yesterday
12 about the underlying injury —

13 THE COURT: Mr. Staggs, —

14 MR. STAGGS: Yes, sir.

15 THE COURT: You or Ms. Pinnock asked that
16 the issue of a black eye. Which y'all have
17 acknowledged I think to me, occurred sometime prior
18 to these, the May 23rd.

19 MR. STAGGS: Your Honor, we requested that
20 he keep out any testimony about other bruises, any
21 injury other than the injuries to the head. It was
22 Your Honor's decision to keep out the bite marks and
23 the black eye specifically.

24 THE COURT: I did it at your request.

25 MR. STAGGS: Somewhat, yes.

1 THE COURT: Now at the end of their trial,
2 their case, you want to start putting up? All
3 right, so you withdraw any objection to their
4 addressing the black eye?

5 MR. STAGGS: Yes, at this point, Your
6 Honor, I feel like it's been addressed.

7 THE COURT: No, it hadn't been addressed,
8 Mr. Staggs. The fracture of the eye and blood in
9 the eye is not one and the same as to a black eye
10 that occurred a week or two weeks, whenever it
11 occurred in the past that y'all have, the ones that
12 told me that occurred.

13 MR. STAGGS: Yes, sir.

14 THE COURT: Well, here's what my ruling
15 is. I rule that we're not going into anything about
16 a prior injury.

17 MR. STAGGS: Okay.

18 THE COURT: Which would be a black eye.

19 MR. STAGGS: Yes, Your Honor.

20 THE COURT: Which would be — what was the
21 other prior injury?

22 MS. CAMPBELL: Bite marks.

23 THE COURT: Bite marks. And we're going
24 to stick with that. I don't think they've opened
25 the door. So I'm not giving you the opportunity to

1 now go ahead and decide -- if you want to ask
2 anything about a eye injury that is related to this
3 case based on what the medical testimony is, that it
4 was contemporaneous with all the other injuries or
5 blood in the eye, I think that's fair game.

6 MR. STAGGS: Okay. Your Honor, the one
7 last -- thank you. Your Honor, I do understand your
8 ruling, but I would like the record to reflect I
9 take exception to it.

10 THE COURT: You wouldn't have made the
11 motion if you hadn't brought it up. If you want to
12 take exception, that's fine.

13 MR. STAGGS: Thank you, Your Honor.

14 THE COURT: You were going to talk about
15 something else?

16 MR. STAGGS: Not at this time, Your Honor.

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

18 MS. CAMPBELL: Yes, Your Honor, we have
19 our witnesses in the courtroom. They've agreed for
20 purposes of these next few witnesses they don't have
21 to be sequestered so we can move quickly.

22 THE COURT: Is that true? We're gonna put
23 everything on the record from now on. Is that true?
24 Y'all have agreed that these chain of custody
25 witnesses can stay in the courtroom?

1 MR. STRICKLER: I agree to that, sir, yes,
2 sir.

3 THE COURT: All right. Ms. Pinnock, do
4 you agree?

5 MS. PINNOCK: I'm sorry, Judge?

6 THE COURT: Do you agree?

7 MS. PINNOCK: Yes.

8 THE COURT: All right, let's bring the
9 jury in.

10 Now Mr. Staggs, my ruling doesn't affect
11 anything that, any evidence about bruises that were
12 occurred at the same time, wherever they may be.

13 MR. STAGGS: Yes, Your Honor, I
14 understand.

15 THE COURT: You're gonna be able to
16 address those with any witness you want to address
17 with.

18 MR. STAGGS: Okay, all right. Thank you,
19 Your Honor.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 1:35
22 p.m., and the following
23 proceedings commenced in open
24 court.)

25 THE COURT: Thank you, ladies and

1 gentlemen. And let me ask you this question again,
2 anybody have any conversation about this case with
3 each other, anybody else, since we left here this
4 morning?

5 (There was no response.)

6 THE COURT: Were you approached by anybody
7 to discuss the case at all?

8 (There was no response.)

9 THE COURT: Anybody do any investigation,
10 make any inquiry through internet, media, or any
11 other method?

12 (There was no response.)

13 THE COURT: All right, good. Okay, ladies
14 and gentlemen, we now think we got all the witnesses
15 that we can use for the afternoon so.

16 You want to call your first witness,
17 Ms. Simpson.

18 MS. SIMPSON: Thank you, Your Honor, may
19 it please the Court. The State calls Investigator
20 Trevor Holt.

21 WHEREUPON,

22 **TREVOR HOLT,**
23 having been duly sworn by the Clerk, testified as
24 follows:

25 THE CLERK: Thank you. Have a seat in

SW - T. HOLT - DIRECT

1 the witness stand and state your full name for the
2 record.

3 THE WITNESS: Trevor Holt.

4 **DIRECT EXAMINATION**

5 BY MS. SIMPSON:

6 Q Investigator Holt, where are you employed?

7 A Richland County Sheriff's Department.

8 Q What is your position there?

9 A I am a crime scene investigator assigned to
10 forensic science.

11 Q And how long have you been a crime scene
12 investigator?

13 A About five years now.

14 Q And in your capacity as a crime scene
15 investigator are you all often called out to attend
16 or be present at an autopsy?

17 A Yes, ma'am.

18 Q And what is your role at an autopsy?

19 A To document and collect physical evidence.

20 Q Okay. And did you have occasion to become
21 involved in this case involving K.H. [REDACTED], a
22 minor victim, her autopsy on, I believe, May 26th of
23 2011?

24 A Yes, ma'am.

25 Q And were you present at that autopsy?

SW - T. HOLT - DIRECT

1 A Yes, ma'am.

2 Q And did you actually collect a buccal swab from
3 K.H.?

4 A Yes, ma'am, I did.

5 Q Can you tell the jury what a buccal scab is?

6 A Sure. If you think about a buccal swab, it's
7 more like a large Q-tip. It's got a handle with
8 cotton and it's sterilized and comes individually
9 packaged. In this case the swab was open from its
10 packaging. It was collected from the mouth area of
11 the child and then placed in a buccal box which is
12 also a sterile container which the swab is placed in
13 before packaging to place in evidence.

14 Q And the purpose of collecting a buccal swab is
15 that sometimes later used for subsequent testing?

16 A Yes, ma'am.

17 Q What type of testing?

18 A For DNA profiles which was in this case.

19 Q I'm gonna show you what's been marked as State's
20 Exhibit 108. Do you recognize this?

21 A Yes, ma'am.

22 Q And what is it?

23 A This is the packaging containing the buccal swab
24 and buccal box that was collected at autopsy.

25 Q All right. And you said that you collected the

SW - T. HOLT - CROSS

1 buccal swab in this case?

2 A Yes, ma'am.

3 Q And while it was in your possession was it
4 tampered or altered with in any way?

5 A No, ma'am.

6 Q And was it properly sealed and packaged?

7 A Yes, ma'am.

8 Q And then turned over to evidence?

9 A Yes, ma'am.

10 Q And once it's placed into evidence do you
11 actually do the testing?

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

13 MS. SIMPSON: Your Honor, at this time we
14 would offer State's 108 in evidence.

15 MR. STRICKLER: It's without objection,
16 sir.

17 THE COURT: So admitted.

18 (WHEREUPON, State Exhibit No. 108 was
19 admitted into evidence.)

20 MS. SIMPSON: Thank you, Investigator.

21 THE COURT: Anything?

22 MR. STRICKLER: One question.

23 **CROSS-EXAMINATION**

24 BY MR. STRICKLER:

25 Q Just quickly, you collected that buccal scab on

SW - T. HOLT - CROSS

1 what day, I'm sorry?

2 A On the 26th.

3 Q 26th of May, 2011?

4 A Yes.

5 Q Okay. And then you delivered it to evidence?

6 A Yes, it was placed into evidence May 26th, 2011,
7 approximately 12:45 hours.

8 Q Did you drop it in a drop box there or did you
9 actually deliver it to someone in the evidence
10 department?

11 A It was placed in refrigerated unit.

12 Q Okay, thank you very much.

13 THE COURT: Anything?

14 MS. SIMPSON: No, Your Honor, nothing
15 further.

16 THE COURT: Thank you. You may step down.
17 You are free to leave.

18 Call your next witness.

19 MS. CAMPBELL: Thank you, sir. The State
20 calls Christine Barrickman.

21 WHEREUPON,

22 **CHRISTINE BARRICKMAN,**
23 having been duly sworn by the Clerk, testified as
24 follows:

25 THE CLERK: Please have a seat in the

SW - C. BARRICKMAN - DIRECT

1 witness stand and state your full name for the
2 record and please spell your first name.

3 THE WITNESS: It's Christine Barrickman,
4 C-H-R-I-S-T-I-N-E B-A-R-R-I-C-K-M-A-N.

5 **DIRECT EXAMINATION**

6 BY MS. CAMPBELL:

7 Q Ms. Barrickman, where are you employed?

8 A Richland County.

9 Q What do you do there?

10 A I currently work in the evidence and property
11 room.

12 Q Tell this jury what you do in the evidence and
13 property room.

14 A The evidence and property section is collect --
15 we take in all the evidence that comes in from the
16 officers and investigators at the Sheriff's
17 Department.

18 Q And is there a certain protocol y'all follow in
19 accepting evidence in cases?

20 A Yes. Every piece of evidence comes in as
21 packaged, properly sealed with evidence tape, and it
22 is not opened. It's just placed in inventory into
23 the evidence room.

24 Q Part of your accepting it it must be sealed?

25 A Yes.

SW - C. BARRICKMAN - DIRECT

1 Q And y'all have certain standards all the deputies
2 or whoever is submitting, are taught?

3 A Correct.

4 Q And especially people that work with the crime
5 scene, they're very familiar with how to collect
6 evidence and submit to crime lab; is that correct?

7 A Yes.

8 Q Back in -- have you had opportunity to review the
9 chain of evidence in this case?

10 A I have.

11 Q And there are a number of pieces of evidence that
12 were submitted by I believe Investigator Holt,
13 Investigator Oates, and Sergeant Faust?

14 A There is.

15 Q And is it documented those were all properly
16 submitted?

17 A Yes, they were.

18 Q And subsequent to that were they checked -- some
19 of those items were checked out to the DNA
20 department?

21 A Correct.

22 Q And turning your attention back to 2011. In 2011
23 what were your duties at the Sheriff's Department?

24 A I was a technician in the DNA laboratory.

25 Q And as a technician in the DNA laboratory what

SW - C. BARRICKMAN - DIRECT

1 did you do?

2 A I assisted the analyst with case work.

3 Q And typically what type of work did you do for
4 the DNA testing?

5 A I would do what I call prep work. I would assist
6 the analyst with casework, checking the paperwork,
7 possibly doing some testing on the items and then I
8 would turn the evidence over to the analyst to run
9 on instrumentation.

10 Q And did you become involved with the case
11 involving K.H. [REDACTED]?

12 A I did.

13 Q What evidence did you get from the evidence room
14 in 2011?

15 A I got -- you want the item numbers?

16 Q Item numbers and names, yes.

17 A Items 19 and 20 and then I also got items 1
18 through 8 and 12 through 17.

19 Q Were these items items that had been collected at
20 the apartment, some of them?

21 A Yes.

22 Q And as well as they were some known standards
23 that were submitted to your department?

24 A Yes.

25 Q And when I say known standards what am I

SW - C. BARRICKMAN - DIRECT

1 referring to?

2 A A known standard would be a buccal.

3 Q How is a buccal swab collected?

4 A It's a Q-tip. It's placed into the mouth of the
5 individual and you swab the sides of the cheeks of
6 their mouth.

7 Q And once the Q-tip is collected, is it stored in
8 a certain way to preserve its integrity?

9 A It goes into a box and then into an evidence bag
10 or envelope.

11 Q Okay. And is your laboratory accredited?

12 A Yes, it is.

13 Q And do y'all have certain protocols in place to
14 assure the integrity of your testing?

15 A Yes.

16 Q And were those protocols observed when you were
17 doing your part in this case?

18 A Yes.

19 Q Once you collected the items that you mentioned,
20 at a later date did you go back and collect some
21 additional buccal swabs? I show you State's Exhibit
22 122.

23 A I did.

24 Q In addition to two buccal swabs you got
25 additionally?

SW - C. BARRICKMAN - DIRECT

1 A Correct.

2 Q As far as the items from the crime scene that you
3 tested in this case, there were several swabs, I
4 think three different swabs that were collected at
5 the crime scene. Tell the jury how you processed
6 those before turning them over for testing by Gray
7 Amick.

8 A The swabs were tested for blood. We do a
9 chemical test and it turns color if it's presumptive
10 for blood. And then I take a cutting from that. I
11 just take a little piece of a swab and it goes into
12 a tube and it's turned over to the analyst to run
13 the instrumentation.

14 Q And did you do that in this case?

15 A I did.

16 Q And at any point in your handling of those three
17 swabs or anything in this case, did you alter it,
18 tamper with it, or change it in any way?

19 A I did not.

20 Q There are also some towels, and I believe some
21 clothing that were collected in this case?

22 A Yes.

23 Q Did you also examine those items?

24 A I did.

25 Q And tell the jury how you went about examining

SW - C. BARRICKMAN - DIRECT

1 those items and getting cuttings from those items.

2 A I did a visual examination of items of evidence
3 and if an area appeared to be blood, I took a swab
4 as I just described and did a chemical test. And if
5 it was presumptive for blood it would change colors;
6 and if that happened, then I would take scissors and
7 just take a little cutting from the article of
8 clothing and put it into a tube, turn it over to the
9 analyst for testing on the instrumentation.

10 Q And in some of these items were there bigger
11 areas and smaller areas that could have been blood?

12 A Yes.

13 Q And do you actually cut the entire area or just a
14 sample in some of the larger stains?

15 A Just a sample.

16 Q And you did that in this case?

17 A I did.

18 Q And then on the known buccal swabs that were
19 submitted to you, which is items 122 for I.D., 109
20 for I.D., and then 108 that's already in, tell the
21 jury how you processed those items to be forwarded
22 to be tested.

23 A These are buccal swabs so they don't need any
24 pre-testing. I just take a cutting from that and it
25 goes into a tube and then it's turned over to the

SW - C. BARRICKMAN - CROSS

1 analyst for instrumentation.

2 Q Once you did your prep work in this case was
3 everything handled properly?

4 A Yes, it was.

5 Q Was anything contaminated in any way?

6 A No, it was not.

7 Q And then was the testing actually done by the
8 analyst, one of the analysts in your department?

9 A Yes, it is.

10 Q And who was that in this case?

11 A Doctor Avery Amick.

12 Q And that was forwarded directly to you through
13 chain of custody?

14 A Correct.

15 Q And as far as any of the evidence in this case,
16 there's no indication anything was handled in any
17 way but properly?

18 A Correct.

19 Q Thank you. I don't have anything further.

20 MR. STRICKLER: May it please the Court.

21 THE COURT: Mr. Strickler.

22 **CROSS-EXAMINATION**

23 BY MR. STRICKLER:

24 Q Good afternoon. So in this particular instance
25 your responsibility was to collect various pieces of

1 evidence from the evidence room, transport it to the
2 DNA/trace department, and conduct some preliminary
3 testing on that evidence yourself?

4 A Correct.

5 Q Am I right about that? Okay. And if I
6 understood you correctly you tested for the presence
7 of blood?

8 A Correct.

9 Q Okay. And there are some tests that you can run
10 which are known as presumptive tests, is that?

11 A Correct.

12 Q Those are the kind of tests that you run?

13 A Correct.

14 Q Specifically did you conduct a test using
15 phenolphthalein?

16 A Yes.

17 Q And that will do what in reference to human
18 blood?

19 A It changes color.

20 Q So that's a procedure that you used on the
21 various swabs that you did from ---

22 A Correct.

23 Q ---various reddish brown stains?

24 A Correct.

25 Q Did you have in your possession for preliminary

SW - C. BARRICKMAN - CROSS

1 testing item number 5 which is labeled a black
2 handled hammer?

3 A I did pick up item number 5, by according to my
4 notes I did not process item number 5.

5 Q You didn't do any processing on it?

6 A No.

7 Q Why would that be?

8 A I processed what is requested.

9 Q Okay. You didn't do any visual examination of
10 that item?

11 A No.

12 Q And you were in possession of the items until --
13 well, you got items 19 and 20 on June 2nd; is that
14 correct?

15 A Correct.

16 Q And then items 1 through 8 and 12 through 17 I
17 believe you received on or picked up from evidence
18 room at June 20th?

19 A Correct.

20 Q And all those items, both the ones from the 2nd
21 and the 20th, remained in your possession until
22 August 2nd when you turned them over to Mr. Amick?

23 A Correct.

24 Q Okay. Thank you very much, ma'am.

25 THE COURT: Anything?

SW - A. AMICK - DIRECT

1 MS. CAMPBELL: No, sir.

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

4 Call your next witness.

5 MS. CAMPBELL: Thank you. The State calls
6 Doctor Avery Amick.

7 WHEREUPON,

8 **AVERY AMICK,**

9 having been duly sworn by the Clerk, testified as
10 follows:

11 THE CLERK: Thank you. Please have a seat
12 in the witness stand and state your full name for
13 the record.

14 THE WITNESS: My name is Avery Amick,
15 A-M-I-C-K.

16 **DIRECT EXAMINATION**

17 BY MS. CAMPBELL:

18 Q Doctor Amick, where are you employed?

19 A Richland County Sheriff's Department.

20 Q What do you do there, sir?

21 A I'm the technical leader of the DNA laboratory.

22 Q As the technical leader of the DNA laboratory
23 what do your duties include?

24 A As an analyst in the DNA laboratory and I oversee
25 all technical aspects, like supervisor of the

SW - A. AMICK - DIRECT

1 laboratory.

2 Q Can you tell the jury a little bit about your
3 education and training in the field of DNA testing.

4 A Yeah. I have a BS in biology in 1989 and a Ph.D.
5 in biochemistry 1993 from University of South
6 Carolina. After getting my degree I got employed at
7 the South Carolina Law Enforcement Division commonly
8 known as SLED where I worked for 11 years. In 2004
9 Sheriff Lott decided he would like to start up a DNA
10 lab, which he employed me and another individual.
11 We started that DNA lab in 2004 at the Sheriff's
12 Department and have been doing testing there ever
13 since.

14 Q And have you been qualified before as an expert
15 in DNA analysis?

16 A I have.

17 Q And approximately how many times have you been
18 qualified as an expert in DNA analysis?

19 A Over 75 times.

20 MS. CAMPBELL: Your Honor, at this time we
21 offer him as an expert.

22 MR. STRICKLER: We have no voir dire or
23 objection to him, Your Honor.

24 THE COURT: All right, ladies and
25 gentlemen, scientific, technical, or other

SW - A. AMICK - DIRECT

1 specialized knowledge will assist you, the trier of
2 the facts, in understanding any evidence or
3 determine any fact that may be at issue. Then a
4 witness may be examined as an expert by virtue of
5 his or her knowledge, skill, experience, training,
6 or education and may testify in the form of opinion.
7 I find that Doctor Amick is an expert in the field
8 of DNA analysis and can offer opinions in this
9 field. I tell you that you are to give his
10 testimony such weight and credibility as you deem
11 appropriate as you will with all witnesses in this
12 case.

13 Proceed, please, ma'am.

14 MS. CAMPBELL: Thank you, sir.

15 BY MS. CAMPBELL:

16 Q Doctor, in every case, typically how do you go
17 about doing an analysis in a case such as this one?

18 A What happens is we, in a case like this, we
19 usually interface with investigators to see what
20 needs to be run. Technician will receive that
21 evidence, fill out the paperwork, do the initial
22 cuttings and some presumptive testing, hand that off
23 to an analysis and we will attempt to develop DNA,
24 and then profile and offer a report, and any
25 interpretation that needs to be done, and then write

SW - A. AMICK - DIRECT

1 the report and testify.

2 Q And when you do DNA testing, the type of testing
3 that's used today is it more sensitive or less
4 sensitive than when DNA first started becoming
5 prevalent?

6 A It's more sensitive.

7 Q And sometimes when talking about DNA you hear
8 things about DNA typically can be left, say, at a
9 crime scene by body fluids?

10 A Yes.

11 Q And is blood, semen, saliva, some of the fluids
12 we're talking about?

13 A Yeah, those are a few of the primary ones .

14 Q In addition to that can you also get DNA, what's
15 called touch DNA?

16 A Yes, we can.

17 Q And are those different types of DNA or just
18 different ways to get somewhere?

19 A Yeah, it's just different ways. I mean, it's
20 still a person's DNA in their blood, semen, saliva;
21 and what they touch is gonna be the same DNA from
22 the person, it's just from a different source.

23 Q And the source, say, if I walk up here and touch,
24 am I necessarily going to leave DNA?

25 A No.

SW - A. AMICK - DIRECT

1 Q But can I leave DNA?

2 A You could, yes.

3 Q And what, what's gonna make my DNA adhere to
4 another surface perhaps?

5 A Well, it depends on the person. If you're
6 sweating or if you shed skin cells easily and stuff
7 like that. It also depends on the surface. If it's
8 a rough or smooth surface so it depends a lot of
9 factors whether it will or won't.

10 Q And you just mentioned that some people shed more
11 skin cells than others?

12 A Yes, ma'am.

13 Q And sweat can be involved, things of that nature?

14 A Yes.

15 Q And the testing that you have in your department
16 now, is it sensitive enough to pick up, say, if I
17 walk up and touch something and come back and
18 swabbed it, that it could test that?

19 A I could possibly develop a profile from that,
20 yes.

21 Q And at crime scenes, though typically some crime
22 scenes especially at homicides, blood is a thing you
23 test for?

24 A Yes.

25 Q And in this case you're aware Christine

SW - A. AMICK - DIRECT

1 Barrickman did the preliminary testing in this case?

2 A I am aware of that, yes.

3 Q And she mentioned that she used a presumptive
4 test. I believe it was referred to as
5 phenolphthalein?

6 A That's correct, phenolphthalein.

7 Q And phenolphthalein, what does that test do and
8 is it -- I don't want to say hundred percent
9 accurate. What are you trying to kind of show?

10 A It's a presumptive test so it will turn a color
11 in the presence of blood.

12 Q Okay. And is it always gonna be blood there that
13 makes it a turn a color?

14 A There are some substances that you can get a
15 false positive from.

16 Q But if you get a positive you should go ahead and
17 test it?

18 A Yes. So it's -- you're just screening out
19 possible sources, possible stains, so if you
20 visually see blood, then you'll do that presumptive
21 test; and if it's positive, then you go forward with
22 the cutting or whatever else for analysis.

23 Q And sometime what appears to be blood, will be
24 blood?

25 A That's correct.

1 Q And sometimes it's not?

2 A That's correct.

3 Q And in this case were certain items submitted to
4 you for testing?

5 A Yes.

6 Q Items from the crime scene?

7 A Yes.

8 Q And in addition to that I'm gonna show you
9 State's Exhibit 121 for I.D., State's Exhibit 109
10 for I.D. and State's Exhibit 108. Were those known
11 samples from different people that you used in your
12 testing in order to compare DNA from the scene?

13 A Yes, these are all known samples from this case.

14 Q And were those samples that you used in your
15 comparison later on to either include or exclude
16 people as being donors of samples from the scene?

17 A Yes.

18 Q And who all's buccal swabs or known samples did
19 you have and use to be your comparison in this case?

20 A I had DN K.H. [REDACTED], and that's item number
21 18.

22 Q 18?

23 A 18. I had buccal swabs from M. Miller. That's
24 item number 21; M.G. [REDACTED], 22; and K. Hill, 23.

25 Q And the numbers you're using are the numbers

SW - A. AMICK - DIRECT

1 assigned to it in the evidence room, right?

2 A Richland County evidence numbers.

3 Q Not the ones from the court?

4 A That's correct. And then buccal swab from Antwan
5 Gaddist, item 24.

6 Q Once you get the -- and you didn't, did you
7 receive all those known samples at once or did they
8 come at different times?

9 A As I recall I think it was different times. I
10 don't have the sheets in front of me, but I think it
11 was different.

12 Q And does that affect your ability to do any
13 testing?

14 A No.

15 Q Once a sample is even collected from a scene does
16 time necessarily affect -- would it change it to
17 make it look like somebody else's?

18 A No, if it's stored properly you can probably
19 definitely get a profile from it.

20 Q And the testing in this case took a while,
21 correct?

22 A It took a while?

23 Q To get all the different samples run?

24 A Well, the testing doesn't take all that amount of
25 time. What happens in this type of cases we'll do

SW - A. AMICK - DIRECT

1 several items, and then we'll interface with
2 investigators again and discuss what hasn't been
3 done or what needs to be done ---

4 Q Exactly.

5 A ---and do some more items. So the whole case,
6 start date I have is like from June 16th to 2011 to
7 July of 2013 so it looks like it took a long time
8 but not all that time is doing testing; it's some
9 other stuff going on I guess.

10 Q Different items may be submitted, different
11 types?

12 A Right.

13 Q And in this case, once you had received the
14 evidence tell the jury how you go about actually
15 doing the test and then making a comparison.

16 A So as you heard, I'll get the cuttings from the
17 technician from the items so they're basically in
18 small test tubes. So I'll extract the DNA,
19 quantitate it, and then I'll try to get a DNA
20 profile from that, from those items. Then I'm
21 compare the items to the standards in the case and
22 say either they're included or executed.

23 Q Okay. And in this cases the items, the cuttings
24 that you actually got as well as the cuttings off
25 the swabs, were those large amounts or small amounts

SW - A. AMICK - DIRECT

1 of actual ---

2 A They're small. They're probably, you know, from
3 4 or 7 millimeter size, enough to fit in a test tube
4 about like that.

5 Q Now I want to take your results and go through
6 them and if we can just go in order?

7 A Okay.

8 Q And item number 1 was a swab from a stain on
9 carpet?

10 A Yes, ma'am.

11 Q And it was tested presumptively for blood?

12 A Yes, blood was indicated on that item.

13 Q And once you do that the next step is to then do
14 what?

15 A To attempt to extract the DNA.

16 Q And do you always get DNA even if it may tested
17 positive presumptively?

18 A No, you do not always get DNA.

19 Q And in this case what was the result?

20 A No DNA was extracted from item 1.

21 Q So could you do any comparison, come up with any
22 result from that swab?

23 A No.

24 Q And is that unusual?

25 A No, it happens every once in a while. It just

SW - A. AMICK - DIRECT

1 may not have been enough DNA there in that sample
2 so. Usually when I get blood on an item I usually
3 get a DNA profile so.

4 Q Again, it's presumptive test for blood?

5 A Correct.

6 Q So it could be other items?

7 A It could have been something other than blood.
8 It could have been a technical issue with that
9 sample.

10 Q A number of reasons?

11 A Right, so it could just not have been enough DNA
12 there for me to pick it up in this test.

13 Q I'm gonna move to item number 2, and the numbers
14 I'm using are your evidence numbers; is that
15 correct?

16 A Yes.

17 Q It's a swab or stain from a bedroom mattress?

18 A Yes.

19 Q And did it test -- what was the result of the
20 test run, blood presumptive for test?

21 A There was also blood indicated on item 2.

22 Q And were you able to extract DNA from that item?

23 A Yes, DNA was extracted from that item.

24 Q And when you compared it to the known standards,
25 and again, when we're talking about comparison

SW - A. AMICK - DIRECT

1 what's caused you develop DNA profile both known
2 standard and then the standard from the scene?

3 A Yes.

4 Q And when you compare those two were you able to
5 match it to anyone, known standards submitted to
6 you?

7 A I was. The DNA result developed from item 2
8 matched K. H. 2 .

9 Q K. H. 2 ?

10 A Yes.

11 Q And in that were you able to exclude matching
12 anyone else?

13 A Yeah.

14 Q Of the known standard you have?

15 A It would not match anybody else, correct.

16 Q And are you aware in this case K. H. 2 and
17 K.H. were twins?

18 A I think I heard that mentioned, yes.

19 Q Does that affect your ability to differentiate
20 between the two DNAs?

21 A It did not in this case, no.

22 Q And why is that, sir?

23 A 'Cause they're two different people so everybody
24 has unique DNA profile except identical twins.

25 Q Except identical twins?

SW - A. AMICK - DIRECT

1 A Correct. So I'm thinking that these are male and
2 female.

3 Q Yes.

4 A So they're not identical twins. Before I even do
5 any testing I know that. So given that, everybody's
6 DNA profile is unique so if I match it to something
7 that would exclude everybody else.

8 Q In this case K.H. [REDACTED]'s profile was
9 different from K.H. 2 [REDACTED]'s?

10 A That's correct.

11 Q The next swab that was submitted for you was a
12 swab from a sample from the front entrance hallway?

13 A Right, item 3.

14 Q What were the results of that?

15 A Blood was indicated, DNA was extracted, and that
16 also matched K.H. 2 [REDACTED].

17 Q Okay. Moving on to another item that was
18 collected at the scene was item number 4. What was
19 that item?

20 A Description child's blue T-shirt.

21 Q Were there, I believe, three cuts from that---

22 A Yes.

23 Q ---that was submitted?

24 A Yes.

25 Q And what was the result of those three cuttings?

SW - A. AMICK - DIRECT

1 A They all three blood was indicated and all three,
2 4.1, 4.2., 4.3, all matched K. H. 2 .

3 Q Okay. And that would then exclude everyone else
4 that was submitted?

5 A Yes.

6 Q Moving on to items 5 and 6, was any analysis done
7 on those?

8 A No analysis was performed on 5 or 6.

9 Q And that was a hammer I believe?

10 A Black handle hammer and a blue top sheet.

11 Q Moving on to item number 7, what was that item?

12 A Number 7 was a blue fitted sheet with stains.

13 Q And were there several cuttings taken from that?

14 A Yes. That's six cuttings from — well, I'm
15 sorry, four cuttings and two hairs?

16 Q Two hairs. Was any testing done by your
17 department on the hairs?

18 A Let me look here and see. Item 75 and 76 were
19 the two hairs. They were unsuitable for this type
20 of DNA analysis.

21 Q And what does that mean, sir?

22 A That means when we look at them on a microscope
23 that didn't have a root which is required for us to
24 get a DNA profile so that's why it says unsuitable
25 for STRD analysis which is what we do. But you

1 could run them say for mitochondria, a different
2 type test that we don't perform.

3 Q And on those items, three out of the four of
4 those cuttings matched whom?

5 A 7.1 and 7.4 matche **K. H. 2**. 7.2 was a
6 mixture.

7 Q Explain to the jury, this is the first time this
8 has come up. A mixture, what is a mixture
9 typically?

10 A A mixture is like two people's DNA mixed
11 together.

12 Q How does that happen, two people's DNA can mix
13 together?

14 A Well, it's, it can be, it depends on the item,
15 but I mean, if it's two drops of blood and they drop
16 in the same place, then you got two people's DNA
17 mixed together.

18 Q Does it necessarily have to be blood?

19 A No, it can be saliva and blood. It can semen and
20 blood. It can be any two body fluids or any two DNA
21 sources mixed together.

22 Q Including, I believe we mentioned earlier, skin?

23 A Yep, could be skin as well.

24 Q Sheds from the skin and things of that nature?

25 A That's correct.

SW - A. AMICK - DIRECT

1 Q When you have a mixture do you try to
2 differentiate between what's called the major
3 contributor and minor contributor?

4 A We can. Some mixtures you can differentiate
5 which means one contributor or one person in the
6 mixture, there's more DNA there from that person
7 than the other so you can pick that profile out over
8 the other person. And vice versa, you can sometimes
9 pick out the minor contributor over the major
10 contributor.

11 Q And item number, one of these cuts, item number 7
12 which was a sheet, there was a mixture?

13 A Yeah, 7.2 was a mixture.

14 Q And what was the result when you did your
15 comparisons?

16 A Result was the major contributor matche **K. H. 2**
17 **██████** and the minor contributor was too weak for
18 match purpose.

19 Q What does that mean?

20 A That means that there wasn't enough DNA from the
21 minor contributor to make the match or to say it
22 matched or didn't match somebody.

23 Q So it didn't include or exclude anyone?

24 A That's correct.

25 Q And in that mixture as far as the major

SW - A. AMICK - DIRECT

1 contributor, it matched K. H. 2 and no one else?

2 A That's correct.

3 Q But there were two contributors to that mixture?

4 A On 7.2, yes.

5 Q And finally, were there any items from 7. -- I
6 mean, item number 7?

7 A Let me see here. 7.1, 7.2, I don't see --

8 Q 7.3 is I believe in the first, the number one
9 paragraph in the results.

10 A Yeah, I'm sorry. All right, so 7.1 and 7.2. 7.1
11 matched K. H. 2 [sic] 7.1, 7.3, and 7.4 all
12 matched K. H. 2 and 7.2 is the major
13 contributor to K. H. 2.

14 Q And moving on to item number 8 --

15 A I mea K.H. , I'm sorry.

16 Q Okay K. H. 2 ?

17 A I sai , it' K. H. 2 .

18 Q Item 8, was there a cutting from that?

19 A Yes, one cutting from a brown pillow case, item
20 8.

21 Q Who did that match?

22 A 8.1 matche K. H. 2 .

23 Q Moving on to the next item which is item number
24 12, what is that item?

25 A Item 12 was a white T-shirt stain.

SW - A. AMICK - DIRECT

1 Q I'm gonna show you State's Exhibit Number 112,
2 which is in evidence. Does that indicate item
3 number 12?

4 A Yep, this looks like item 12.

5 Q Okay. And were there any cuttings for that item?

6 A Yes, there cuttings and one hair.

7 Q Okay, and the cuttings in that case, did they --
8 were they tested presumptively for presence of
9 blood?

10 A Yes, they were.

11 Q And what was the result of those three cuttings
12 with the white T-shirt?

13 A 12.1, -2, and -3 blood was indicated on those
14 items.

15 Q On this item there's some markings on this. Does
16 that indicate the areas?

17 A Yep.

18 Q The black markings?

19 A Yeah, like Sharpie.

20 Q Uh-huh. And would that have been the areas where
21 they were taken?

22 A That would be areas where they were taken and
23 tested, yeah.

24 Q What was the result of 12.1?

25 A Item 12.1 matche K.H. .

SW - A. AMICK - DIRECT

1 Q And were you able to eliminate anyone else as
2 being a contributor for that sample?

3 A 12.1, no. Nobody else would match that sample.

4 Q Item number 12.2, and again, all three of these
5 were presumptively positive for blood?

6 A Correct. 12.2 is too weak for match purposes.

7 Q What was the major contributor for 12.2?

8 A Oh, I'm sorry, that was the minor contributor.

9 12.2 is a mixture. Major contributor 12.2 matched
10 K.H. .

11 Q And the minor contributor on the second stain on
12 that shirt matched was what?

13 A Was too weak for match purposes.

14 Q Final cutting from that T-shirt was item number
15 12.3?

16 A Correct.

17 Q And what was the result there?

18 A Item 12.3 matche K.H. .

19 Q And would that eliminate anyone else?

20 A That would eliminate everybody else, yes.

21 Q Finally, item 12.4 was some hairs?

22 A Yes.

23 Q Were there any analysis done on those?

24 A No analysis was performed on 12.4.

25 Q Moving on to item number 13 what was that?

SW - A. AMICK - DIRECT

1 A Item 10 is a blue bath towel.

2 Q And was any analysis performed on that blue bath
3 towel?

4 A No, no analysis performed on item 13.

5 Q And typically when that says no analysis that
6 they might necessarily do any analysis?

7 A That -- no, that, what this indicates no analysis
8 means it wasn't requested basically.

9 Q And item number 14?

10 A Yes.

11 Q What is that item?

12 A Item 14 was a white/black/red wash cloth with
13 stains.

14 Q And I show you item number State's Exhibit Number
15 114. Is that item number 14?

16 A Yes, item 14.

17 Q And were any cuttings submitted for testing from
18 that item?

19 A Yes, two cuttings.

20 Q What was the result of 14.1 and 14.2?

21 A Blood was indicated on both of those. 14.1 was a
22 mixture, a major contributor matched K.H. [REDACTED],
23 and the minor contributor matched Antwan Gaddist.
24 That was 14.1. 14.2, again a mixture, major
25 contributor matched K.H. [REDACTED] and the minor

SW - A. AMICK - DIRECT

1 contributor was too weak for match purposes.

2 Q And this is the first time you mentioned that
3 there is a major contributor and minor contributor
4 that you identified?

5 A Correct.

6 Q And one of these -- and on this wash cloth the
7 major contributor was K.H. [REDACTED]?

8 A On 14.1, yes, the major contributor matched
9 K.H. [REDACTED].

10 Q And the minor contributor was who?

11 A Minor contributor matched Antwan Gaddist.

12 Q Was everyone else eliminated other than those
13 two?

14 A The match, yes.

15 Q Okay. Moving on to item number 15 which was
16 what?

17 A 15 was a brown with pink striped towel with
18 stains.

19 Q And how many cuttings were submitted from that?

20 A Two.

21 Q And were they tested for presumptively for blood?

22 A Yes. 15.1 and -2 are, blood was indicated on
23 those items.

24 Q And what were the results when you did that
25 testing on those two items?

SW - A. AMICK - DIRECT

1 A Result developed from 15.1 and 2 matched Miesha
2 Miller.

3 Q Moving on to item 16, what is that item?

4 A Number 16 was a brown towel with stains.

5 Q How many cuttings were submitted for your
6 analysis?

7 A Three.

8 Q And what were the results of the cuttings from
9 the brown towel with stains?

10 A Blood is indicated on the three cuttings. And
11 16.1, the first cutting matched K. H. 2 . 16.2
12 matched K.H. , and 16.3 was a mixture and
13 the major contributor was K. H. 2 and the minor
14 is too weak for match purposes.

15 Q Moving on to item number 17, what is that item?

16 A Item 17, green bath towel with stains.

17 Q And were you able to do any analysis on it?

18 A Yes.

19 Q What analysis did you do on that item?

20 A The same analysis I was doing the other ones.
21 Blood was indicated on 17.1, -2, -3 and -4, the four
22 cuttings from that item.

23 Q And what was that item again?

24 A Green bath towel with stains.

25 Q I show you State's Exhibit 110. Do you recognize

1 that?

2 A Item 17, yes.

3 Q What was the result?

4 A 17.1 matche K.H. [REDACTED]. 17.2 was a mixture,
5 the major contributor matched K.H. [REDACTED] and
6 Antwan Gaddist could not be eliminated from this
7 mixture.

8 Q Which one was that, I'm sorry?

9 A 17.2.

10 Q Okay.

11 A 17.3 matched, was a mixture and the major
12 contributor matched K.H. [REDACTED] and the minor
13 contributor matched Antwan Gaddist. That was 17.3.
14 Then 17.4 was a mixture, major contributor matching
15 K.H. [REDACTED] and the minor contributor too weak for
16 match purposes.

17 Q When you're doing your match and I notice that in
18 one of these you just mentioned that 17.2 the major
19 contributor was K.H. [REDACTED]?

20 A Yes.

21 Q And in that case, in all these cases if we can go
22 back to them a little bit. Do you ascribe numbers
23 or statistics to this analysis as far as the match
24 probability or the match of it being someone else?

25 A I do.

SW - A. AMICK - DIRECT

1 Q Tell the jury how you do that, how that was done
2 in this case, and give some comparison.

3 A So what we do is we interpret these and determine
4 whether it's a match or not basically, just simply
5 looking at the profiles. And then we make that
6 statement it's a match or it's not a match or
7 excluded. And then we, based on population, the
8 frequency of these markers in the population, we
9 assign a frequency to those profiles and we give
10 that as a statistic.

11 Q And typically in this case when we're talking
12 about some of the matches to K.H. [REDACTED], what was
13 the probability, say, in her case when she's a major
14 contributor as well as the only contributor of her,
15 in being someone else?

16 A For example, 17.1, that item and that cutting
17 matched K.H. [REDACTED] so in the report it says that
18 it matches K.H. [REDACTED]. Then I would say based on
19 the genetic results obtained the frequency of seeing
20 this profile in the population, in Caucasian
21 population, is approximately 1 in 954 quintillion
22 and in an African American population approximately
23 1 in 114 quintillion.

24 Q What does that mean to someone like me? You say
25 quintillion?

1 A Yes.

2 Q How many zeros is quintillion?

3 A Eighteen.

4 Q How many people on earth?

5 A About seven billion.

6 Q Seven billion. And how many zeros in that?

7 A Nine.

8 Q And what was the number on the match you just
9 used for quintillion?

10 A For the Caucasian population?

11 Q No, the African American?

12 A 114 quintillion.

13 Q So how many times is that more than the
14 population on earth? That's a good question.

15 A About a billion more times.

16 Q So do you have any opinion as to whose DNA that
17 was?

18 A Yeah, my opinion for that ite **K.H.**
19 would be the source of the DNA in that cutting.

20 Q And when you have things such as major
21 contributor, tell the jury basically how y'all
22 figure out the alleles and all that in order to use
23 some of these calculations and how it can affect
24 your statistics.

25 A Well, the statistics are different based on the

SW - A. AMICK - DIRECT

1 actual profiles that are developed because at some
2 of the locations the two people who are mixed may
3 share a particular allele or marker so. And then
4 there's other reporting parameters that we have to
5 adhere to as to whether or not we can use that
6 location for the statistical part of this report.
7 So the number, if you look at the numbers for the
8 different matches you'll see different match
9 statistics based on that. It doesn't change the
10 fact that it's a match; it's just our reporting
11 conventions have us calculate those in that fashion.

12 Q So whenever you say there's a match, that means
13 that the information that was present, the amount of
14 the DNA present allowed you to make a match?

15 A Correct.

16 Q But there may be a match at more points than on,
17 say, another piece?

18 A Correct.

19 Q And then a number of such as 114 continued it
20 would match across the, on everything that you
21 tested?

22 A If you were to ask me if I had a match
23 probability of 1 in 114 quintillion, I would
24 probably say based on my experience that that was a
25 15 out of 15 low side profile meaning, yes, I got a

SW - A. AMICK - DIRECT

1 full profile and it matched. It was able -- the
2 statistics were being able to be used at every
3 location.

4 Q But before you're gonna get up here and testify
5 or submit a report that says it's a match, you have
6 to have enough information to match it to, even if
7 it's a mixture what you've got?

8 A Correct. I have to see the person I'm comparing
9 it to, I have to see their profile in that mixture
10 before I say it's a match, yes.

11 Q So every time you testified in front of this jury
12 there's a match, there's enough information for you
13 to do that?

14 A Yes, there is.

15 Q And one of the lower calculations and one of your
16 matches you have with a minor contributor I believe,
17 you calculated it is low as 1 in
18 292 million percentage on 14.1 for example?

19 A 14.1?

20 Q Uh-huh.

21 A Yeah, the minor contributor -- 14.1, the minor
22 contributor, matched Antwan Gaddist; and based on
23 those genetic results, six out of 15 low side.

24 Q Uh-huh.

25 A The African American population was approximately

SW - A. AMICK - DIRECT

1 1 in 292 million.

2 Q So the chances of it being the blood from, or the
3 DNA from another unrelated American is 1 in
4 292 million?

5 A I don't -- we don't use the word chances.

6 Q Sorry.

7 A I mean, it's -- it's still a match. It's just,
8 like I said, the information, the genetic
9 information I was able to use for the statistic, I
10 had less of that; but it's, the alleles are still
11 there and it's still a match.

12 Q And proceeding in that I believe on one of them,
13 17.2, you didn't use the word match as to the major
14 contributor. You said that, I believe Antwan
15 Gaddist could not be eliminated. What's the
16 difference in the verbiage you're using there and
17 why do you use that?

18 A Okay. That is less, I have less information or
19 the information I have at that location is at a low
20 level maybe and they would share some alleles at
21 that level, but I still see his alleles there so I
22 don't have enough. The information is not enough
23 where I can generate a statistic like we talked
24 about before; but it is enough to be able to say, I
25 see his profile there, I see parts of his profile

SW - A. AMICK - DIRECT

1 there so I can't eliminate him from being there.

2 And based on what I see I can do the statistics I
3 did here and I can eliminate certain other people in
4 the population.

5 Q And what percentage of the population you're able
6 to eliminate just based on the information you were
7 able to get there that's not even -- it's not enough
8 to call a match but you say cannot be eliminated.

9 A In that one, 17.2, based on the genetic results
10 obtained, greater than 99.996 percent of the African
11 American population would have been excluded.

12 Q 99.96?

13 A 99.996.

14 Q 996? That much population can be eliminated?

15 A That's correct.

16 Q And that was with just that?

17 A That's correct.

18 Q And it's got -- you have to have more compelling
19 than that to get a match?

20 A That's a fair statement, yeah.

21 Q And with DNA can you tell how long, if it's blood
22 or semen or saliva or skin shed cells, can you tell
23 long the DNA may have been there?

24 A No, you cannot tell how long it's been there.

25 Q So you can't date it in any way?

SW - A. AMICK - DIRECT

1 A No.

2 Q So it could have been deposited within a week,
3 within a month, within a year?

4 A That's correct.

5 Q One item is item number 16. I believe you had a
6 match K.H. 2 and to K.H. ; is that correct?

7 A 16, there were three cuttings. 16, one match
8 K.H. 2, 16.2 matched K.H., and 16.3
9 was a mixture with a major matching K.H. 2 and
10 a minor too weak.

11 Q And I show you State's Exhibit Number 123. Is
12 that item number 16?

13 A Yes, ma'am, it's item 16.

14 MS. CAMPBELL: Your Honor, at this time I
15 offer into evidence.

16 MR. STRICKLER: Your Honor, without
17 objection.

18 THE COURT: So admitted.

19 (WHEREUPON, State Exhibit No. 123 was
20 admitted into evidence.)

21 BY MS. CAMPBELL:

22 Q And again, your lab is accredited?

23 A It is.

24 Q And in any way was any of this evidence cross
25 contaminated or in any way compromised during your

1 testing? Did you alter or tamper with it or change
2 it in any way?

3 A No, I did not.

4 Q Once you were able to gather all your information
5 you then put it in a report?

6 A I did.

7 MS. CAMPBELL: Beg the Court's indulgence.
8 That's all.

9 THE COURT: All right, anything?

10 MR. STRICKLER: Thank you, sir. May it
11 please the Court.

12 **CROSS-EXAMINATION**

13 BY MR. STRICKLER:

14 Q Good afternoon, Mr. Amick.

15 A Good afternoon.

16 Q Just as far as the comparisons that you do when
17 you do DNA testing, you are looking at DNA from
18 several different locations, given human DNA; is
19 that correct?

20 A Particular sample several different locations on
21 the DNA molecule, yes.

22 Q And that would be, what, 15?

23 A It's actually 16, but.

24 Q 16?

25 A 15 one certain type and then one additional.

SW - A. AMICK - CROSS

1 Q And the one additional is?

2 A Sex typing marker.

3 Q Okay. And you've used a term match. Now that's
4 a term of art for you. It's defined in your
5 protocol, correct?

6 A It is.

7 Q Okay. What does it mean to be a match?

8 A What does it mean?

9 Q Yes, sir, how is it defined?

10 A It means the analyst has determined that the
11 evidence, alleles or profile, is the same as or
12 equivalent to the standard that whatever, whichever
13 standard you're talking about.

14 Q Okay. And it's either a complete match or we
15 take it which would be equivalent to every one of
16 the low side, every one of those places, or it's
17 equivalent to it however many low side you're able
18 to get a result; is that correct?

19 A That's accurate, yes.

20 Q Okay. And then you used another term, can't be
21 eliminated, okay?

22 A Can't be excluded.

23 Q That's another term of art?

24 A Cannot be excluded, yes.

25 Q Can't be excluded. That too is a term of art

1 defined in your protocol, right?

2 A I don't know what you mean term of art.

3 Q That term is defined in your protocol?

4 A Yes, we use that in our reporting, yes.

5 Q It's just not something you personally pulled out
6 of the air to use to describe something. That is a
7 term that you are permitted to use if a sample
8 matches certain criteria?

9 A That's correct.

10 Q And that's what's contained in the protocol,
11 right?

12 A That is one of our reporting conventions, yes.

13 Q Okay. And you know, you operate with protocol
14 which is a, well, very detailed description of the
15 procedure that you need to conduct in doing this
16 testing, right?

17 A Yes, it's more, it's more detailed with
18 procedural than reporting conventions.

19 Q But the reporting conventions are defined in the
20 protocol?

21 A Well, you have to ask me specifically about which
22 ones I guess.

23 Q Okay. Well, I've talked with you about match and
24 can't be excluded.

25 A Okay. Match, no match, and exclusion are

SW - A. AMICK - CROSS

1 specifically addressed in the procedural protocol.
2 The reporting convention of cannot be excluded is
3 not defined as you're asking in the protocol per se.

4 Q Okay. As you went through all of these items
5 that you tested -- I was trying to keep up. Of all
6 of the results you got, I counted three in which
7 Antwan Gaddist name was mentioned: That being 14.1
8 which is contained in your conclusion number 13.
9 17.2 which is contained in your conclusion number
10 14; and 17.3 which is contained in your conclusion
11 number 11. Can you help me a minute and tell me if
12 I miscounted.

13 A I think that's right, hang on, let me look. Yep,
14 I think you're right.

15 Q Okay. Now I'd like to ask you about each of
16 those in a little more detail but not a lot; but
17 before I get there, just a couple of things. I
18 think Ms. Campbell covered it but I'd like to make
19 sure myself. You can't tell us, and specifically
20 directing our attention to the three that matched
21 Antwan Gaddist, okay, you can't tell us when his
22 DNA, what you say is his DNA, was deposited on any
23 one of these items that you tested, correct?

24 A That's correct, I cannot.

25 Q And you can't tell us, DNA technology can't tell

SW - A. AMICK - CROSS

1 us, under what circumstances it was deposited on
2 these items?

3 A No.

4 Q Indeed, since it's a mixture you can't tell
5 whether or not the DNA that you relate to Antwan
6 Gaddist in these things is indeed blood as opposed
7 to epithelial cells or skin cells or sweat or any
8 other substance, correct?

9 A Ask that again.

10 Q You can't tell on these items whether the DNA
11 present from Antwan Gaddist that you identify is
12 from Antwan Gaddist's blood or whether it's from
13 some other substance, sweat, skin cells, any other
14 substance?

15 A Um---

16 Q You have blood present?

17 A Correct.

18 Q That blood could either be fro [K.H.] and
19 Antwan, [K.H.] and DNA or some other source from
20 Antwan, from Antwan with DNA from some other source
21 from [K.H.]?

22 A That's accurate. It could be a mixture of two
23 bloods, could be blood, somebody's blood and
24 somebody's saliva, somebody's blood and somebody's
25 skin cells. I think that's what you're saying;

SW - A. AMICK - CROSS

1 that's correct.

2 Q Yeah, that's what I'm saying exactly. So you
3 can't tell when it was there, how it was there, or
4 indeed whether in this particular situation with
5 these mixtures, indeed whether what's present is
6 blood or some other form of DNA from anyone?

7 A That's accurate.

8 Q Okay. Now before I get into specifics we're
9 gonna forget about it, you were not asked to analyze
10 item five which is the black handled hammer?

11 A That's correct.

12 Q But it was submitted to you or transmitted to
13 you?

14 A That's correct. I don't know if I took
15 possession without looking at the sheet.

16 Q Yes, sir.

17 A It could have been in a box with other items.

18 Q Okay.

19 A And sometimes that happens so, you know, clothing
20 from a scene and items from the scene would be
21 packaged in one box. If we need to test something
22 from the box then that custody would transfer that
23 item as well.

24 Q Okay. But you test whatever you're asked to test
25 by the investigators in the case?

1 A Pretty much. We'll talk with them and we'll, we
2 may suggest some items, you know, based on our
3 experience and they will suggest items based on
4 their knowledge of the case and the crime scene and
5 all.

6 Q Okay. But you get a, procedurally you get a
7 written request from investigators as to what items
8 they'd like you to process?

9 A Yes, that's correct.

10 Q Okay. All right. So just quickly we have item
11 1, no DNA, you found presence of blood, for whatever
12 reason you get no DNA, correct?

13 A That's correct.

14 Q Item 2 **K. H. 2**, correct?

15 A Correct.

16 Q Item 13 **K. H. 2**, correct?

17 A Correct.

18 Q Items 4.1, 4.2, and 4.3 **K. H. 2**, correct?

19 A That's correct.

20 Q Item 5, no test? Right?

21 A Correct.

22 Q Item 6, no test?

23 A Correct.

24 Q Now we get item 7.1 through 7.6 and 7.1 is

25 **K. H. 2**?

SW - A. AMICK - CROSS

1 A That's correct.

2 Q 7.2 is a mixture and the only person that you can
3 identify for that mixture is K.H. 2, correct?

4 A That's right.

5 Q 7.3 is K.H. 2?

6 A Correct.

7 Q 7.4 is K.H. 2?

8 A Correct.

9 Q And the two hairs, 7.5 and 7.6, not suitable,
10 right?

11 A Correct.

12 Q All right. Item 8, which is 8.1 — and when you
13 have the .1 that means you got an item 8 which is a
14 particular, what is it, pillow case? Yeah. And you
15 take cuttings from it, right? That's why it's .1?

16 A That's right, uh-huh.

17 Q So item 8.1 is K.H. 2.

18 A That's correct.

19 Q All right. Item 12.1 through 4, 12.1 is
20 K.H. .

21 A That's correct.

22 Q Item 12.2 is the only read you can get as the
23 major contributor and that would be K.H. ,
24 correct?

25 A Correct.

1 Q Item 12.3 i K.H. ?

2 A Correct.

3 Q And item 12.4 is hairs, again, not suitable; is
4 that correct?

5 A 12.4, no analysis.

6 Q Yeah, no analysis. All right. Item 13, bath
7 towel, no analysis?

8 A Correct.

9 Q Was there a reason for that?

10 A Same reason as the other, no analysis.

11 Q Then items 14.1, -2, and -3. 14 is 14.1 is a
12 mixture K.H. and you have identified Antwan---

13 A Correct.

14 Q ---as a minor contributor?

15 A That's right.

16 Q And 14.2 is too weak. The -- excuse me, is a
17 mixture also major contributor is K.H., minor is
18 too weak to even make any kind of call; is that
19 correct?

20 A That's correct.

21 Q So that ' K.H. and we don't know. And 14.3
22 is hairs again which you didn't do any analysis on;
23 is that correct?

24 A That's correct.

25 Q All right. Then we have 15.1 and 15.2. And if I

SW - A. AMICK - CROSS

1 lost track there, that's Miesha?

2 A That's correct.

3 Q And then we have 16.1, -2 and -3 which would be

4 16.1 is K. H. 2 .

5 A K. H. 2 , yep.

6 Q 16.2 i K.H. ?

7 A Yes.

8 Q And 16.3 is a mixture minor too weak but you can

9 identify K.H. as being present, correct?

10 A K. H. 2 .

11 Q K. H. 2 , pardon me. And again, you can

12 differentiate between K.H. and K. H. 2 ?

13 A Yes.

14 Q Correct?

15 A Uh-huh.

16 Q We're just about done. When you get to 17 which

17 is 17.1, 17.2, 17.3, and 17.4 and on there you to

18 get 17.1 is K.H. ?

19 A That's right.

20 Q 17.2 is a mixture and that is a mixture with

21 K.H. and Antwan Gaddist cannot be excluded?

22 A That's correct.

23 Q Forgive me if I use the wrong terminology.

24 A Okay.

25 Q 17.3 is a mixture again. Major contributor is

1 K.H. [REDACTED] and you identify the minor contributor as
2 Antwan Gaddist.

3 A That's 17?

4 Q I'm sorry, 17.3.

5 A Correct.

6 Q And 17.4 is too weak to do?

7 A It' K.H. [REDACTED].

8 Q 17.4 i K.H. [REDACTED]?

9 A Yes. Too weak for the minor.

10 Q Okay. That's all, correct?

11 A Pretty much.

12 Q I'm sorry, did I skip something?

13 A No, there's -- I mean, I was looking at the item
14 list. I mean, there's buccal swabs.

15 Q Right, I'm just talking about the items you did
16 analysis--

17 A Yes.

18 Q --your conclusion. All right. Now just about
19 done. Turning specifically to, let's take them in
20 order I guess. 17.3, which is contained in your
21 conclusion number 11.

22 A Okay.

23 Q The minor contributor information. Your
24 conclusions of minor contributor matches Antwan
25 Gaddist, based on genetic results obtained, two out

SW - A. AMICK - CROSS

1 of 15 low side the frequency is in the African
2 American population is 1 in 942?

3 A Correct. That's correct.

4 Q So when you talk about loci, those are locations,
5 right?

6 A That's correct.

7 Q You're testing with 15 locations you've talked
8 about, plus the one gender sex location, ---

9 A That's correct.

10 Q ---correct? Okay. So, and when you come up with
11 the numbers is that just based on the 15 locations
12 and not the gender location?

13 A That's correct.

14 Q Okay. So let's talk about 15 locations rather
15 than 16.

16 A Okay.

17 Q If I understand what you say correctly, that in
18 that situation you've got a sample which matches
19 which you have the alleles at two locations out of
20 15 are the same as Antwan Gaddist?

21 A No.

22 Q No?

23 A Okay, that -- that does seem like it says.

24 That's confusing. And the location that

25 parenthetical phrase is probably the reason it's

1 confusing. The statistic is based on 2 of the 15.

2 Q Right.

3 A Not the match to the 15. So I, to look at the
4 profile and tell you how many loci that his DNA
5 shows up at, I can do that. But only two of those
6 were, they qualify for me to use for statistics.

7 Q Right.

8 A Which is different from match, make that clear.

9 Q Okay. And you would be prohibited from using a
10 place, a location, where multiple loci in doing your
11 statistical analysis because of the protocol that
12 you operate under; is that correct?

13 A Prohibited from using?

14 Q Don't let me lock you in as far as the words.

15 A No, I won't. Right, reporting conventions with
16 the statistical calculations are pretty specific,
17 okay. So if, especially in minor contributor. Let
18 me use my fingers to show you. Okay, so say you
19 have a minor contributor, there are two peaks and
20 you have a minor contributor that's this weight.

21 Q Right.

22 A And they share one of the peaks, right.

23 Q Right.

24 A See? This is the minor; this is the major
25 sharing. They're in this middle peak. Well, if

SW - A. AMICK - CROSS

1 this is the way it looks to me, I can see the major,
2 I can see the minor profile here, but I can't see
3 his second allele because it's shared by -- and the
4 major contributor is masking it. So that's just an
5 example. His allele could be present, both of his
6 alleles could be present; but because of our
7 reporting conventions statistical parameters, I
8 can't use this location for statistical purposes.

9 Q Okay.

10 A But that doesn't mean he didn't match at this
11 location. It just means I couldn't use that
12 location for statistics.

13 Q Okay, let's do this. And I don't want to get
14 deeply into anything here which we're talking about
15 two locations and for any of this, and any
16 particular spot we will have two alleles; is that
17 correct? Or could we also have just one allele?

18 A That's correct. You either have one -- actually
19 you have two alleles at every location.

20 Q Correct.

21 A And let me explain.

22 Q Sure, explain please.

23 A So, and let me go back. You get half your DNA
24 from your mom and half from your dad, right, and any
25 location you may get different alleles is what we're

1 talking about from your mom and your dad. If you
2 get two different peaks from your mom and dad, it's
3 gonna give you that pattern. If you get the same
4 allele from your mom and dad, it's gonna be the same
5 thing; it's gonna look like one P because they're on
6 top of each other.

7 Q So if you inherit the same allele from both mom
8 and dad you show one, you really got two 'cause---

9 A Correct.

10 Q ---both of them in the same spot?

11 A Correct.

12 Q And that's called homogenous?

13 A Yes.

14 Q And two is called heterogenous?

15 A That's correct.

16 Q And what you're saying is that for statistical
17 purposes, if you get a situation where the two are
18 present and they happen to have to be the same
19 allele for both, both contributors, it looks like
20 you just got three?

21 A It could, yes.

22 Q It could look like you just had three. It could
23 also, it could also be two from K.H. [REDACTED] and not two
24 from Antwan Gaddist with one of them overlying, but
25 one from someone else?

SW - A. AMICK - CROSS

1 A That's a possible interpretation, yes.

2 Q Correct? Which is why you can't use it, is that
3 right, making your numerical calculations or one
4 reason you can't use it?

5 A Well, that's not the -- the reason is that -- we
6 say that it's a conservative slant towards the
7 accused in that we're not assuming his allele is
8 there, okay. So it's not because we know it's not
9 there, but we're taking a conservative approach and
10 saying, okay, we're just not gonna use this location
11 so it's not to -- to be more conservative with the
12 number.

13 Q Okay. But you know, you don't sit around and
14 make up the rules that you use, correct?

15 A Some of them I do.

16 Q Well, okay. The protocol, you're required to
17 have a protocol, correct?

18 A Yes.

19 Q You have, you can't do this kind of testing
20 without having -- you can't get accredited for doing
21 this kind of testing without having a protocol,
22 right?

23 A That's correct.

24 Q I didn't come up with that idea, and you didn't
25 come up with that idea. A lot of people are

SW - A. AMICK - CROSS

1 smarter, certainly smarter than me, came up with
2 that idea.

3 A That's correct.

4 Q Okay. And they include rules for what you can
5 use for arriving at your conservative statistical
6 estimates for a reason, correct?

7 A That's correct.

8 Q And the main reason is to avoid any chance that
9 you're saying something present or identifying
10 someone as being present in a particular spot when
11 you're not absolutely sure that's the case. I don't
12 know if I.

13 A Probably to account for all possibilities, how's
14 that.

15 Q Okay. So employing your protocol which is what
16 you have to do in order to report these numbers at
17 11, you're allowed to consider two out of the 15
18 loci present there in considering that you come up
19 with a probability of 1 in 942 in the American,
20 African American population; is that correct?

21 A That's correct.

22 Q Okay. And with 13, you identify Mr. Gaddist as a
23 minor contributor there, and in that particular case
24 his profile is present at 6 -- you're allowed to
25 attribute it statistically his profile being present

SW - A. AMICK - CROSS

1 at 6 of the 15 loci?

2 A That's correct.

3 Q Is that a fair statement?

4 A Yeah.

5 Q And based on that, six out of the 15 which is
6 less than half if my math is right, you're able to
7 report statistically that frequency of seeing it in
8 African American population is approximately one in
9 292 billion people; is that correct?

10 A That's correct.

11 Q Okay. And I assume the reasons behind using six
12 out of 15 are the explanation is the same as we've
13 just gone through?

14 A That's correct.

15 Q I don't want to rehash that. It could also be
16 that there is not a profile present in the
17 particular loci.

18 A As far as the reason I didn't use it?

19 Q Yeah.

20 A That's correct. It could have, it could be that
21 his, a minor contributor's profile is completely
22 dropped out at a particular locus, yes.

23 Q That's because there are different amounts of DNA
24 present for major contributor and minor contributor,
25 correct?

1 A That's correct.

2 Q And part of the process you do, you said you
3 quantitate it, figure out how much is present, and
4 then you amplify it, right?

5 A That's right.

6 Q That's when you do what's called a polymerous
7 chain reaction amplification. You take a small bit
8 of DNA and turn it into a, what I call a big bit,
9 enough that you can go ahead and do identification
10 on it, right?

11 A That's right.

12 Q And sometimes in that process if the sample from
13 the minor contributor is small enough it's just not
14 gonna show up on the amplification?

15 A That's right.

16 Q Okay. So 6 out of 15. And then number 14, which
17 is 7.2 that you identify K.H. [REDACTED] as major
18 contributor and you can't be -- and I keep saying
19 excluded; you say can't be eliminated from the
20 mixture, correct?

21 A That's correct.

22 Q And that's where you get 99.996 percent of the
23 African American population excluded, correct?

24 A That's right.

25 Q And how many loci were you allowed to use in

SW - A. AMICK - CROSS

1 arriving at that population estimate?

2 A So with that one I used -- I couldn't used nine
3 loci.

4 Q Nine loci?

5 A Yes.

6 Q That's what you used to get 99.996 percent?

7 A Yes.

8 Q And nine loci yields less likelihood of -- I'm
9 gonna go with 99.996 African American is a smaller
10 number than one in 292 million. Would I be wrong in
11 that?

12 A 99.996 percent of African American population is
13 a smaller number than 1 in --

14 Q I guess I'm misstate that. It's more likely that
15 he would be present in that than he would in one
16 chance in 292 million?

17 A I have no idea what you're asking.

18 Q Okay. Perhaps I don't either, okay. I guess my
19 confusion is, you got a situation where you have six
20 loci and you report one chance in 292 million. You
21 got a situation where you have nine loci and you
22 present it as this percentage that we're talking
23 about. How come?

24 A How come?

25 Q Yeah.

SW - A. AMICK - CROSS

1 A It basically, like I said earlier, it's based on
2 the rules that we use to write reports of our
3 statistics so for -- and a lot of times it has to do
4 with two contributors or if there's three
5 contributors. There's two clear contributors I can
6 do major minor. If there's more genetic information
7 there I may say, okay, I see his alleles and he is
8 or cannot be excluded or he cannot be excluded or he
9 is excludes. So that's probably the shortest,
10 clearest answer I can give.

11 Q All right. So for all the stuff you tested, you
12 tested a number of items which are as far as
13 anything you've been able to identify, positive for
14 **K. H. 2**, correct?

15 A Correct.

16 Q And the number which are positive fo **K.H.** ,
17 correct?

18 A Matc **K.H.** , correct.

19 Q Correct. And you've got three out of all these
20 we have listed in which, well, in which you identify
21 Mr. Gaddist as a minor contributor or you can't
22 eliminate him as a possible contributor?

23 A That's right.

24 MR. STRICKLER: Beg the Court's
25 indulgence, Your Honor.

SW - A. AMICK - REDIRECT

1 Thank you very much, sir.

2 THE COURT: Anything on redirect?

3 MS. CAMPBELL: Yes, sir, just a couple of
4 questions.

5 **REDIRECT EXAMINATION**

6 BY MS. CAMPBELL:

7 Q Any time you said it was match — you didn't
8 testify these — you said it was a match is a match.

9 A That's correct.

10 Q And I believe you said you conserve to give the
11 benefit of the doubt?

12 A That's how we set up our statistical parameters,
13 yes.

14 Q And he asked about your lab being accredited.
15 Who accredits your lab?

16 A An agency called ASCAD LAB, Academy Society Crime
17 Laboratory Directors.

18 Q Uh-huh.

19 A It's an international accreditation board.

20 Q It's an international accreditation board. Is
21 else in the state of South Carolina accredited like
22 your laboratory?

23 A In this state, not at the level internationally
24 that we are, no.

25 Q And did you all protocol in this case?

SW - A. AMICK - REDIRECT

1 A I take that back, Beaufort and Charleston lab do
2 have internal accreditation now.

3 Q It's a different one?

4 A No, the state labs is a different one, but the
5 Beaufort and Charleston do. I mean, Beaufort and
6 Greenville, I'm sorry.

7 Q Prior to submitting your reporting and coming
8 here to testify did you have your results reviewed?

9 A Yeah, part of the accreditation and part of our
10 protocol is hundred percent technical so another
11 qualified analyst has to look at my results and
12 agree how I reported them and what I reported.

13 Q And the white T-shirt, item number, excuse me,
14 12, in your laboratory, this is T-shirt, did you
15 know who it belongs to?

16 A Do I know who it belongs to?

17 Q Uh-huh.

18 A No.

19 Q Whose blood is on it.

20 A Twelve K.H. [REDACTED]'s, 12.1 matche K.H. [REDACTED]
21 [REDACTED]. 12.3 matches K.H. [REDACTED] and 12.2, the
22 major contributor matches K.H. [REDACTED].

23 Q And he also asked you about the fact there are
24 only three times you mention Antwan Gaddist as being
25 included, your matching the evidence in this case?

SW - A. AMICK - REDIRECT

1 Every time who is the major contributor that it
2 matches with?

3 A Who is the major contributor that he's involved
4 with? K.H. [REDACTED], K.H. [REDACTED].

5 Q And typically these all tested positive
6 presumptively for blood as you indicated to the
7 jury?

8 A That's correct.

9 Q And in that case, when you have a major
10 contributor and minor contributor can you tell which
11 one contributed the blood?

12 A My opinion would be the major would most likely
13 be from blood. It doesn't rule out that the minor
14 could be as well; but if I have a blood stain and I
15 have a major contributor, that's what I'm going to
16 attribute that part to the one DNA I got from the
17 major contributor of.

18 Q Thank you.

19 THE COURT: Anything, Mr. Strickler?

20 MR. STRICKLER: No, sir. Thank you very
21 much.

22 THE COURT: Thank you. You may step down.

23 All right, ladies and gentlemen, I'm gonna
24 let you step back and take a break 15 minutes or so.
25 Please don't discuss the case. Please everybody

1 else keep your seats until the jury leaves the room.
2 Don't talk about the case while you're back there.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 3:03 p.m., and the following
5 proceedings commenced in open court.)

6 THE COURT: All right, we'll stand in
7 recess.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 THE COURT: All right, you got another
11 witness?

12 MS. CAMPBELL: Yes, Your Honor.

13 THE COURT: Let's bring the jury in.

14 (WHEREUPON, the jury was returned to the
15 courtroom at 3:20 p.m., and the following
16 proceedings commenced in open court.)

17 THE COURT: All right. Let's call your
18 next witness please, ma'am.

19 MS. MCDUFFIE: May it please the Court,
20 the State would call Investigator Scott Faust.

21 WHEREUPON,

22 **S. SCOTT FAUST,**
23 having been duly sworn by the Clerk, testified as
24 follows:

25 THE CLERK: Thank you. Please have a

SW - S. FAUST - DIRECT

1 seat in the witness stand and state your full name
2 for the record.

3 THE WITNESS: Steven Scott Faust,
4 F-A-U-S-T.

5 **DIRECT EXAMINATION**

6 BY MS. MCDUFFIE:

7 Q And Investigator Faust, where are you employed?

8 A The Richland County Sheriff's Department.

9 Q And what are your duties with the Richland County
10 Sheriff's Department?

11 A Currently I am a supervisor with the title of
12 sergeant over the special victims unit.

13 Q And what do you do as a sergeant for the special
14 victims unit?

15 A We handle a large variety of situations starting
16 from, dealing with runaways, incorrigible children,
17 missing persons. The difference between runaways
18 and missing person, being an adult. We also deal
19 with child abuse, sexual assaults with children and
20 adults, and also dealing with vulnerable adults
21 which is financial and abuse, sexual and physical.

22 Q And as a sergeant for the special victims unit do
23 you also supervise other investigators and
24 coordinate investigations?

25 A I do. Typically if something comes in they'll

SW - S. FAUST - DIRECT

1 call the supervisory and then at that point we pass
2 them out to investigators in our division. Those
3 investigators have the title of investigator, but
4 they are also considered supervisors at a corporate
5 level, deputy, corporal, sergeant, that type of
6 level.

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

8 A Since 1995.

9 Q And how long have you been a supervisor of the
10 special victims unit?

11 A January of 2009, so approximately six years, I'm
12 working on six.

13 Q And Investigator Faust, did you become aware of
14 an incident that happened on May 23rd, 2011, at 220
15 Springtree Road?

16 A I was.

17 Q Is that in Richland County?

18 A That is in Richland County.

19 Q And were you notified as the sergeant at that
20 time?

21 A I did. We got a call through basically the
22 deputy, asked for an investigator dealing with a
23 child abuse so they called me. Spoke to Deputy
24 Wilder and then began to ascertain the specifics of
25 the case so as to what, where, when, time situation.

SW - S. FAUST - DIRECT

1 Q And did Richland County deputies actually respond
2 to Providence Northeast?

3 A That's correct.

4 Q And so as the investigator in charge of this
5 investigation what did you then do?

6 A I then began to get the facts of where did it
7 happen such as, you know, the biggest thing I preach
8 is crime scene. You know, the first thing we want
9 to do is go maintain and control the crime scene.
10 Learned of the address, then I started to ask where
11 the child was between the time that took place the
12 child was being transported to Palmetto Richland.
13 And at that time I start coordinating efforts.
14 Specifically, I started working on a search warrant
15 for the crime scene, which is 220 Springtree Drive,
16 apartment ■■■4. I was actually sitting at my desk in
17 the computer. I have the information and the
18 ability to start that right then. I then called
19 some of my detectives, in this particular case
20 Investigator Richard Carter. We also had just
21 recently had Kevin Preston come to our unit so I
22 wanted him to kind of shadow Investigator Carter who
23 had several years of experience in the Special
24 Victims Unit. And this is a, you know, when a child
25 abuse case comes in it's pretty significant so I

SW - S. FAUST - DIRECT

1 wanted to get him experienced right then and there.

2 Q And so you began the, actually prepare the search
3 warrant and obtain a search warrant for the
4 residence [REDACTED] Springtree Drive?

5 A That's correct.

6 Q And you sent Investigator Carter to the hospital
7 with Investigator Preston to obtain more
8 information?

9 A Well, I initially sent them to the crime scene to
10 see if anybody was there. When they got there they
11 didn't find anybody and then I said, well, you know,
12 go, see if you can find whoever was there. I
13 learned that Antwan Gaddist was with the child at
14 the time of the incident and I, you know, let's go
15 talk to him.

16 Q And so investigators Preston and Carter then
17 canvassed the apartment complex and then went to the
18 hospital?

19 A That's correct.

20 Q And did you also coordinate with your supervisor
21 Lieutenant Heidi Scott?

22 A I did. Lieutenant Heidi Scott, now Lieutenant
23 Baker, she's also a victim advocate. So when you
24 have something dealing with a child abuse case we
25 contact them to where if they can offer services,

SW - S. FAUST - DIRECT

1 the compassionate, you know, consoling aspect of law
2 enforcement, as well as she is an investigator and if
3 she needed to assist she has that capability of
4 doing both.

5 Q And you at some point learned that K.H. [REDACTED]
6 was transferred to Palmetto Health Richland?

7 A That's correct.

8 Q And so both Investigators Carter and Preston and
9 Lieutenant Scott went to Palmetto Health Richland?

10 A That's correct. At that point in time Lieutenant
11 Scott then began to work with Investigator Carter to
12 ascertain witnesses and began to start to interview
13 people.

14 Q And that evening you were aware that the
15 defendant in this case Antwan Gaddist was
16 interviewed by Investigators Carter and Preston?

17 A That is correct.

18 Q At the hospital?

19 A That is correct.

20 Q And Lieutenant Scott interviewed Ms. Miller?

21 A That is correct.

22 Q And Lieutenant Scott advised Ms. Miller of her
23 rights before questioning her?

24 A She did advise Miesha of her advisement of
25 rights, that is correct.

SW - S. FAUST - DIRECT

1 Q And then obtained the 18 page handwritten
2 statement?

3 A That is correct.

4 Q And Investigators Carter and Preston also took a
5 statement from Mr. Gaddist that's already been
6 introduced into evidence?

7 A That is correct.

8 Q You were made aware of both of those statements?

9 A Yes, and I did have a chance to read those.

10 Q And while that was occurring you were back at the
11 residence during the execution of the search
12 warrant?

13 A I did obtain a search warrant while a lot of this
14 was going on and did make entrance into the location
15 with another deputy and the lab unit.

16 Q When you say made entrance into the location,
17 what does that mean?

18 A Well, in this situation, since there's not
19 extenuating circumstances, there's not the need to
20 force entry, we typically try to minimize damage
21 and. In other words, we didn't want to break the
22 door down if we didn't have to. We knew or had
23 believed that nobody was inside. I had a deputy
24 sitting on it. There was nobody coming or going,
25 didn't hear any noises so, plus we had time to

SW - S. FAUST - DIRECT

1 actually get a key and I think that had already been
2 done by Investigator Carter. So at that point when
3 I arrived we had a key, went ahead unlocked the
4 door. Deputy Enzor and I cleared the residence
5 which basically made sure that there wasn't a treat
6 inside, and we found no one to be in that apartment.

7 Q And then were you there while Investigator Oates
8 processed the scene?

9 A That is correct.

10 Q And did you yourself go into ---

11 MS. PINNOCK: Objection, it's leading.

12 THE COURT: Ask him what he did.

13 BY MS. CAMPBELL:

14 Q Investigator Carter [sic], did you actually go
15 into the apartment?

16 THE COURT: You're leading. Ask him what
17 he did.

18 BY MS. MCDUFFIE:

19 Q Once you were in the apartment what did you then
20 do?

21 A We then began to search the apartment for
22 evidence of a crime scene.

23 Q And please tell the jury how you proceeded in
24 going through the apartment.

25 A Typically the lab unit photographs every where.

SW - S. FAUST - DIRECT

1 And we, before I touch anything I try to get him to
2 focus in or photograph it, and when I find things --
3 or once it's photographed, then I will assist in the
4 search. I'll sometimes allow him to do it or we'll
5 break in two to expedite matters. But typically,
6 anything that there's a question or we don't know if
7 it's of evidentiary value, we discuss whether it
8 needs to be taken. And you know, most of the time
9 if there's a chance it could be relevant we'll take
10 it. Sometimes we'll take it and it's not relevant,
11 and sometimes we, you know, obviously, there are
12 relevant things that are relevant that we do need to
13 take that are here.

14 Q And so you went through each and every room in
15 the apartment?

16 A Yes.

17 Q Along with Investigator Oates?

18 A Yes.

19 Q And after you finished doing a thorough search of
20 the apartment what did you then do?

21 A Well, he, Investigator lab unit Oates collected
22 evidence. And at that point I made contact with or
23 whenever investigator Carter, I may have called and
24 left him a voice mail if he's in the middle of
25 something but there was communication between myself

SW - S. FAUST - DIRECT

1 and Investigator Carter letting him know what I'd
2 done and then he'd let me know what I had done.
3 What he had done, excuse me.

4 Q And did Investigator Carter also inform you that
5 Mr. Gaddist ---

6 MS. PINNOCK: Objection, leading.

7 THE COURT: What did he inform you?

8 BY MS. CAMPBELL:

9 Q What did Investigator Carter inform you of when
10 you spoke with him that evening?

11 A Investigator Carter informed me that, that the
12 child had, well one, that he had obtained a
13 statement from Antwan Gaddist and the facts of that.
14 That they also, the statement that was obtained by
15 Miesha and the general summary of that. Made
16 arrangements to have those transported to where I
17 could get access to those. We then began, I
18 explained to him some of the things that I found.
19 Also the, there was discussion of wanting to
20 interview Antwan Gaddist based off of the fact that
21 he was with the child at the time of the call, and I
22 wanted to re-interview him since he was on nights
23 and I was participating in this investigation. I
24 asked him, could you ask him to come in the
25 following morning.

SW - S. FAUST - DIRECT

1 Q And so that would be the next day, May 24th?

2 A That would be correct, yes.

3 Q Please tell the jury on May 24th of 2011 what
4 happened that morning?

5 A Antwan had agreed to come in at 9 so I got to
6 headquarters, had asked Investigator Preston to
7 participate again. He also had met with Antwan the
8 night before so he had a rapport with him. And at
9 that time at 9:00 had come and gone a few minutes
10 and I didn't see Investigator Preston so I gave him
11 a call and learned that he was going to be late. So
12 at that time I decided to, it was about 9:15 and I
13 decided to go check at that time and see if Antwan
14 was, in fact, in the building. I did find him
15 downstairs and I asked him to come upstairs with me.

16 Q Investigator Faust, I'm sorry to interrupt you,
17 are you aware of how Mr. Gaddist got there that
18 morning?

19 A He was, I don't know if he drove or his mother
20 drove, but he came with his mother.

21 Q Not in police custody?

22 A He was not in custody. I don't know how they got
23 there. I assume one of them drove, but they did
24 arrive at headquarters on their own free will.

25 Q And you checked to make sure he was down there?

SW - S. FAUST - DIRECT

1 A At 9:15 I wanted to check. I didn't, you know,
2 we were already 15 minutes late. I didn't want him
3 to think I wasn't there and then leave. Sp at that
4 time I went downstairs found him and asked him if
5 he'd come upstairs and he voluntarily came upstairs
6 with me.

7 Q And when you say upstairs what do you mean?

8 A Our headquarters is on 5623 Two Notch Road. It
9 is a two story level. The second part of that is
10 investigations. That building, the Special Victims
11 Unit is not located, victims service and special
12 victims is not located. We're located on Pineview
13 and Garners Ferry on the lower side of the county.
14 So at that time when I went downstairs to find him I
15 brought him upstairs to where we have a waiting area
16 and then a portion of that, there's admin offices, a
17 couple of other offices for road unit supervisors
18 and then our lab and our evidence area for our lab
19 technicians. And then another portion of the
20 building is where the investigators that work
21 different types of crimes than us have offices,
22 cubicles, with a few supervisor offices that are
23 rooms.

24 Q And after you left Mr. Gaddist in the waiting
25 area what did you then do?

SW - S. FAUST - DIRECT

1 A I then went to, again, with me not having an
2 office and most of the offices up there we don't
3 typically have an area where somebody can be
4 interviewed. So as I was walking through, the first
5 person I saw was Kevin Eisenhower. He is a sergeant
6 over major crimes and armed robbery area; that's his
7 specialty. And at that time I said, I need an
8 office and can you help me. It was a very brief
9 meeting. I gave him limited details since I'd
10 already preplanned to do this with Investigator
11 Preston. And at that time he said sure, and he
12 goes, we can just use my office.

13 Q We all see on TV interview rooms. Does Richland
14 County have interview rooms like you see on TV at
15 the Sheriff's Department?

16 A There is no specific interview room. That's
17 another reason why we're not in the building room.
18 We're just -- there was not room to keep up of us in
19 there and with, you know, our specialty we wanted to
20 keep victims away from the area where or potential
21 suspects could be interviewed so that's why we
22 moved.

23 Q So there's no such room as interview rooms at the
24 Sheriff's Department?

25 A There is none. Every time we try to create one

SW - S. FAUST - DIRECT

1 we needed to eliminate it for space for a person, an
2 employee.

3 Q So when individuals are brought to the Sheriff's
4 Department to be interviewed, where are they
5 interviewed?

6 A Typically in somebody's office in a cubical or
7 if it's a supervisor there are doored offices, but
8 it's our office.

9 Q And so you asked Investigator Isenhoward to use
10 his office?

11 A That's correct. When I saw him he was the first
12 person I saw and I said, hey, can you spare a couple
13 of minutes and, you know, you have office space and
14 assist me with an interview.

15 Q And Investigator Isenhoward's office, can you
16 please describe what it looks like.

17 A Basically walk into a room, I can't really give
18 you the diameters but it's has a desk, a computer,
19 his chair and a chair where he was talking to
20 somebody, interviewing somebody, there was another
21 chair there.

22 Q Office he works out of every day?

23 A Every day.

24 Q And what information did you have at this point
25 in time prior to speaking with Mr. Gaddist about the

SW - S. FAUST - DIRECT

1 condition of K.H. [REDACTED]?

2 A I had learned that there was a brain injury
3 pretty significant, and at the time that she was
4 brought in she was not breathing so there was pretty
5 significant injuries.

6 Q And you learned whether the doctors knew whether
7 these injuries were from illness, accidental,
8 intentional?

9 A I had learned that these were non-accidental
10 injuries. If they were accidental and could be
11 explained and the doctor could make sense of it that
12 they won't report him to law enforcement. This was
13 something where the hospital mandated reporting and
14 they notified the law enforcement that they have a
15 significant injury to a child, that child abuse
16 needs to be eliminated.

17 Q And that was the extent of the medical
18 information you knew at that time?

19 A For the most part.

20 Q And after you arranged with Investigator
21 Isenhoward to have him assist you in using his
22 office what did you then do?

23 A I then went back and grabbed Antwan. He was out
24 in this waiting area.

25 Q And brought him to Investigator Isenhoward

SW - S. FAUST - DIRECT

1 office?

2 A Yes.

3 Q While you were bringing him to Investigator
4 Isenhoward's office did you and he engage in
5 conversation or small talk?

6 A We did. There was nothing discussed about the
7 case other than I did not have an update on
8 K.H. 's condition from the night before so I
9 figures he did. And I asked him, I said, you know,
10 how is she doing. And he indicated to me that she
11 was breathing on her own and off the respirator and
12 to me I referred back, I said, well, that's good
13 news.

14 Q And you had no information at that point to know
15 whether that was correct assessment of her condition
16 or not?

17 A That is correct. I took him that she was off the
18 ventilator and was breathing on her own.

19 Q And you then made it to Sergeant Isenhoward's
20 office?

21 A That's correct.

22 Q And once you and Mr. Gaddist and Investigator
23 Isenhoward were in his office, please describe for
24 the jury what happened.

25 A At that point I explained to him why I asked him

SW - S. FAUST - DIRECT

1 to come back up to discuss the injuries to K.H.

2 and that I was gonna advise him of his rights.

3 Q And when you advise someone of their rights how
4 do you do that at the sheriff's department?

5 A We have a written -- well, what we have verbal, I
6 have this. That's why I keep this I.D. card. I
7 have the advice of rights here. If we're out in the
8 field such as a traffic stop or we're called to a
9 scene to where I don't readily have this piece f
10 paper in my hand. But when we're at offices or we
11 have time to access them I do have those in my
12 trunk; but this situation, we were prepared and I
13 was in a situation where I had a written form and I
14 chose to use a written form.

15 Q And is that what is -- is this the advice of
16 rights used on May 24th of 2011 with Antwan Gaddist?

17 A This appears be the original form.

18 Q State's 119? State's Exhibit 119?

19 A Yes.

20 MS. MCDUFFIE: Your Honor, at this time we
21 offer State's 119 into evidence.

22 MS. PINNOCK: No objection.

23 THE COURT: So admitted, 119.

24 (WHEREUPON, State Exhibit No. 119 was
25 admitted into evidence.)

SW - S. FAUST - DIRECT

1 BY MS. MCDUFFIE:

2 Q Investigator Faust, this is the actual piece of
3 paper you used with Mr. Gaddist that day?

4 A The original form.

5 Q Please describe for the jury -- or what time did
6 you start advising Mr. Gaddist of his rights?

7 A There's a form up here, starts with your name,
8 place, officers, date. And then the next thing I
9 would immediately filled out, I would have started
10 off with his name. Then I put Richland County
11 headquarters which is in the location of the
12 Sheriff's Department at 5623 Two Notch Road.
13 Officer Faust and Isenhoward filled that out. The
14 date would have 5/23/11. And at that point in time
15 for me to look and see it's 9:34 I would looked at
16 the phone. That's typically how I get the time.
17 And I would, I indicated 9:34 a.m.

18 Q And that's when you began to advise Mr. Gaddist
19 of his rights?

20 A I -- well, I started off by asking for his date
21 of birth. I was told [REDACTED], which I later
22 confirmed that as indeed his date of birth. Then
23 down at the bottom I asked a couple of questions at
24 the time of application to get an indication of
25 comprehension and determine if he can he read and

1 write. Some people indicate no, but in this case
2 Antwan Gaddist indicated yes. I asked his education
3 level and was told 11th grade, and then he was
4 currently working on his GED.

5 Q And you then began to advise Mr. Gaddist of his
6 rights?

7 A I then started from the top line and what I
8 typically do is put is -- in this situation if you
9 can imagine, I'm sitting like this, Antwan is
10 sitting kind of off to the front of me. There's
11 about three or four feet and the desk is sitting to
12 his right, my left. And the space is behind me and
13 over to this area.

14 Q And please demonstrate for the jury how you
15 advised Mr. Gaddist of his rights on May 24th of
16 2011.

17 A This is the desk right here. I turned it to
18 where he could see it. And I have it, it's actually
19 a little bit lower but, to where I start off by
20 reading the first line and I'll say -- there are a
21 couple of little boxes over here. There's nothing
22 that says we have to mark them off; but as standard
23 practice I do this with every time to, just so I can
24 say this is how I do it every time so it's just a
25 standard practice that I use. The first question I

SW - S. FAUST - DIRECT

1 asked or the first thing I read was, and I read out
2 loud, before we ask any questions you must
3 understand your rights and I looked at Antwan to
4 acknowledge, you know, do you understand that. I
5 will not move forward without getting some type of
6 acknowledgment whether it be verbal or yes. If I
7 get a no or no answer, then I won't proceed until I
8 say, do you understand, before I ask any questions
9 you must understand your rights. He acknowledged in
10 a positive manner, whether it be verbal or not, that
11 he understood. At that point I marked off a little
12 X, then moved to the next line. You have a right to
13 remain silent and he indicated yes. I moved to --
14 and marked it off. I then went to the next line,
15 anything you say can be used against you in court.
16 I continued that down. Each process he acknowledged
17 that he understood what I was reading. You have the
18 right to talk to a lawyer for advice before you ask
19 [sic] any questions and have a lawyer with you
20 during any questioning. Acknowledgment, mark off.
21 If you cannot afford a lawyer one will be appointed
22 for you before any questions if you wish.
23 Acknowledgment, mark off. If you decide to answer
24 questions now without a lawyer present you still
25 have the right to stop answering any time. You also

SW - S. FAUST - DIRECT

1 have the right to stop at any time until you talk to
2 a lawyer. Acknowledgment. I move down to the next
3 section. There are places there to sign but I
4 typically wait and sign everything once there's full
5 acknowledgment of the form.

6 The next is a waiver of rights. I read the
7 statement of my rights and I understand and know
8 what my rights are. I'm willing to talk and answer
9 questions. I understand and know what I'm doing.
10 No promises -- and I underlined promises -- have
11 been made to me or no pressure or coercion -- and I
12 signed each one of those words -- of any kind has
13 been used against me. He indicated I'm not promised
14 anything to talk to me. Then I explained what
15 pressure and coercion meant. And once we made an
16 acknowledgment that he understood and that he was
17 willing to talk to me, I marked it off and then
18 asked him to sign the form. And then I marked off
19 two little spots where he is to indicate that he
20 understood what I read to him and he was waiving his
21 rights and willing to speak to me.

22 Q And did you define pressure and coercion for
23 Mr. Gaddist?

24 A I -- typically your average person understands
25 what pressure is. Your average person doesn't

SW - S. FAUST - DIRECT

1 necessarily coercion, specifically in this incident,
2 but I explained to him to where he said, yes, I
3 understand what you're implying by coercion. And
4 then we went on to sign.

5 Q And at any point in time did you ever get any
6 indication that Mr. Gaddist did not understand his
7 rights?

8 A If he fully indicated at any point that he would
9 have stopped or not answered, I don't proceed.

10 Q And at any point did Mr. Gaddist tell you that he
11 did not understand or did not want to proceed?

12 A He did not.

13 Q And did he, in fact, indicate —

14 MS. PINNOCK: Objection, Your Honor, it's
15 leading.

16 THE COURT: Sustained.

17 BY MS. MCDUFFIE:

18 Q After you advised Mr. Gaddist of his rights did
19 he then waive his rights to you?

20 A He did, and he then went on to sign the form as
21 witnessed by Kevin Isenhoward and myself.

22 Q In State's Exhibit 119, whose signature is that
23 under the rights?

24 A Where your thumb is, it's Antwan Gaddist.

25 Q And under the waiver of rights?

SW - S. FAUST - DIRECT

1 A Antwan Gaddist.

2 Q And whose signatures are these as witnesses?

3 A Mine is on the top line and then I handed it to
4 Kevin Isenhoward and then he signed it.

5 Q After you advised Mr. Gaddist of his rights,
6 please tell the jury what took place after that.

7 A At that point I then asked, stated, asked Antwan
8 what happened, can you tell me how K.H. [REDACTED] was
9 injured. He stated that she was laying on the bed.
10 At that point I said that that's not what could have
11 happened, that that's medically impossible, the
12 doctors are saying that if child is not going to lay
13 on a bed and have these type of significant
14 injuries.

15 Q Let me stop you right there, Investigator Faust.
16 What was the information you knew about K.H. [REDACTED]'s
17 medical condition?

18 A That that child had a brain injury and was not
19 breathing at the time EMS was notified and that then
20 put on a ventilator to help her breathe.

21 Q And what was the doctor opinions of how these
22 injuries were caused?

23 A They were non-accidental.

24 Q And Mr. Gaddist's first statement to you was
25 that, what again?

SW - S. FAUST - DIRECT

1 A The child was laying on the bed.

2 Q Again, your response to that was?

3 A That the doctors indicated that was not possible,
4 that this was a non-accidental injury, that these --
5 a child laying on the bed is not gonna have a brain
6 injury.

7 Q And then please tell the jury what happened after
8 that?

9 A He then suggested that she fell off the bed, then
10 suggested that she fell off the bed and that I
11 stated that that was not possible, that if she fell
12 off the bed and was unconscious then how was she
13 able to climb back up on the bed and also suggest,
14 you know, wouldn't she have cried, wouldn't you have
15 heard her, and she climbed back on the bed.

16 Q Let me stop you right there. So Mr. Gaddist's
17 version was that she must have fallen off the bed
18 and received the injury and then been unconscious
19 and got back on the bed again?

20 A That's what he suggested. I just said that
21 doesn't make sense. If you think about it, if she
22 fall off the bed then she would have been on the
23 floor; but you're saying she was laying on the bed.
24 I said, if she was unconscious she couldn't have
25 climbed up on top of the bed, it just doesn't make

1 sense, it's physically impossible for an unconscious
2 child human being to climb back up on the bed.

3 Q After he made that statement did you then discuss
4 with him some things you observed in the home?

5 A I did.

6 Q And please tell the jury about that.

7 A While I was there in the children's room I
8 observed what appeared to be smear marks. I don't
9 know if they were, but they appeared that they could
10 have been defecation. I then stated that, you know,
11 I asked him, I was like, did you get upset because
12 she -- and I used the word poop -- that she pooped
13 herself and that some of this was on the children's
14 floor and that they may have rubbed the feces in it.
15 You know, could you have gotten upset. And that
16 that upset him. And I indicated again that I
17 thought I observed what this was; and he stated
18 that, no, that wasn't it, that the children do not
19 poop themselves, that this was likely food that I
20 observed smeared on the bedroom floor.

21 Q And after that please tell the jury what happened
22 after that.

23 A I then, after I did that I then stated, well, was
24 she crying, did this upset you? You know, is this
25 something that caused you -- I said did you notice

SW - S. FAUST - DIRECT

1 her crying and if you shook her because she was
2 crying. When I stated that statement he was
3 sitting in a chair like this. He went into a
4 position like this, which is what we consider like a
5 fetal position. He bowed his head and kind of went
6 into what I describe as a fetal position.

7 Q Let me stop you right there. When this
8 interaction between you and -- Investigator
9 Isenhoward is also present right now, correct?

10 A That's correct?

11 Q You and Investigator Isenhoward and Mr. Gaddist's
12 taking place, is this a hostile -- are you
13 screaming, I mean, what's going on?

14 A I am talking to him like I am talking to y'all.

15 Q And he then went into what you describe as a
16 partial fetal position?

17 A He did. And then his, then he started to get
18 choked up.

19 Q And please tell the jury what happened after
20 that?

21 A He then stated that he didn't mean to hurt

22 K.H. [REDACTED], that he just couldn't get her to stop
23 crying. Antwan Gaddist stated that he shook

24 K.H. [REDACTED] for a few minutes until she went
25 unconscious. When I heard her say several minutes,

SW - S. FAUST - DIRECT

1 you know, several minutes of shaking anybody,
2 specifically a child, I felt like I needed to
3 clarify what exactly a few minute was. So I then
4 started to talk ---

5 Q Let me stop you right there. Why did you feel
6 the need to clarify what a few minutes meant?

7 A Again, when, you know, it just shaking somebody
8 for a few minutes, if you think about it, I mean,
9 for the, you know, this has only been about ten
10 seconds so to, you know, to start shaking somebody
11 for several minutes it just seems like an extremely
12 long time.

13 Q And so you wanted to clarify that?

14 A I did want to clarify that, just not say a few
15 minutes and other they did it a few minutes. I
16 wanted to figure out what a few minutes was by him
17 telling me what a few minutes were.

18 Q And so what did you then do?

19 A I then stated that, well, let's start, I'm gonna
20 start right now and let's, you know, you tell me how
21 long you shook K.H. [REDACTED]. I said, we're about ten
22 seconds. And in my mind I'm going, thousand one,
23 thousand two, got up to 15. I said did you shake
24 this long? He goes, yeah, a few minutes. So I
25 continued. Twenty, as I got up, counted up to 30, I

SW - S. FAUST - DIRECT

1 said did you shake her this long? We're up to about
2 30 seconds. Yeah, I shook her. I shook her for a
3 couple of minutes. Got up to 45, 45. I shook her
4 this long, I shook her. Got up to about a minute.
5 Where I counted out my head, thousand one 60 times.
6 And when I got up to 30, 45, I asked him did you
7 shake K.H. this long? Once I got up to 60 I
8 said, did you shake her this long, and he goes yes.
9 And I shook her for a couple of minutes. So after
10 once I got up to 60 which is probably where I'm at
11 now, I then didn't count anymore and I realized when
12 he shook her a couple of minutes, that he literally
13 meant at least a minute or more.

14 Q And he again said that he shoo K.H. until
15 she went unconscious?

16 A That is correct.

17 Q That she was conscious, she was crying, he shook
18 her, and she went unconscious?

19 A That is correct.

20 Q And did he make any statements about blood or any
21 other substances coming from K.H.

22 A He would reiterate this and he described as
23 having blood and white stuff coming from K.H.'s
24 nose. That he went on to say that he used a towel
25 to wipe the blood off and some blood got on his

SW - S. FAUST - DIRECT

1 shirt. And I will say, you know, I figured that the
2 shirt that I found is the shirt that he was
3 referring to.

4 Q Let me stop you right there. That's the shirt
5 that you and Investigator Oates had found the
6 previous evening which is in evidence as State's
7 112?

8 A That is correct. And I would identify that by
9 him as referring to the Florida shirt.

10 Q Please proceed.

11 A I would also learn that he stated he put it by
12 the washer. He stated he didn't put it over there
13 to conceal it. I will say based on the way I found
14 it that would be an accurate statement. What I
15 found over there, this shirt would have been on top.
16 It wasn't behind or hidden; it just was thrown on a
17 stack of clothes. So in my opinion I don't believe
18 he was trying to hide or conceal it. At that time
19 Investigator, Sergeant Kevin Isenhoward left the
20 office.

21 Q And Sergeant Eisenhower left the office to do
22 what?

23 A I didn't know ---

24 MS. PINNOCK: Your Honor, object to this
25 testimony, previous objection.

SW - S. FAUST - DIRECT

1 THE COURT: You didn't know why he left
2 the office?

3 MS. PINNOCK: No, Your Honor, it would be
4 the answer to why he left the office based on our
5 previous objection.

6 THE COURT: He just said he didn't know
7 why he left the office. Overruled.

8 THE WITNESS: I don't really recall why he
9 left the office, but when he came back he came back
10 with a Teddy bear approximately one-and-a-half to
11 two feet long.

12 BY MS. MCDUFFIE:

13 Q And then please tell the jury what happened after
14 that.

15 A At that point in time he offered this teddy bear
16 do Mr. Gaddist and asked him to demonstrate what he
17 did to K.H. .

18 Q And please describe for the jury what you
19 observed.

20 A He took the bear, the bear ---

21 Q Let me stop you, when you say he, who is he?

22 A Antwan Gaddist. The bear, he took the bear to
23 where the bear's face is facing him. He put his
24 hands under the arms to where his, these fingers
25 would have been in the back of the bear. The thumb

SW - S. FAUST - DIRECT

1 would have been up around the chest area, if you can
2 imagine holding the teddy bear facing you. And then
3 he began to shake the bear (indicating) like this,
4 and we observed the bear shaken violently.

5 Q Was this a gentle shake?

6 A No, it was, if not, harder than I was just
7 shaking. And I've been reiterated how long did you
8 do that and he stated at least a minute or a few
9 minutes. That was the, you know, he shook the bear
10 and indicated he shook her for over a minute.

11 Q And again, you started advising Mr. Gaddist of
12 his rights that morning at 9 -- what was the time?

13 A At 9:34.

14 Q Approximately how long was the period -- I'm
15 sorry, do you know when the written statement or was
16 a written statement taken from Mr. Gaddist?

17 A A written statement was taken.

18 Q And that was after the oral statement that you
19 just described for the jury?

20 A That's correct. My walking through the time and
21 also the going to get the bear and then actual
22 shaking of the bear. And then I made a phone call.
23 I stepped out of the office at that time.

24 Q And Investigator Faust, when a person down at the
25 Sheriff's Department, is there audio/video recording

SW - S. FAUST - DIRECT

1 equipment for the investigators to have access to?

2 A There are none. I have been an investigator
3 since 1999, an employee since 1995 under Sheriff
4 Sloan and now Sheriff Lott, and there's never been
5 any recording devices. And it is the sheriff's
6 policy that we don't do them so we can't bring any
7 in. If the sheriff doesn't provide it or we don't
8 have it we don't have ability to record them. And
9 it 's policy at this time we don't do that.

10 Q But you do memorialize statements in written
11 form?

12 A We do. And once we do in written form we always
13 have the person read over the form and they agree
14 with it, they sign it, and we are mandated to make
15 them a copy. And part of this statement there is a
16 line there where it says you are supplied a copy.

17 Q State's Exhibit 120, do you recognize that?

18 A Yes, this is the original statement we took on
19 that day.

20 Q And was Mr. Gaddist asked if he wanted to give a
21 written statement about what he had just told you
22 and Investigator Isenhoward?

23 A We did. I asked what we just talked about, if he
24 was willing to put it down on paper. We took a
25 statement from him and he indicated yes.

SW - S. FAUST - DIRECT

1 Q And then you stepped out of the room for a
2 minute?

3 A I believe it was -- I don't know if I stepped out
4 at that time. I have to look over my notes real
5 quick. I did eventually step out of the room. I
6 believe it might have been after the statement, but
7 I did go and make a phone call.

8 Q And again, you were in Investigator Isenhoward's
9 office?

10 A That's correct.

11 Q So when Mr. Gaddist agreed to give a written
12 statement about what he just told you, who actually
13 took the written statement?

14 A At that time since it's in Kevin's office and
15 it's his computer, just, he knows where his forms
16 are so it's logical he go and take the statement.
17 So at that time he took the statement.

18 Q And when you say took the statement, describe for
19 the jury how that was done.

20 A It's a question/answer form. We basically start
21 off by asking a question and then answer. Our
22 question is once we type it out we ask it, and then
23 anything verbal that comes back, we do the best of
24 our ability to get every single word and their
25 terminology as best we can. I personally stop

SW - S. FAUST - DIRECT

1 people and say, whoa, you're going too first, I
2 repeat what I'm up to do and have it repeated back
3 to me to maintain exactly what is said. And then to
4 confirm that, at the end of the statement we ask the
5 person, whether it be a witness, suspect, or a
6 victim to read over the statement to make sure they
7 agree with it. That is their statement, not ours.

8 Q And what time did Investigator Isenhoward
9 actually begin after he got the computer up and
10 forms and stuff began?

11 A 10:30 that same morning so approximately 56
12 minutes later.

13 Q So the period of time where Mr. Gaddist was
14 giving you the oral version of what happened was not
15 a lengthy period of time?

16 A No.

17 Q And during that period of time he was advised of
18 his rights, Investigator Isenhoward left and got a
19 bear, all of that was done during that?

20 A The first thing we did before we asked any
21 questions of any substance was advise him of his
22 rights.

23 Q And at any point in time when you were speaking
24 with Mr. Gaddist did he ever tell you he didn't wish
25 to speak with you any further?

SW - S. FAUST - DIRECT

1 A No. He was very well mannered and if he said no
2 or didn't want to talk, we would have stopped.

3 Q Did he tell you he didn't want to speak without
4 an attorney present?

5 A He did not.

6 Q At any point in time did you withhold creature
7 comforts, food, restroom, anything like that?

8 A No. If anybody ever asked to use the restroom
9 during a statement or ask for water, we typically
10 offer water. Usually, we use the bathroom before we
11 get started. We ask would you like something to
12 drink. We do have a canteen and a water container
13 that puts out fresh water. We typically offer it.
14 And during a statement I typically, and in this case
15 since I'd have been involved, if he would have said
16 I need to use the bathroom we usually put, we'd stop
17 at such and such time so Mr. Gaddist or Mr. Jones,
18 whoever it is, asked to use the bathroom or wanted
19 to go get a drink of water, anything of that nature.
20 We, I document it -- since I would have been
21 involved in this, it would have been my practice to
22 say, hey, let's stop the statement, put it in here.
23 But in this situation the statement was three pages,
24 basically two and a couple of lines, and this
25 statement did not take that long and he didn't ask

SW - S. FAUST - DIRECT

1 for water or to use the bathroom. And again, if he
2 would have, we would have stopped. And if I would
3 have had to use the bathroom or Kevin, we would have
4 stopped.

5 Q And at any pint during your interaction with Mr.
6 Gaddist were you threatening him, coercing him,
7 telling him what to say, promising him anything?

8 A Again, we talked in this manner. He talked,
9 spoke to me in the same tone, and I spoke to him in
10 this tone. There was never raising of voices. Even
11 when the first thing when I stated I didn't believe
12 that the child could have fallen off, there was no
13 yelling; it was talking like this.

14 Q And after the written statement was obtained you
15 then placed Mr. Gaddist under arrest?

16 A After we got the statement I made a phone call to
17 Doctor Rosa and when I came back Kevin Isenhoward
18 was sitting with them. At that point in time, to
19 free up Kevin since he was gracious to allow me some
20 of his time in his office, he has his work to do. I
21 then took Antwan and went and found another office
22 to where I could sit there and do the paperwork that
23 I needed to do, the booking paperwork.

24 Q And you said you stepped out for a minute to call
25 Doctor Rosa?

SW - S. FAUST - DIRECT

1 A That's correct. And now that I said that I
2 realize when we took the statement, then I stepped
3 out to go call Doctor Rosa because when I came back
4 I relieved Kevin Isenhoward of sitting with Antwan.

5 Q And what was the nature of your conversation with
6 Doctor Rosa?

7 A We have a good relationship with doctors,
8 especially when it comes to the special victims
9 unit. When we find out what type of injury or how
10 an injury occurred, we will call that doctor to say,
11 hey, this is what we found out, to help with the
12 diagnosis or treatment. At that point I did call
13 her and advised her of our findings that Antwan did
14 Gaddist did admit to shaking her, discussed the time
15 that she was shaken, and that I also mentioned to
16 her that Antwan had stated she was doing better and
17 off the ventilator.

18 Q And what did you learn?

19 A At that point Doctor Rosa stated that she was not
20 doing well, that around 4 a.m. that morning which
21 would have been 24th, we're now right around 10:30,
22 a little after 10:30 and she stated that at 4 a.m.
23 that morning she had taken a turn for the worst and
24 that she was in very critical condition and that was
25 her, deteriorating.

SW - S. FAUST - DIRECT

1 Q And Mr. Gaddist was arrested at that point?

2 A I then took him to Don's -- another office which
3 happens to Don Robinson's but he was not in the
4 office. And at 11:20 is when I discussed the case.
5 Actually I'd gone downstairs and relieved his
6 mother, you know, so she didn't have to sit around
7 waiting on him. And then came back up and when I
8 sat him down to Don's office approximately 11:20 I
9 indicated he was going to be under arrest for
10 unlawful conduct towards a child, inflicting great
11 injury for a child 11:20 that morning.

12 Q And there's some paperwork you had to fill out?

13 A That's correct.

14 Q And you proceeded to do that?

15 A That is correct.

16 Q And did Mr. Gaddist then ask you if he could use
17 the phone?

18 A He did. He asked me -- he, while we were doing
19 that I'm sitting there and it's not a lot of talking
20 and he stated could he make some phone calls; I said
21 absolutely. Don's office, his phone -- again, his
22 office is longer this way versus more square which
23 was Kevin's office. The phone would have had to
24 reached over; and being in somebody else's office I
25 didn't want to move anything around. The phone is

SW - S. FAUST - DIRECT

1 connected to our computer so I said just give me a
2 minute, and I then took him to an area where there
3 was an empty office where somebody had just moved
4 out and allowed him to make phone calls from this
5 phone.

6 Q And at Richland County Sheriff's Department are
7 all phones in the Sheriff's Department,
8 incoming/outgoing calls recorded?

9 A Yes.

10 Q And that's every single call?

11 A Every single call.

12 Q To public numbers or incoming/out?

13 A Incoming/outgoing calls, they're recorded.

14 Q The sheriff normally does that during the normal
15 course of business?

16 A Yeah, 24/7 they are recording.

17 Q And do all phones at the Sheriff's Department
18 have a big orange sticker on them?

19 A All calls recorded.

20 (WHEREUPON, State Exhibit No. 124, 125 and
21 126 were marked for identification only.)

22 MS. PINNOCK: Your Honor, we need to
23 approach.

24 THE COURT: Ladies and gentlemen of the
25 jury, let me let you step back to the jury room.

1 Please do not discuss the case while you're there.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 4:04 p.m.)

4 MS. PINNOCK: May it please the Court,
5 Your Honor, I've just been handed three pictures
6 taken in some office somewhere in Richland County
7 Sheriff's Department I'm assuming. These
8 photographs were not available when we did the
9 Jackson v. Denno hearing. This is our first time
10 ever seeing these pictures. I do believe this is a
11 discovery violation. We have no idea where these
12 were, you know, whose office this was. This is the
13 first time we're seeing them. We were not aware
14 there were going to be pictures taken. So I do
15 believe this is a discovery violation with this.

16 And then to add, Judge, we've been trying
17 to get these photographs for probably a
18 month-and-a-half or so and now today is the first
19 time we're ever seeing them so I have an objection
20 to them being introduced abused into evidence.

21 THE COURT: So you knew for a
22 month-and-a-half they existed?

23 MR. STAGGS: No, sir.

24 THE COURT: You just said you'd been
25 trying to get them for a month-and-a-half.

1 MS. PINNOCK: We've been trying to get
2 them. I've been trying to get to the Sheriff's
3 Department to take pictures. I was informed that
4 they did not have any pictures. I didn't know this
5 was going to be an issue. Ms. McDuffie just
6 informed me they took them, printed them, and now
7 they're trying to introduce them into evidence.

8 MS. MCDUFFIE: Your Honor, Ms. Pinnock and
9 I have never discussed this, nor has she ever called
10 me and asked if I can help arrange for her to go to
11 the Sheriff's Department to take pictures. We had
12 these pictures available at the Jackson v. Denno
13 hearing.

14 THE COURT: Well, the Jackson v. Denno
15 hearing is not relevant to this.

16 MS. MCDUFFIE: And then also, we were
17 prepared Your Honor was gonna go forward with the
18 motion to suppress. Your Honor, I don't know how
19 these pictures are discoverable. Under Rule 5
20 they're not material to guilt or exculpatory. And
21 further, the Defense has withdrawn their motion to
22 suppress. Your Honor, I believe that they're aware
23 all calls at the Sheriff's Department are recorded.
24 We took these photographs as demonstrative evidence.

25 THE COURT: Well, I don't know what

1 they're aware of. They've alleged from the very
2 beginning that there is no notice at the Sheriff's
3 Department about telephone calls.

4 MS. PINNOCK: Yes, sir, and I wasn't
5 saying that ---

6 THE COURT: The deputy told me that in --
7 we've had conferences in the office. She's taken
8 that position. I think you've taken the opposite
9 position, and in fact, told them, made the statement
10 that, yes, there is notice that they are being
11 recorded. Of course, we did not have a hearing
12 because I determined this court didn't have any
13 jurisdiction. What is the basis that you would be
14 entitled to them under Rule 5?

15 MS. PINNOCK: Your Honor, I do believe
16 this would be discoverable.

17 THE COURT: Well, I know Rule 5. When did
18 y'all take these pictures?

19 MS. MCDUFFIE: A day before the pretrial,
20 Your Honor. I'm sorry, that's incorrect. They were
21 taken 1/23/14. But they were taken in anticipation
22 of the pretrial.

23 THE COURT: Why wouldn't they be entitled
24 under 1(c) under: On request of defendant
25 Prosecution shall permit the defendant to inspect

1 books, pages, photographs, tangible objects,
2 buildings or places or copies of positions thereof
3 which are within the possession, custody, and
4 control of the prosecution which are material to the
5 preparation of the defense or intended to be used by
6 the prosecution as evidence in its case and chief.

7 MS. MCDUFFIE: Your Honor, I believe that
8 there's also case law says if defense is aware of
9 the information, then nondisclosure is not a
10 violation. Under Brady and Rule 5 I believe Ms.
11 Pinnock said she'd been trying to get to the
12 Sheriff's Department for a month-and-a-half.
13 Further, I ---

14 THE COURT: Well, I don't know about that.
15 She's probably trying to get out there to photograph
16 phones that don't have notices.

17 MS. MCDUFFIE: There aren't any.

18 THE COURT: I don't think she wants to go
19 out there and photograph something that gives her
20 notice.

21 MS. MCDUFFIE: Well, they all have notice.

22 THE COURT: All right, well, I'm gonna
23 suppress the pictures. I think you should have
24 given them to her sometime between now. I don't
25 know that you need them. You -- witness can

SW - S. FAUST - DIRECT

1 clearly testify to it and...

2 MS. PINNOCK: Thank you, Your Honor.

3 THE COURT: All right, bring the jury in.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 4:08 p.m.)

6 THE COURT: All right, Madam Solicitor.

7 BY MS. MCDUFFIE:

8 Q Investigator Faust, please describe the phones
9 and stickers on the phones at the Sheriff's
10 Department.

11 A When we're assigned phones the second we go into
12 a building, for example, when I got my phone they
13 handed me the phone. Across the top of it it says,
14 all phones, or all phone calls are recorded.

15 Q And the phone that Mr. Gaddist was allowed to use
16 that day, did that also bear that sticker?

17 A Yes.

18 Q And you allowed Mr. Gaddist to use the phone?

19 A I did.

20 Q Did you allow him to make calls to whomever he
21 chose to call?

22 A Whoever he chose to call. I explained to him to
23 dial 9 before he called out. If it's a local number
24 to dial out just dial the 3 and 4 numbers; and if it
25 was long distance a 1 and then area code and 3 and 4

SW - S. FAUST - DIRECT

1 numbers.

2 Q And while Mr. Gaddist placed calls from the
3 Sheriff's Department that day, were you in the
4 office with him or right outside the office?

5 A I was standing in the doorway. I did try to
6 maintain privacy to some extent, but I also, I can
7 hear what he's saying. I'm not necessarily focusing
8 in like this, but you know, I'm sitting there with
9 him. I think he involved me in the first
10 conversation he heard, but I also have to maintain
11 security. You know, that office was cleared out,
12 but I don't know if there's a pair of scissors in
13 the drawer so I do have to maintain security for
14 everybody in the office and myself.

15 Q And did you specifically hear Mr. Gaddist place a
16 phone call to his mother?

17 A Yes.

18 Q And have you had opportunity since then to view
19 State's Exhibit 121, or listen to State's 121?

20 A I have.

21 MS. MCDUFFIE: Your Honor, at this time we
22 offer State's 121.

23 MS. PINNOCK: Your Honor, I renew our
24 previous objection.

25 THE COURT: I'm sorry?

SW - S. FAUST - DIRECT

1 MR. STAGGS: I renew our previous
2 objection.

3 THE COURT: All right, so admitted.

4 MS. MCDUFFIE: Your Honor, permission to
5 publish 121.

6 (WHEREUPON, State Exhibit No. 121
7 was admitted into evidence.)

8 BY MS. MCDUFFIE:

9 Q And this is a phone call the defendant placed to
10 his mother on May 24th of 2011?

11 A Yes.

12 (State's Exhibit No. 121 was played for the jury.)

13 BY MS. MCDUFFIE:

14 Q That was the entirety of that call being placed
15 to his mother?

16 A That's correct.

17 Q And after the death o K.H. the charges
18 were changed to homicide by child abuse?

19 A That's correct.

20 Q Did you also during your investigation of this
21 case speak with Ms. Short?

22 A I did.

23 Q And were you able to confirm what time Miesha
24 arrived at work that morning?

25 A That's correct.

SW - S. FAUST - DIRECT

1 Q What time was that?

2 A I don't have it in front of me. I want to say --

3 I ---

4 Q Would it help fresh your memory if I give you a
5 copy of your investigative notes?

6 A You know what, I've got them right here in front
7 of me; I just was going off of memory. Let me look
8 at it real quick.

9 Q The third paragraph on page 4.

10 A Page 4. Records indicate that she clocked in
11 through the photo call system at 11:21 a.m. and that
12 would have been on the 24th -- or excuse me, the
13 23rd. Yes, the 23rd, when she was with Ms. Short.

14 Q And you were also able to followup on information
15 from EMS, the fire department, other individuals
16 involved in this case?

17 A That's correct.

18 Q The individual that you spoke to on May 23rd of
19 2011 who gave you, May 24th, 2011, who gave you the
20 oral statement and also placed that phone call, do
21 you see him in the courtroom today?

22 A I do.

23 Q Can you please identify him to the Court.

24 A He's sitting at this table in a blue shirt with
25 black and blue, little bit of white tie.

SW - S. FAUST - DIRECT

1 MS. MCDUFFIE: Your Honor, please let the
2 record reflect he identified the defendant.

3 THE COURT: It does.

4 BY MS. MCDUFFIE:

5 Q In part of your investigation in this case,
6 Sergeant Faust, did you also -- I think they've
7 already been testified to, obtain some known
8 standards or buccal swabs from M.G. [REDACTED], K. H. 2
9 [REDACTED], and Miesha Miller?

10 A I did.

11 Q And did Ms. Miller consent to you obtaining their
12 DNA?

13 A In written form.

14 Q And did you also obtain Mr. Gaddist's DNA?

15 A I did.

16 MS. MCDUFFIE: Your Honor, at this time
17 ---

18 BY MS. MCDUFFIE:

19 Q And that was contained in State's 122 and 109?

20 A That's correct.

21 MS. MCDUFFIE: Your Honor, at this time
22 we'd offer these in evidence.

23 MS. PINNOCK: No objection.

24 THE COURT: So admitted.

25 (WHEREUPON, State Exhibits Nos. 109 and

SW - S. FAUST - CROSS

1 122 were admitted into evidence.)

2 MS. MCDUFFIE: No further questions, Your
3 Honor.

4 THE COURT: All right. Ms. Pinnock?

5 MS. PINNOCK: May it please the Court.

6 **CROSS-EXAMINATION**

7 BY MS. PINNOCK:

8 Q Sergeant Faust, you never went to the hospital on
9 May 23rd, right?

10 A Did I go to the hospital?

11 Q Yes, did you go to the hospital May 23?

12 A No, I went and executed the search warrant.

13 Q All right. And who did you talk to before you
14 went to get the search warrant?

15 A Deputy Wilder.

16 Q That's the only person you spoke to?

17 A I mean, well, I spoke to a lot of people; but
18 you're asking me when I got the call. I got the
19 call -- well, the first person I spoke to was Deputy
20 Wilder.

21 Q Okay. He provided you some information. You
22 said you made some phone calls to Investigator
23 Carter, Investigator Preston ---

24 A Started dispatching task.

25 Q Okay, the only person you spoke to from the

SW - S. FAUST - CROSS

1 hospital was Deputy Wilder; is that right?

2 A At the initial, yes, and then obviously Carter,
3 Preston, and Lieutenant Scott.

4 Q First thing, your first involvement, the only
5 person is from the hospital, Deputy Wilder?

6 A The first person to call me was Deputy Wilder.

7 Q Wa K.H. transported from the hospital at
8 that point or was she still at Providence?

9 A He responded to the Northeast. I don't know when
10 he called me, what time she was transported, but he
11 called me at approximately 2:40 and I think they're
12 documented times -- I don't have them in front of me
13 -- but there was testimony when she was transported.

14 Q Now when you got to the apartment who was there?

15 A When I got there it was myself, Deputy Enzor, and
16 lab unit -- oh, the three of us were, when we opened
17 the door that was the three of us there and no one
18 else.

19 Q Okay. And at that point Investigator Carter,
20 Investigator Preston had headed over to Palmetto
21 Richland?

22 A They were either there or already there, yes.

23 Q And you sent them over there, asked them to go
24 find Antwan Gaddist, take statement?

25 A That's correct. When I got to the scene Deputy

SW - S. FAUST - CROSS

1 Carter, Investigator Carter had a line unit, a
2 deputy, come sit on scene to secure it. That was
3 Deputy Enzor. That's why he was one of the first
4 ones go there with myself and Oates. Carter had
5 obviously already left, yes.

6 Q And their purpose was to go find Antwan Gaddist?

7 A Well, to go talk -- yes, they were there. That
8 was -- the person that was with the child who called
9 in and we wanted to talk to him try to ascertain
10 what happened.

11 Q Okay. And they ended up talking to him at the
12 hospital?

13 A Yes.

14 Q They took a statement?

15 A Yes.

16 Q They provided you a copy of that statement?

17 A I would get a copy of that, yes.

18 Q And Lieutenant Scott spoke to Miesha Miller?

19 A Yes.

20 Q She took a statement?

21 A She did.

22 Q And she provided you with her statement?

23 A She did.

24 Q All right. Lieutenant Scott also did a report
25 and handed that over to you for your call, right?

SW - S. FAUST - CROSS

1 A It's in the file. I don't have it with me this
2 second, but she did.

3 Q I want to go back to the apartment for just a
4 second. You said you walked through every room in
5 that apartment?

6 A I did walk through the house. We had to clear
7 it. We wanted to make sure someone wasn't hiding in
8 the closet or -- yeah, we cleared every -- we made
9 sure there was nobody there.

10 Q It was a three bedroom apartment?

11 A Yes.

12 Q Three bedrooms, two bathrooms, the kitchen,
13 living area, eating area, right?

14 A Yes.

15 Q Okay. Were you aware tha [K.H.] slept in
16 [M.G.]'s bedroom that night?

17 A I would find that out.

18 Q You didn't know before you were there?

19 A When I walked in there, no.

20 Q 'Cause you hadn't talked to anyone yet?

21 A That is correct.

22 Q So no processing whatsoever was done in that
23 third bedroom?

24 A There was nothing observed in there. For
25 example, you know, when we went in the children's

SW - S. FAUST - CROSS

1 room I thought what I thought was feces turned out
2 not to be feces. If I'd have seen anything or
3 Deputy lab unit Oates would have seen anything or
4 Enzor would have seen anything out of ordinary in
5 that room, we would have made note of it and
6 processed it.

7 Q There are pictures taken of the living room,
8 right?

9 A Yes.

10 Q There's nothing out of order in this living room,
11 right?

12 A I don't know what out of order would be by your
13 standards.

14 Q Was it a clean living room?

15 A I wouldn't find it an unkept house.

16 Q Okay. You just said if you didn't see anything
17 that was out of place or concerning you weren't
18 going to process it?

19 A Sure.

20 Q I mean, would you agree with me that there were
21 pictures of the living room?

22 A I have not looked at the pictures, but yeah, I'm
23 pretty sure there would be pictures.

24 Q Would you agree there's pictures of the master
25 bedroom?

SW - S. FAUST - CROSS

1 A Pictures there, then yes. I did not look at the
2 pictures. I have not looked at the pictures in a
3 long time.

4 Q You didn't review everything before starting this
5 case?

6 A I did not look at the pictures.

7 THE COURT: Well, let's not debate whether
8 -- if there's a picture you want him to look at,
9 then show it to him.

10 MS. PINNOCK: I'm trying to locate the
11 picture, Judge.

12 BY MS. PINNOCK:

13 Q It is Defense Exhibit 15. That's a picture of
14 the kitchen, right?

15 A Yes.

16 Q And number 14, that's a picture of the living
17 room. Right?

18 A Yes.

19 Q All right. So pictures were taken of the
20 bedrooms, but not the last place that K.H.
21 was still alive, right?

22 A If there's not a picture, then that would be
23 correct.

24 Q And you're in charge of that crime scene. You
25 called it a crime scene?

SW - S. FAUST - CROSS

1 A I'm in charge of it, but the lab unit technically
2 takes precedence once I release it to him or once he
3 starts then, you know, he's the one that's gonna
4 collect things, not me. He's gonna be the one to
5 swab, fingerprint, and what have you. If there's
6 going to be processing it's gonna be the lab unit,
7 not me.

8 Q Okay. After you finished executing search
9 warrant, after you had people that photographed
10 everything, collected everything, you had a phone
11 call with Investigator Carter?

12 A At some point, yes, several phone calls that day.

13 Q Okay. You documented one that said he gave you
14 an update on what he had done at the hospital?

15 A Yes.

16 Q The fact that he had gotten Antwan's statement?

17 A Yes.

18 Q The fact that Lieutenant Scott had gotten Miesha
19 Miller's statement?

20 A Yes.

21 Q And during that phone call you asked him for, to
22 get Antwan to come down to headquarters?

23 A I asked him to ask Antwan if he'd be willing to
24 come in at 9 the following morning.

25 Q You didn't ask Ms. Miller to come down to

SW - S. FAUST - CROSS

1 headquarters?

2 A Did not.

3 Q You knew she gave a statement?

4 A I knew the general content. I knew the general
5 content of Antwan.

6 Q What time did you get there in the morning? You
7 said 8:30 or so?

8 A Who?

9 Q The next morning at headquarters.

10 A Who got there?

11 Q You did.

12 A I, you know, the earlier I get there, I get to
13 work anywhere between 8 and 8:30. My hours are 8:30
14 to 5, but I don't walk in at 8:30. There are times
15 I'm early so I got there sometime that morning.

16 Q Okay. Well, when you got there you reviewed both
17 statements?

18 A That is correct. But I'd ---

19 Q They were waiting for you. You didn't have to go
20 searching for them?

21 A That's correct. I had already known the general
22 content of them.

23 Q But when you got there you read them?

24 A I did read them.

25 Q You read Antwan's, I believe, six page?

1 A It might be longer than that, but I read them.

2 Q Okay. Fully?

3 A Yeah.

4 Q And you said Antwan was supposed to be there at
5 9:00.

6 A Yes.

7 Q So before you actually went down to get him out
8 of the lobby you were aware that Ms. Miller said he
9 got up at 10 or 10:30?

10 A That has -- I knew the general content of what
11 she said and he said. I don't, I'm not gonna sit
12 here and tell you I know what exactly the specific
13 time. I knew the content of what she said. She
14 said she left to go to work that day, who was in
15 care of the child. And I will tell you, the 24th I
16 knew the specific times of everything, obviously I
17 didn't know what time she clocked in because I found
18 that out later, but I believe though she had left
19 and that at the time the child was, there was
20 medical need for that child, he was with the child.

21 Q And you knew the reason that Antwan had the child
22 that day is because she didn't take K.H. [REDACTED], she
23 had reasons?

24 A I would have found that out.

25 Q It was in the statement.

SW - S. FAUST - CROSS

1 A The -- all right. You asked that real quickly.

2 Repeat the question.

3 Q You read her statement so before you went to get
4 Antwan to interview him again, you knew that

5 K.H. [REDACTED] did not go to day care because she had
6 bruises?

7 A She did indicate something to that effect, yes.

8 MS. MCDUFFIE: Your Honor, we have a
9 matter of law I'd like to take up please.

10 MS. PINNOCK: Okay.

11 THE COURT: All right. I'm gonna let you
12 step back outside.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 4:33 p.m., and the following
15 proceedings commenced in open court.)

16 THE COURT: All right.

17 MS. MCDUFFIE: Your Honor, I believe that
18 Ms. Pinnock has already crossed Ms. Miller on her
19 statement. I don't know if she is improperly trying
20 to impeach Ms. Miller through reading a version of
21 the statement to Investigator Faust; but I don't
22 think that her reading Ms. Miller's statement into
23 the record is a proper basis at this point. And
24 Your Honor ---

25 THE COURT: Well, I don't know about that.

1 I think she can ask him about what information he
2 had that would allow him to proceed with his
3 investigation. What disturbs me a little bit is
4 apparently, the information I had -- and again, I
5 got it from y'all, primarily from the defendant --
6 is that this child had a black eye or something and
7 that's why the child didn't go to the day care; is
8 that right?

9 MS. MCDUFFIE: Ms. Miller says that the
10 bite marks and bruise was the reason that the child
11 did not go to day care and that she was running late
12 for work. I don't know how we're not opening the
13 door to going into all of this.

14 THE COURT: Opening is opening the door.
15 I think you're trying to violate my order.

16 MS. PINNOCK: Your Honor, your order was
17 we were not discussing bite marks.

18 THE COURT: Black eye.

19 MS. PINNOCK: I have not mentioned a black
20 eye, Judge. I didn't ask ---

21 THE COURT: What other bruises did this
22 child have?

23 MS. PINNOCK: There's been testimony all
24 week about bruising that---

25 THE COURT: What other bruising did this

1 child have at the time the, that you have
2 information that existed, other than the doctors
3 testifying here today that they, I mean, here this
4 week other than that the child had some bruises on
5 the head, on the buttocks, had broken ribs, had eye
6 socket that was broken. Tell me what other bruises.

7 MS. PINNOCK: I have the statement of her
8 mother taken on May 24th that said she had bruises
9 ---

10 MS. MCDUFFIE: That is not ---

11 MS. PINNOCK: ---I'm sorry, that were
12 present when she left the house that morning.

13 THE COURT: Gave the statement of who?

14 MS. PINNOCK: Miesha Miller statement says
15 that K.H. [REDACTED] did not go to day care because
16 she had bruises on her ribs. I did not mention bite
17 marks. And then she tells Investigator Scott on
18 May 24th that she had no more bruises on her body
19 then when she left that morning.

20 THE COURT: Did you ask the mother about
21 this?

22 MS. MCDUFFIE: No.

23 MS. PINNOCK: Yes, I did. I did cross the
24 mother, I did cross. Miller about if K.H. [REDACTED] looked
25 the same as when she left the house that morning

1 because she had said on direct that wasn't the same
2 child when I left my house this morning.

3 THE COURT: Let me tell you something,
4 Ms. Pinnock.

5 MS. PINNOCK: I'm sorry?

6 THE COURT: Y'all made a big issue that
7 you didn't want what considered prior bad acts
8 admitted into this courtroom. You gave me a case
9 that said unless it's clear and convincing. You
10 said that the bad acts were a blank eye and bite
11 marks.

12 MS. PINNOCK: Your Honor, I believe ---

13 THE COURT: Now you come up after the
14 fact.

15 MS. PINNOCK: I'm sorry?

16 THE COURT: After the fact you come up and
17 say, no, there were other bruises that existed.
18 Nobody ever told me anything about other bruises.

19 MS. PINNOCK: If memory serves me
20 correctly, Judge, I do believe I addressed that
21 initially.

22 THE COURT: Well. I have very little
23 confidence in your memory.

24 MS. PINNOCK: I understand that, Judge.

25 THE COURT: Dictated by this morning when

1 you said, oh, I can't remember what they said, or
2 what I said.

3 MS. PINNOCK: I apologize, my memory was a
4 little off this morning. We can check the
5 transcript. I think I did address it.

6 THE COURT: Memory of convenience to me.

7 MS. PINNOCK: Your Honor, it's my
8 understanding---

9 THE COURT: What other bruises do you
10 allege that existed on this child prior to
11 Ms. Miller going to work?

12 MS. PINNOCK: All of them.

13 THE COURT: Bruises on the top of the
14 head?

15 MS. PINNOCK: Yes, I believe all of them.
16 I'm not talking about the bruises on top of the
17 head. I'm not talking about the bite marks. I'm
18 not talking about a black eye.

19 THE COURT: So all of those, you're saying
20 all of those bruises that the doctors have testified
21 here today existed prior to Ms. Miller going to
22 work?

23 MS. PINNOCK: The only testimony, Judge,
24 that the doctors test-- that the pathologist
25 testified about making an incision on around her

1 legs and her bottom. There was no testimony about
2 doing any incision on her torso or anywhere else
3 where she any had bruises.

4 THE COURT: Well, you just told me all the
5 bruises -- he certainly wouldn't know when these --

6 MS. PINNOCK: I'm not asking when he, if
7 he knew when they showed up. This is information
8 that's in Ms. Miller's statement. She, if nothing
9 else, Judge, denied even she wouldn't acknowledge
10 the statement. So the information was made aware to
11 this investigator---

12 THE COURT: Where you see acknowledged? I
13 heard her say she gave a statement, and you showed
14 it to her. It was 18 pages long, something like
15 that.

16 MS. PINNOCK: She refused to refer to her
17 statement during my questioning, Judge.

18 THE COURT: Well, I don't know about that.
19 She acknowledged she had a statement.

20 MS. MCDUFFIE: Your Honor, the court
21 reporter I believe, at the request of Defense, did a
22 transcript of Ms. Miller's testimony and it says:
23 Ms. Pinnock, "You also remember investigator Scott
24 asking you if K.H. [REDACTED] looked the same as she did
25 that morning at the hospital?" "Yes." "You told

1 her she looked the same; didn't you?" "I don't
2 recall what I said." "Okay, it's on your statement,
3 page 16." "Okay, that's fine." "Okay, so you said
4 she looked the same. You never mentioned swelling.
5 Correct? "I don't know." "Can we agree that it's
6 probably not in there." "It may be not." And that
7 was the extent of Ms. Pinnock's questioning on this,
8 on how K.H. appeared that day. That was the
9 extent of her questioning. I don't think it's
10 proper to try and impeach a witness that the proper
11 foundation hasn't been laid under 613 and---

12 THE COURT: Well, I don't have -- and the
13 way I interpreted that is this, Mr. Pinnock is
14 attempting to show that this child had the bite
15 marks or the black eye which was what the reason
16 told that she didn't go to -- when y'all had
17 pretrials with me, that she didn't go to day care.
18 You didn't want that information to come in to the
19 trial. You thought it was prior bad acts and was
20 not admissible.

21 MS. PINNOCK: Judge, again, I'm not ---

22 THE COURT: Anything that existed prior to
23 whatever could be testified to contemporaneously
24 with the fatal injury.

25 MS. PINNOCK: I'm not referencing the

1 black eye and I'm not referencing the bite marks.

2 THE COURT: Well, he -- I don't know, what
3 is it you're trying to do with him?

4 MS. PINNOCK: Just to ---

5 THE COURT: To get him to say that she's
6 wrong and he's right?

7 MS. PINNOCK: Exactly what I just asked,
8 Judge, that this is what he knew when he came up to
9 talk to my client. Is the information that he had
10 as part of his investigation. It goes to the nature
11 of ---

12 THE COURT: He said he read the statement.

13 MS. PINNOCK: Yes, he read the statement.
14 Before he went down it goes to show what the
15 direction they were going with their investigation.
16 It's, I mean, it's the integrity of his
17 investigation at this point with the information
18 that he had and what he did or did not do with that
19 information. I'm not talking about a black eye.
20 I'm not talking about bite marks. Doctor Rosa I
21 believe testified to 12 different impact wounds on
22 the child's body and all these other injuries. I
23 mean I, I'm not talking about what you ruled on. I,
24 there is a part of her statement that says bruise
25 and bite marks. I'm not asking about bite marks;

1 that was part of your ruling. I'm complying with
2 your ruling. I'm not -- you ruled we cannot talk
3 about the black eye. I'm not talking about a black
4 eye. The State made -- he knew about that before he
5 asked ---

6 THE COURT: Well, you've asked, did he
7 read the statement. He said, yes, he read it and he
8 considered that in general terms along with what the
9 statement was that the other, that the defendant had
10 given the night before.

11 MS. PINNOCK: Yes, he said he read both
12 statements.

13 THE COURT: All right. What else you
14 wanted to -- what else you want him to say?

15 MS. PINNOCK: About the, Ms. Miller's s
16 statement?

17 THE COURT: Yeah, he said he read it.
18 That he considered it.

19 MS. PINNOCK: I mean, just, ---

20 THE COURT: I'm gonna let her ask. He
21 said he read it and he said he considered it prior
22 to meeting with Mr. Gaddist on the morning of the
23 24th. That's all you want?

24 MS. PINNOCK: No, I mean, the question,
25 that I asked that he, about being aware of the

1 reason she didn't go to day care.

2 THE COURT: Well, so you want to ask him
3 what? Does he have knowledge that she made, in her
4 statement she didn't go to day care because she had
5 some injuries on her body?

6 MS. PINNOCK: Yes.

7 MS. MCDUFFIE: How is that relevant?

8 THE COURT: Well, I guess they're trying
9 to show that something else should have been done in
10 this investigation. I can't answer that.

11 MS. MCDUFFIE: Your Honor, I mean, those
12 are the very injuries that had we been allowed to go
13 into them, the testimony would have been from
14 Ms. Miller and from the doctors as it was relayed to
15 them to Ms. Miller, the bite marks happened at a
16 prior time when Mr. Gaddist was watching the
17 children and that the black eye occurred at the time
18 when Mr. Gaddist was watching the children.

19 Mr. Gaddist blamed those injuries on the children.
20 I mean, I don't know, I mean, that's the information
21 that the investigator actually had. That's
22 information that his investigation revealed. So I
23 don't know where she's trying to go.

24 THE COURT: I don't know, but maybe she's
25 gonna open the door on all this with this witness.

1 MS. PINNOCK: I was not going into anymore
2 detail, Judge. It was, was he aware of the
3 information. The testimony was given on Monday ---

4 THE COURT: What does the statement say?
5 My recollection is she testified at trial that ---

6 MS. CAMPBELL: She was late.

7 THE COURT: ---she didn't take her because
8 she was running late.

9 MS. MCDUFFIE: That's correct, Your Honor,
10 and that was also what she was crossed on about and
11 Ms. Pinnock did not choose to impeach her with the
12 prior statement.

13 MS. PINNOCK: Your Honor, the statement,
14 her answer says, "I didn't take them today because I
15 got up too late, I would have to have them there by
16 9:00. I was too late, I was also unable to them
17 because the twins had been rough with each other. I
18 can't take one without the other. **K.H. 2** cries when
19 **K.H.** isn't with him. I didn't want to take
20 **K.H.** because she had bruises on her ribs. She
21 also had bite marks on her side from **K.H. 2**." She
22 had bruises. That's all I asked. I didn't ask
23 about anything else.

24 THE COURT: All right. Well, you can ask
25 him, did he have information the child had bruises

1 on her ribs, from having read the statement.

2 MS. PINNOCK: Thank you.

3 MS. MCDUFFIE: Your Honor, but we, we
4 instructed our witnesses specifically that she
5 couldn't talk about that so now it looks like she's
6 misleading the jury or not providing information to
7 the jury because ---

8 THE COURT: Well, in reply y'all may have
9 to bring somebody back in that said those injuries
10 occurred prior to this incident and how they
11 occurred.

12 MS. CAMPBELL: And if I could, Your Honor,
13 I also informed Ms. Pinnock that in going over the
14 statement with Ms. Miller that the only part she
15 said wasn't right was she never said there was never
16 bruises on the child's ribs; and Ms. Pinnock laughed
17 at me and said, well, that's that not a problem now,
18 we aren't going into all that.

19 THE COURT: Well, that'd be inconsistent
20 with what we have in this case.

21 MS. MCDUFFIE: No.

22 THE COURT: I'm going to let her ask it,
23 but if y'all want to bring somebody back or bring
24 another witness up, re-call somebody, you know, just
25 y'all decide what you want to do and I'll deal with

1 it.

2 MS. MCDUFFIE: Your Honor, we would ask
3 the witness be allowed to respond with the truth.

4 MS. CAMPBELL: With the truth about the
5 bite marks and about the black eye when he was
6 taking care of the child and all that.

7 THE COURT: Well, I don't know what he
8 found out in the course of investigation.

9 MS. CAMPBELL: I think we ---

10 THE COURT: She asked if he read the
11 statement.

12 MS. CAMPBELL: Okay. We just ask he be
13 able to go further in that to rehabilitate him. If
14 she wants to go there we should be able to
15 rehabilitate the whole issue with him and go into
16 the facts.

17 THE COURT: Maybe you can. Maybe you can
18 then take her statement, did he also have
19 information that the child had bite marks and ---

20 MS. CAMPBELL: And who was taking care of
21 her at that time and that stuff.

22 THE COURT: All right, bring in the jury.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 4:45 p.m., and
25 the following proceedings commenced in

SW - S. FAUST - CROSS

1 open court.)

2 BY MS. PINNOCK:

3 Q Investigator Faust, you are aware that Ms. Miller
4 did not take K.H. to school May 23rd
5 because she said she had bruises?

6 A That is -- yes.

7 Q Okay.

8 A And if I may, that was part of the reason.

9 Q Okay. What time did you go down to get Antwan
10 out of the lobby?

11 A Approximately 9:15.

12 Q And you said he was sitting there with his
13 mother?

14 A He was.

15 Q And that's Ms. Suzette Gaddist?

16 A I, that -- yeah, if that's her first name.

17 Q Did you allow Ms. Gaddist to come upstairs?

18 A I did not.

19 Q You didn't. Did she ask to come upstairs?

20 A If she did I would have told her no.

21 Q So you just told her to wait in the lobby and you
22 and Antwan went to the second floor?

23 A That's correct.

24 Q When you got there you didn't go immediately into
25 Investigator Isenhoward's office?

SW - S. FAUST - CROSS

1 A No, because I didn't have an office to go into as
2 I stated. I had him sit in a waiting type area and
3 where there's some chairs in the hallway and then I
4 went to locate an office.

5 Q And do you know approximately how long you were
6 gone?

7 A I don't think it was more than a couple of
8 minutes because I immediately bumped into Kevin and
9 I said, briefed him, well, one, asked if he could
10 assist, could we use his office and then this is
11 when I got his minute or two or three. It wasn't
12 that very detailed because we wanted to get started.

13 Q Okay. But when you came back Antwan was still
14 sitting there?

15 A That would be correct.

16 Q All right. So y'all make it to Investigator
17 Isenhoward's office, and you said one of the first
18 things you do is advise him of his rights?

19 A Well, we had a brief non-conversation about this
20 incident, which I stated earlier, about asking how
21 K.H. was. And then when we got down there I
22 stated, well, we're here to talk about K.H. and
23 before we do I want to advise you of your rights and
24 then at that point I did.

25 Q Okay. Since you mentioned it, again, when you

1 were walking you asked how K.H. [REDACTED] was, Antwan said
2 that she's doing better, she's off the ventilators?

3 A That's what he said.

4 Q And you said that was good news?

5 A I thought that was good news.

6 Q You hadn't talked to any doctors at that point so
7 you didn't know if that was true or not.

8 A I did — well, I assumed it was true; that's what
9 he said. I figured he had talked with the family
10 and knew that that was the information.

11 Q You had no reason no doubt him at that point,
12 right?

13 A No.

14 Q After you advised him of his rights you say, you
15 pretty much said, you know, explain to us what
16 happened yesterday?

17 A Yes.

18 Q And he told you the exact same thing he told
19 Investigator Carter?

20 A Well, he — I don't know that — obviously his
21 story was, the pages were a little bit longer. When
22 I asked him, I said can you tell me what happened.
23 He stated, I said, how did she get hurt. He said
24 that she was laying on the bed.

25 Q He found her laying on the bed.

SW - S. FAUST - CROSS

1 A That's it.

2 Q And you told him that was medically impossible?

3 A I stated that those injuries were med-- the
4 doctor said that's medically impossible.

5 Q And ---

6 A That baby is not going to be laying on the bed
7 and have a brain injury and stop breathing.

8 Q What doctor had you talked to?

9 A The information through Investigator Carter,
10 through him talking to the Doctor Rosa night before.

11 Q So, nobody. You didn't actually talk to a
12 doctor?

13 A I got information from a trusted investigator
14 that this is the injuries.

15 Q All right. So you asked him again what happened.
16 Tell us what happened.

17 A I said that, that's it.

18 Q And after you tell him that for the second time
19 after he's told you what he told Investigator
20 Carter, he says maybe she fell and that's how she
21 got hurt?

22 A That was his next -- yes.

23 Q You told him that was physically impossible?

24 A I said that I, stated what I said, that if she
25 fell off the bed that it was physically impossible

1 hat if she fell off the bed and was unconscious, how
2 could an unconscious baby climb back up on top of
3 that bed and did you not hear her crying.

4 Q All right. So you told him it was physically
5 impossible?

6 A Just that quick, yes.

7 Q At that point you said you started asking him if
8 he got upset because there was potential poop on the
9 floor and he said, no, the kids don't do, it was
10 probably food. So at that point you said to you
11 that, well, you know, was she crying and did you
12 shake her because of that, right?

13 A That's what I said.

14 Q Okay. And that's the first time anybody had ever
15 mentioned crying at any point?

16 A That's what I said, yes.

17 Q All right. The only information you had was the
18 information Investigator Carter had from his
19 statement saying that Antwan found K.H. in bed?

20 A That is correct, but there's a reason why I asked
21 that question.

22 Q Were you taking notes when you were talking to
23 him?

24 A No.

25 Q You don't take any notes when you're talking to

SW - S. FAUST - CROSS

1 him?

2 A They were transcribed shortly thereafter, the
3 statement.

4 Q Was Investigator Isenhoward taking notes?

5 A No, we were in communication. I typically like
6 to observe the person I'm talking to.

7 Q Right. You said you don't do video or audio
8 recordings?

9 A That is our policy, yes, ma'am.

10 Q Okay. It's a hardline policy; there's no getting
11 around it?

12 A If the sheriff says don't do it and we don't have
13 equipment, we're not going to do it.

14 Q You said you do have your report in front of you,
15 right?

16 A I do.

17 Q Can you turn to page 3. At some point you went
18 out and spoke to Ms. Bessie Gilliard, right?

19 A At the day care. I just don't see -- oh, there
20 it is. I do.

21 Q And when you said when you were there talking to
22 her trying to get the attendance records and stuff
23 from the day care you witnessed somebody dropping
24 their child off?

25 A That is correct.

1 Q And it was 10:00 in the morning?

2 A That is correct.

3 Q After 9:00?

4 A Yes.

5 Q Right?

6 A Yes.

7 Q Okay. So you talked to her?

8 A Yes.

9 Q Took her information down?

10 A Yes, ma'am.

11 Q And you got the name of the day care where the
12 children attended from Ms. Miller's statement,
13 right?

14 A I got it, yes.

15 Q Okay.

16 A I got it somewhere. I got it, yes. And I knew
17 that's where the kids had been. I went and got the
18 attendance records.

19 Q And while you were there you witnessed a child
20 being dropped off at 10:00?

21 A That's correct.

22 Q Beg the Court's indulgence. One last question,
23 Investigator. We just listened to some phone calls,
24 right?

25 A Yes, ma'am.

SW - S. FAUST - REDIRECT

1 Q And are recordings at the Sheriff's Department?

2 A Yes, ma'am.

3 Q All right, thank you.

4 THE COURT: Anything further?

5 MS. MCDUFFIE: Briefly.

6 **REDIRECT EXAMINATION**

7 BY MS. MCDUFFIE:

8 Q Ms. Pinnock asked you about bruises on K.H. [REDACTED]

9 for the reason and she didn't go to day care?

10 A Yes.

11 Q We haven't been able to talk about that till now.

12 Through the course of your investigation did you

13 also learn about prior injuries that had been

14 inflicted on K.H. [REDACTED] while she was in the

15 defendant's care?

16 A That's correct.

17 MS. PINNOCK: Objection, she's leading.

18 THE COURT: Sustained.

19 BY MS. MCDUFFIE:

20 Q What injuries did you learn of?

21 THE COURT: Well, we're not going there.

22 MS. MCDUFFIE: Thank you, Your Honor.

23 THE COURT: Anything else? Anything else?

24 MS. MCDUFFIE: No, Your Honor.

25 THE COURT: All right, thank you. You

SW - K. ISENHOWARD - DIRECT

1 may step down.

2 Call your next witness.

3 MS. CAMPBELL: Sergeant Kevin Isenhoward.

4 WHEREUPON,

5 **KEVIN S. ISENHOWARD,**

6 having been duly sworn by the Court, testified as
7 follows:

8 THE COURT: All right, have a seat. Tell
9 us your full name please.

10 THE WITNESS: My name is Kevin Scott
11 Isenhoward.

12 **DIRECT EXAMINATION**

13 BY MS. CAMPBELL:

14 Q Sergeant Isenhoward, where are you employed?

15 A Richland County Sheriff's Department.

16 Q What do you do there?

17 A I'm a sergeant with the major crime unit.

18 Q What do your duties include?

19 A I supervise the major crimes unit and that unit
20 investigates robberies, homicide, suspicious death,
21 assaults, things of that nature.

22 Q How long have you been in law enforcement?

23 A Sixteen years.

24 Q I want to turn your attention back to May 24th of
25 2011. Were you initially involved in the

SW - K. ISENHOWARD - DIRECT

1 investigation of this case?

2 A I was not initially.

3 Q That morning after did you come in contact with
4 Sergeant Faust?

5 A I did.

6 Q And what was he wanting you to do that day?

7 A Once he needed some space, like he's testified
8 to, we have a problem just focus a he needed some
9 space to conduct an interview and I have an office.
10 He also needed another person. Typically if this is
11 the major crime we like to have two officers present
12 for the statement of the person. He needed someone
13 else to be there with him. I didn't have anything
14 to do at that time till I officers my office told
15 him I would assist and he gave me a real brief
16 synopsis what he think at that point in time about
17 the child and her injuries.

18 Q What happened next?

19 A He went and I assumed Mr. Gaddist was there in
20 the waiting room. I didn't walk around with him.
21 He brought Mr. Gaddist to where I was at in my
22 office and introduced the two of us. We sat down,
23 spoke briefly with the two of them, mostly I think
24 spoke about the child's condition. And then he
25 basically said that we're gonna talk about what

SW - K. ISENHOWARD - DIRECT

1 happened, how, what happened to the child and he was
2 advised of his rights.

3 Q I show you what's been marked as State's Exhibit
4 Number 119. Do you recognize that?

5 A Yeah, this is the advice rights form Mr. Gaddist
6 was read from and acknowledged and signed.

7 Q And why did y'all think it was presumed to go
8 ahead and advise him of his rights at that, at this
9 point?

10 A Well, I mean, we knew that he was the sole
11 caregiver at the time. When the child believed the
12 child received injuries obviously he's a suspect in
13 the case. Somebody suspected of a crime we're gonna
14 advise him of their rights so they now, they're
15 gonna give us a statement of a criminal matter and
16 we want to know what their rights are. We want it
17 to be freely and voluntarily.

18 Q So by the next morning you had been army to
19 determine at the time shoal person in Be the time at
20 the time the injury occurred you were you at that
21 point you got medical information?

22 A Faust had received some information which he read
23 them.

24 Q And also initial statements from both the
25 defendant and the mother?

SW - K. ISENHOWARD - DIRECT

1 A Yes.

2 Q This interview tapings him your office?

3 A I did.

4 Q And how many people were actually in their that
5 day?

6 A In my office? Just the three of us.

7 Q And was he under arrest there initially?

8 A No.

9 Q And in fact, once he had been advised of his
10 rights did he indicate whether or not he understood
11 his rights?

12 A He did.

13 Q Sergeant Faust already testified today to some of
14 this. You witnessed all this, right?

15 A I did.

16 Q At any point did he tell, did ---

17 A No.

18 Q At any point did he indicated he wanted to leave?

19 A No.

20 Q And at that point if he wanted to leave would he
21 have been free to go?

22 A Absolutely.

23 Q When he had been advised of his rights and chose
24 to waive his rights, did y'all then start talking to
25 him?

SW - K. ISENHOWARD - DIRECT

1 A Yes, we did.

2 Q Tell the jury how that happened.

3 A Obviously he had given a statement the night
4 before, and I was not able to read that entire
5 statement but I got a synopsis of it from Faust. He
6 basically rehashed that, initially said that he had
7 found the child in the bed lying there unresponsive
8 and then some back and forth question and answers
9 between us. It progressed to he believed the child
10 must have fallen off the bed and, again, you know
11 obviously we had some issues with that.

12 Q And what happened next?

13 A We continued to press him to explain to him that
14 there was a problem with that statement, it didn't
15 make sense. We appealed to him to tell us the
16 truth, we need to find out what's wrong, what
17 happened, and move on. And you could see that our
18 words were affecting him. He was listening to us;
19 he became emotional. He kind of dropped down and
20 started crying and then basically told us he was
21 gonna tell us happened.

22 Q And at any point -- let me ask you this, what was
23 the tone of this conversation or this interview?
24 What was going on?

25 A It was a conversation, I mean, typical

SW - K. ISENHOWARD - DIRECT

1 conversation you would have with someone. Now you
2 know, there's some feeling in the voice because I'm
3 telling him why we're pleading with him, tell, we
4 know what he's telling us is not true, we know it.
5 So we're pleading with him to tell us the truth,
6 that there's nobody yelling at anybody, it's not
7 CSI, that no one is pounding any desks or anything
8 like that, just talking to him. And he wants to
9 talk to us. The example is that is, that he
10 actually does change his story and tell us what
11 happened.

12 Q Did he appear to understand your questions?

13 A Oh, absolutely.

14 Q Did he appear to understand them when he was
15 advised of his rights?

16 A He did.

17 Q At any time during dug his ability to understand
18 what was going on that day?

19 A Not at all.

20 Q Have there been other people you interviewed that
21 you were concerned about?

22 A Yeah, throughout my career sometimes you have
23 some concerns about, you know, if you ask questions
24 and the answers don't make sense, they don't match
25 with the question, people are intoxicated or you

SW - K. ISENHOWARD - DIRECT

1 think mental illness, then yeah, I've had that
2 occur, but not this case.

3 Q No evidence of any kind? No, he appeared
4 coherent and able to understand?

5 A He did.

6 Q And his first story to you, all -- was that when
7 he was talking to you verbally he found the child in
8 the bed unresponsive?

9 A Unconscious I think is what he said.

10 Q And then what happened?

11 A We would, like I said, you know, he progressed
12 the child must have fell out the bed, you know, we
13 had some issues with that. Then he moved on, he
14 broke down and cried and he said, okay, I'm gonna
15 tell you up front and he went through the whole part
16 about shaking the child and he said initially you
17 know, asked him to be specific on what happened and
18 so he kind of was just telling us that he wrapped
19 his hands around the child and he took her, shook
20 her for several minutes. He heard the testimony but
21 he says several minutes; and I guess this
22 conversation, you know, several minutes, that's not
23 a long time but we know that anything that goes
24 on -- a fight, a fistfight between two men that goes
25 on for several minutes is a long time. So we wanted

SW - K. ISENHOWARD - DIRECT

1 to make sure he's actually telling us that, you
2 know, did you shake this child for several minutes
3 'cause if you did, that's a long time, that's
4 dangerous, it's bad. And he was, he was firm on it.
5 And we went through the whole kind of counting out
6 the time, or Faust did; but he was, he was adamant
7 that he shook the child for several minutes.

8 Q Did he demonstrate how he shook the child and how
9 he held the child when he shook her.

10 A He did. He kind of just did this initially
11 before I went and get, you know, something to
12 demonstrate on but. Initially, he just kind of
13 grabs it like this. And when someone is -- they're
14 reliving an event when they're telling, this --

15 MR. STRICKLER: Objection, Your Honor.
16 This is speculation by --

17 THE COURT: Sustained. Just tell them
18 what he said, what you observed.

19 BY MS. CAMPBELL:

20 Q Just describe it for us.

21 A Okay. He put his hands up like this and he
22 started shaking and he kept shaking, he kept
23 shaking. And he, you know, he went on and on and
24 saying, you know, (indicating) I kept shaking her,
25 kept shaking her and basically says he shook her

SW - K. ISENHOWARD - DIRECT

1 until she went unconscious and then that he got
2 upset, he called the mother. He wanted to know what
3 to do, call 9-1-1, he had to perform CPR. He talked
4 about in his statement to us, about holding the
5 child up and I think patting her on the back trying
6 to, I guess, clear an airway or something; but
7 patting her on her back and he said he was adamant
8 that that was not real aggressive, just light
9 tapping on the back. And then obviously contacted
10 9-1-1 -- I think she did; and, but he was on the
11 phone and the ambulance responded.

12 I then, for me, and I wanted to see, I
13 wanted to see how he was holding her and I wanted
14 something to, for it to be displayed on so I knew we
15 head -- we have teddy bears in the secretary's
16 office. We have stuffed, you know, this was a teddy
17 bear. We have various stuffed animals we use to
18 comfort children all of, you know, in the middle of
19 the night sometimes we have kids who are injured or
20 parents were injured, we have them in our office so
21 we try and have things they're familiar with to give
22 them some comfort. So, I understood that the kid,
23 the child in question here and was a little over a
24 year old, the teddy bear I got is about that same
25 size, let's say roughly. So I brought it around to,

SW - K. ISENHOWARD - DIRECT

1 for him to demonstrate on. And handed him and I
2 said, I want you to show me exactly, exactly what
3 you did. And when he grabbed the teddy bear
4 (indicating), I could see the pressure he was
5 putting, first of all, with his hands around the
6 bear itself. You know, he's squeezing the bear.

7 MR. STAGGS: Objection, Your Honor. We
8 addressed this earlier.

9 THE COURT: Well, I'm gonna let him tell
10 what he observed, overruled.

11 MS. CAMPBELL: Thank you.

12 THE WITNESS: So he's squeezing this bear,
13 it's hard, and then he starts to shake. He's
14 shaking the bear (indicating.) And he's, I mean,
15 it's, I'm looking at it and I'm thinking wow. But
16 he is shaking this bear; and the head of the bear is
17 bouncing back and forth and back and forth. And it
18 was just, I mean, the word I can use to describe is
19 violent, it was violent. And it was, you know, I
20 typically deal with bigger people; but I was just
21 thinking that, you know, this is a baby so. But he
22 went on for, like I said, a minute or so shaking
23 that bear; and I mean, that was his demonstration I
24 guess.

25 Q Once you think he finished with his demonstration

SW - K. ISENHOWARD - DIRECT

1 what happened next?

2 A I think, you know, we talked to him and wanted to
3 make sure he was ready to put this down on paper. I
4 mean, he has the option, he doesn't have to. But he
5 agreed to write, wanted to write down the statement.
6 So at this point he had a statement that he had
7 given the night before to the other investigators so
8 basically we're gonna make a second statement which
9 effectively changes his first statement. So we did
10 that. And again, we're in my office, I'm familiar
11 with it, so I actually took the statement from him.
12 And the way we do that is, we read the question or I
13 have propose a question to you, and then whatever
14 your answer is I type down or word for word as best
15 I can so that it makes sense. And then when we're
16 done with the statement, you have the right and the
17 ability to read it and if you don't like the way
18 something sounds, even though that's the way you
19 said it to me, you don't like the way it sound when
20 it's written down, you can change it and then we'll
21 print it back out. You can -- some people just want
22 to scratch out with a pen and change it or people
23 want me to retype the whole thing and I'll do
24 whatever they want 'cause it's their statement;
25 they're gonna put in there whatever they want to put

SW - K. ISENHOWARD - DIRECT

1 in there.

2 Q Okay. In this case after the statement was
3 reduced in a typewritten form, did he have
4 opportunity to review it?

5 A He did.

6 Q And did he indicate he wanted to make some
7 changes?

8 A He did. He did.

9 Q I show you what's been marked State's Exhibit
10 Number 120. Do you recognize that?

11 A I do.

12 Q And what changes are noted on there that he
13 actually wrote and initialed himself?

14 A So when he's giving me, you know, we're naming
15 some of the other children, some of the other
16 parties in this, I misspelled according to the way
17 this child's name was spelled, called **K.H.2**. I'm
18 familiar with a different spelling. He corrected me
19 which we noted and he initialed and Scott Faust
20 initialed, and I think he did it several times
21 throughout the statement.

22 Q And those were the changes that he wanted to
23 make?

24 A That's right. And that's significant because he
25 obviously can read it 'cause he read it and made a

SW - K. ISENHOWARD - DIRECT

1 change to it, so he can read.

2 Q So he was able to make those changes?

3 A Right.

4 Q And once those changes had been initialed and
5 changed, did he then acknowledge the statement?

6 A He did.

7 Q And how did he acknowledge the statement?

8 A He signed it when he -- when it was to his
9 satisfaction he signed saying that he, this was
10 given without threat, promise or reward, and that we
11 offered him a copy of it and he received a copy of
12 the statement so he actually signs twice on each
13 page of the statement.

14 Q And was that witnessed by you?

15 A It was.

16 Q And who else was there?

17 A Sergeant Scott Faust.

18 Q And State's Exhibit 120, is that the actual
19 statement?

20 A This is the actual paperwork.

21 MS. CAMPBELL: Your Honor, at this time
22 I'd offer it into evidence. It's been provided to
23 Defense.

24 MR. STAGGS: No objection, Your Honor.

25 THE COURT: So admitted.

SW - K. ISENHOWARD - DIRECT

1 (WHEREUPON, State Exhibit No. 120 was
2 admitted into evidence.)

3 MS. CAMPBELL: Permission to publish.

4 THE COURT: You may.

5 BY MS. CAMPBELL:

6 Q Can you go through the statement for the jury?

7 A Yes. "Statement of Antwan Lydell Gaddist, date
8 of birth [REDACTED] [REDACTED] Joyner Road, Columbia, South
9 Carolina 29209. Columbia, South Carolina, made at
10 Columbia, South Carolina this 24th day at 10:30 in
11 the morning in the presence of Sergeant K.
12 Isenhoward and Sergeant S. Faust of the Richland
13 County Sheriff's Department. I, Antwan Gaddist,
14 understand I have the right to remain silent.
15 anything I say can be used against me in court. I
16 have the right to talk to a lawyer for advice before
17 you ask me any questions and have a lawyer present
18 with you during any questioning. If I cannot afford
19 a lawyer, one will be appointed to you before any
20 questioning if I wish. If I decide to answer
21 questions now without a lawyer present, I still have
22 a right to stop answering at any time. I also have
23 the right to stop answering at any time until I talk
24 to a lawyer. Do make this following statement" --
25 and we started off Q, it's just identifying people

SW - K. ISENHOWARD - DIRECT

1 asking questions and then R is the people
2 responding. In this case Q is K. Isenhoward and as
3 far as R, it's Antwan Gaddist. "Question, do you
4 want to make a second statement about the injuries
5 to K.H. [REDACTED]? Response: Yes. Question, tell us
6 what happened truthfully. Response, my girlfriend,
7 my girlfriend Miesha went to work around 11:10 a.m.
8 I was at the home, house alone with the children. I
9 was feeding K. H. 2. K.H. [REDACTED] was still asleep at
10 the time. I went to go feed K.H. [REDACTED]. She was
11 asleep and I got her up out of the bed. She started
12 crying right away. I started shaking her to try and
13 calm her down; I thought it would help her. I was
14 shaking her for a couple of minutes. She went
15 unconscious. I called Miesha and told her she was
16 unconscious and asked her what to do. She told me
17 to call 9-1-1. She called from her phone with me on
18 three way calling. The dispatcher was telling me
19 how to do CPR. She" -- and it's continued. "Told
20 me to hold her nose and blow in her mouth. I was
21 doing this on the floor in the kid's room. I did it
22 a while there, then I took her into the room that me
23 Miesha sleep in. When I was doing CPR I saw blood
24 coming from her nose a little bit and some white
25 stuff coming from her nose. I would wipe the blood

SW - K. ISENHOWARD - DIRECT

1 and white stuff with a towel and do CPR again. I
2 would also pick her up and put her on my shoulder
3 and pat her on her back. I didn't know what to do.
4 I was trying anything. I did CPR all the way up
5 until the ambulance got there. Question, how much
6 time passed between the time that you first shook
7 K.H. [REDACTED] and the time when you Miesha and 9-1-1.
8 Response, a few minutes after I realized I realized
9 she was unconscious, less than five minutes.
10 Question, can you explain how you held and shook
11 K.H. [REDACTED]? Response, I held her under her
12 straight" — that's an error. "I held her straight
13 up with my hands under her armpits. My hands were
14 wrapped around her from front to back. I was face
15 to face with her. I shook her for about a minute
16 and she went unconscious. Question, please explain
17 to us why exactly you shook K.H. [REDACTED]. Response, she
18 was crying. She wouldn't stop crying, I was trying
19 to stop her from crying. Question, did you
20 demonstrate to us how you shook K.H. [REDACTED] on a
21 stuffed Teddy bear in my office today accurately?
22 Response, yes, sir. Question, where was K.H. 2 when
23 you were with K.H. [REDACTED] Response, he was in the
24 house somewhere. Question, have you shaken
25 K.H. [REDACTED]? Response, no, sir." And I think that

SW - K. ISENHOWARD - DIRECT

1 should be K.H. 2. "Question, have you ever hit
2 K.H. before? Response, no, sir. Question, did
3 you use towels and washcloths to wipe the blood from
4 her face? Response, yes, sir. Question, did you
5 change your shirt prior to EMS responding?
6 Response, yes, the other shirt had her blood on it.
7 I told Investigator Carter where it was in the dirty
8 clothes. Question, just to be sure, did you ever
9 strike K.H. during this event? Response, no,
10 sir, I just shook her. Question, have you ever
11 shook K.H. 2? Response, no, sir. Question, have
12 you ever struck K.H. 2? Response, no, sir.
13 Question, is there anything else you would like to
14 add to this statement? Response, I want to say that
15 I apologize. I didn't mean to do it. I was just
16 trying to calm her down. I pray that she pulls
17 through this. My heart goes out to her." And
18 that's the end of the statement which is
19 acknowledged with his signature and our signature.
20 Q At any time during the time you spent with him
21 that day did anyone ever threaten him in any way?
22 A No.
23 Q Did you promise him anything to make him talk to
24 you?
25 A No.

SW - K. ISENHOWARD - DIRECT

1 Q Did you intimidate him?

2 A No.

3 Q Or force him?

4 A No.

5 Q At any time did he invoke any of his rights?

6 A No, he didn't.

7 Q And in your experience was he talking to you
8 because he wanted to?

9 A Absolutely.

10 Q You mentioned that he changed his story. Is that
11 unusual in your experience?

12 A Not at all.

13 MR. STAGGS: Objection, Your Honor, that's
14 speculation.

15 MS. CAMPBELL: Witness's experience.

16 THE COURT: I sustain it. Proceed.

17 BY MS. CAMPBELL:

18 Q In his statement he talked about his T-shirt?

19 A Yes.

20 Q And did he indicate when he took the T-shirt off
21 and threw it in the?

22 A Prior to the ambulance arriving and calling 9-1-1
23 I believe.

24 Q So prior to the ambulance arriving he changed his
25 clothes?

1 A Sure, yes.

2 Q And did he indicate whether he ever called 9-1-1?

3 A He said that he didn't know what to do. He
4 called Miesha and she called 9-1-1 while he was on
5 the line basically three way calling so he -- no, he
6 didn't call.

7 Q That's all I have.

8 THE COURT: All right. All right, Mr.
9 Staggs.

10 MR. STAGGS: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. STAGGS:

13 Q Sergeant Isenhoward, I'll be as brief as I
14 possibly can. You and Sergeant Faust used your
15 office, correct?

16 A We did.

17 Q Before that Faust has told us that he briefed you
18 on the case?

19 A Yes.

20 Q About how long did y'all speak prior to?

21 A You know, I wasn't timing it but probably just a
22 minute or two.

23 Q Okay. You didn't know how ol [K.H.] was,
24 right?

25 A How would?

SW - K. ISENHOWARD - CROSS

1 Q Correct.

2 A I just knew she he was an infant. I believe
3 around a year.

4 Q Seventeen months old?

5 A Okay.

6 Q And you didn't know how much she weighed at the
7 time, did you?

8 A No.

9 Q And you didn't actually know what her specific
10 injuries were at that time, did you?

11 A I knew that she had head injuries I believe.

12 Q Okay. And you didn't review Antwan's statement
13 from the night before that he gave to Investigator
14 carter, did you?

15 A I just got a summary, yeah.

16 Q Okay. Did you take any notes while this
17 interview was going on?

18 A Notes?

19 Q Sure?

20 A No, we wrote a statement.

21 Q Okay, so, but that's done after the fact, right?
22 You guys have a conversation for a while, that's
23 what we've heard is you guys had a that
24 conversation, then you reduced it to writing. You
25 don't take any notes while you're talking, right,

SW - K. ISENHOWARD - CROSS

1 the first part of it. Your notes are on the
2 computer as ---

3 A It's one event, okay. We're talking and then we
4 memorialize it in a statement so, I mean, it's all
5 ---

6 Q Okay, but ---

7 MS. CAMPBELL: Objection.

8 THE WITNESS: This is -- it's all taking
9 place in, I don't know, 45 minutes to an hour and
10 it's not that I don't need to know it from three
11 weeks from now.

12 BY MR. STAGGS:

13 Q Okay, so, but you do an interview, then you ask
14 Antwan if he wanted to put it in writing; is that
15 correct?

16 A That's correct.

17 Q Okay, all right. You also prepared a report in
18 this case, right?

19 A I did.

20 Q And can you tell us when you prepared your
21 report?

22 A When?

23 Q Yes, sir.

24 A I, probably within a day or so, I don't know. We
25 use a computer system and I log in and write down,

SW - K. ISENHOWARD - CROSS

1 you know, my portion of the investigation.

2 Q So you'd say within about 24 hours?

3 A I don't know if it was within 24. It was
4 probably within a week.

5 MR. STAGGS: Your Honor, may I approach
6 the witness.

7 THE COURT: Sure.

8 BY MR. STAGGS:

9 Q This is a copy of the ACISS Investigative
10 Followup Report?

11 A Uh-huh.

12 Q Could you tell me what that date is?

13 A It says July 2nd, or I'm sorry, yeah, 7/2/2013.

14 Q This one up here at the top.

15 A 8/26/2011.

16 Q Okay. Does that say report date next to it?

17 A That's what it says but that's when it's loaded
18 into ACISS. ACISS is investigative management
19 system. We actually write, I write my investigative
20 followup, I'll store it on my computer 'cause, you
21 know, I may be involved in this again at some point
22 down the line. Generally when the case becomes,
23 gets to the point where it's complete, it's gonna be
24 submitted, then I'll lead it into the ACISS system.

25 Q Okay, so that's the data compiling system for the

1 Sheriff's Department?

2 A Yeah, right.

3 Q Okay, and you -- but you made the note and you
4 saved it on your computer and then load it into the
5 file later?

6 A Yeah, I'm sure that's what happened, yeah.

7 Q All right. Now when you started the interview
8 and you started the interview, Antwan repeated what
9 he had told sergeant or Investigator Carter the
10 night before, right? He came in, found her
11 unresponsive, correct?

12 A Yes, basically.

13 Q And he was told that was medically impossible; is
14 that correct?

15 A He was told that it was impossible for her to
16 have fallen out of the bed and received an injury
17 substantial enough that -- or the cause -- well, for
18 something happened when she fell to cause those
19 injuries, she can't back in the bed on her own.

20 Q I understand that; but first we weren't talking
21 about falling out of the bed, were we? He told you
22 he came in and found her unresponsive on the bed; is
23 that correct?

24 A That's right.

25 Q And that's what he told Investigator Carter the

SW - K. ISENHOWARD - CROSS

1 night before, right?

2 A I believe so.

3 Q And you told him it was medically impossible? He
4 was told it was medically impossible at that time,
5 correct?

6 A He was told that it couldn't have happened that
7 way I believe.

8 Q Okay, then this issue of falling out of the bed
9 comes up and he's told that that's physically
10 impossible, correct?

11 A Yes.

12 Q All right. In your report you describe it as
13 continued questioning before we get to the shaking,
14 right?

15 A Yes.

16 Q About how long would you say that went on?

17 A I don't know, 10, 12 minutes.

18 Q Okay, all right. Now I want to talk about this
19 bear for just a minute, okay?

20 A Okay.

21 Q You've already told us you didn't know how much
22 K.H. weighed, correct?

23 A That's correct.

24 Q Okay. This bear didn't weight 12 pounds, did it?

25 A No.

1 Q Okay. And this bear didn't have a spine, did it?

2 A Nope.

3 Q It didn't have the bone structure, it didn't have
4 the muscular structure, right?

5 A No [K.H. █████] did.

6 Q Okay, that's true. Okay. After this bear
7 incident you actually reduced the statement to
8 writing, right?

9 A We did.

10 Q And Antwan signed it?

11 A Yep. Yes, I'm sorry.

12 Q Sergeant Faust steps out of your office, is that
13 correct, makes a phone call?

14 A He does, yes.

15 Q And you were sitting in there with Antwan?

16 A Yes.

17 Q While that was going on?

18 A Yes.

19 Q And you remember about how long he was gone?

20 A No.

21 Q And then he came back and he took Antwan into
22 custody. They left your office?

23 A Yeah, I'm trying to remember if he stepped out
24 and then when Faust came back we wrote the statement
25 and then he left or, I can't...

SW - K. ISENHOWARD - CROSS

1 Q So there's some confusion on that issue, I mean,
2 the phone call statement, statement, phone call.
3 We're not clear on that, right?

4 A Yeah.

5 Q All right. Regardless, once Sergeant Faust comes
6 back in, Antwan leaves your office, your involvement
7 in this case is over with?

8 A Yes, yes.

9 Q All right. Beg the Court's indulgence. Oh,
10 Investigator Isenhoward, didn't Antwan tell you when
11 he was holding K.H. she's having blood and white
12 stuff coming out of her mouth?

13 A Yeah, he spoke about blood ---

14 Q While he had her on his shoulder?

15 A Yes.

16 MR. STAGGS: Okay, beg the Court's
17 indulgence for just a moment, Your Honor.

18 BY MR. STAGGS:

19 Q Just a couple more things. Besides the three
20 page statement, was your interrogation of Antwan
21 recorded on audio or video?

22 A No.

23 Q And that's because there's a top down policy at
24 the Richland County Sheriff's Department not to do
25 so; is that correct?

SW - K. ISENHOWARD - CROSS

1 A It's our policy. It's also, like I said, it
2 gives a person the ability to control what the
3 statement is, you know, make changes. So a lot of
4 departments do it like we do; a lot record
5 everything they do.

6 Q So -- okay. It's an institutional decision not
7 to record, right?

8 A It's a decision, it's not as much not to record,
9 it's just to do it this way. Does it make sense to
10 you?

11 Q That's fine with me.

12 A Okay.

13 Q Thank you.

14 THE COURT: Anything on redirect?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Thank you. You may step down.

17 THE WITNESS: Thank you. Anything else
18 from the State?

19 MS. CAMPBELL: May I approach.

20 (WHEREUPON, counsel approached the Bench
21 for an off-the-record discussion.)

22 THE COURT: All right, ladies and
23 gentlemen, we're gonna go ahead and break for the
24 evening. I ask you to be here tomorrow morning.
25 We'll start up at 9:30. Please don't discuss the

1 case with each other or with anyone else you come in
2 contact. Please don't do investigation, make any
3 inquiry, get on the computer, do anything but get a
4 nice good sleep tonight, and we'll come back in the
5 morning and begin. Again, so y'all have a nice
6 evening and we'll see you tomorrow morning.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 5:38 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: All right, apparently the
11 State wants to think a little bit about what it
12 might, might want to do in the morning; but my
13 suggestion is that y'all be ready to go in the
14 morning. Y'all have, you still plan on having
15 experts on Monday?

16 MS. PINNOCK: Yes, sir.

17 THE COURT: No experts tomorrow?

18 MS. PINNOCK: No experts tomorrow.

19 THE COURT: How many witnesses will you
20 have tomorrow? What kind of day are we looking at?

21 MS. PINNOCK: Our witnesses are not gonna
22 take long, probably six, seven, seven total. They
23 should not take too long.

24 THE COURT: Does one of them include your
25 client?

1 MS. PINNOCK: Oh, no -- yeah, we're gonna,
2 we'll talk to him about that and be able to confirm,
3 Your Honor, in the morning if he's going to testify
4 and we -- so, total eight if we call everybody and
5 Mr. Gaddist.

6 THE COURT: All right. Are y'all prepared
7 to put him up prior to putting up your experts?

8 MS. PINNOCK: Ideally I would like to have
9 him testify on Monday; but I mean, Your Honor
10 controls the courtroom. If you tell us to put him
11 up Friday ---

12 THE COURT: I don't control calling of the
13 witnesses. I mean, that's certainly your
14 responsibility. I'm not gonna interfere with that
15 but.

16 MS. PINNOCK: I would prefer to have him
17 testify on Monday.

18 THE COURT: How many experts do y'all
19 have, do you anticipate on Monday?

20 MS. PINNOCK: Two.

21 THE COURT: And one of them is a
22 confession?

23 MS. PINNOCK: Yes, sir.

24 THE COURT: And what is the other one,
25 medical or?

1 MS. PINNOCK: Yes, medical.

2 THE COURT: All right. And -- all right,
3 well, I would like to see the attorneys in my
4 office.

5 Yes, ma'am.

6 MS. MCDUFFIE: Your Honor, so we don't
7 have a delay tomorrow with the jury, last night the
8 Defense provided to us I guess three or four
9 witnesses they intended to call, one of them being
10 Ricky Seel who is a fire inspector in this case. We
11 just ask that before his testimony goes up that it
12 be proffered. He has no personal knowledge of this,
13 and I don't know if they're putting him up for
14 impeachment purposes; but we went back through the
15 statements they offered and none of them deny making
16 the statements that they gave to Mr. Seel, the
17 specific statements they were questioned about, so I
18 don't know the purpose of questioning him but we
19 would just ask that that testimony be proffered
20 before it's presented to the jury.

21 THE COURT: What's the purpose of the
22 fireman?

23 MS. PINNOCK: Oh, he wouldn't be talking
24 about any of the facts of the case. He was a
25 completely separate investigator, but there was

1 communication between Investigator Seel and Sergeant
2 Faust that kind of interconnected the two
3 investigations so just pretty much what he did, what
4 Investigator Seel did, who he talked to, and what
5 actually got him involved in this investigation is
6 all we're asking, and we're not asking him about any
7 other facts ---

8 THE COURT: What kind of investigation did
9 the fireman conduct?

10 MS. PINNOCK: It was internal
11 investigation ---

12 THE COURT: Related to the behavior of the
13 firemen?

14 MS. PINNOCK: Yes.

15 THE COURT: At the scene?

16 MS. PINNOCK: Yes, sir.

17 MS. MCDUFFIE: I mean...

18 THE COURT: Tell me what that has to do
19 with anything, the fact that they -- I understand
20 y'all have different testimony about how this child
21 was handled from the time it was recovered in the
22 apartment and put on the gurney. Somebody says they
23 carried him this way, somebody says they carried him
24 this way, it may or may not have something to do
25 with what the jury thinks; but the fact that they

1 have words exchanged or bad blood, tell me how that
2 comes to play.

3 MS. PINNOCK: Well, honestly, we're not
4 even going into what information he got from the
5 investigation 'cause that part, his part is over.
6 That part is over, that was done almost three years
7 ago. The only information we'd be asking him about
8 is when he got the information, how he conducted his
9 investigation, how he got involved with speaking to
10 Richland County about the criminal investigation and
11 the conversations that he had with Sergeant Faust
12 during the internal affairs investigation and how
13 it's linked back to the criminal.

14 MS. MCDUFFIE: Your Honor, conversations
15 with Sergeant Faust are hearsay and could have been
16 inquired with Sergeant Faust. Secondly, I don't
17 know the relevance of fire investigation, internal
18 affairs investigations, when the officer testified
19 that as a result of his conduct he was suspended for
20 three days.

21 THE COURT: Well, I don't know, I mean,
22 clearly whatever Faust told him would be hearsay,
23 right? He can't testify to what Faust told him.

24 MS. PINNOCK: I can't say I disagree with
25 that.

1 THE COURT: Pardon me?

2 MS. PINNOCK: I can't say I disagree with
3 that.

4 THE COURT: Well, I mean, well, I mean,
5 there's no point putting something up that's -- if
6 you attempt to get up it's not relevant and we then
7 have to not let him testify; that doesn't help you.
8 And if it does, then let's figure out what it is
9 that he can say that you think is helpful. Well,
10 we'll have to chat about it in the morning.

11 MS. PINNOCK: Yes, sir, we'll discuss it
12 this evening.

13 THE COURT: Do what you got to do and come
14 on back.

15 (WHEREUPON, the proceedings were concluded
16 for the day to be reconvened on February
17 7, 2014)

18 THE COURT: All right, ladies and
19 gentlemen, for the record I had a ex parte
20 conference with the Defense counsel this morning
21 with permission of the State relating to several
22 things, one of which was the State -- I mean, the
23 Defense brought to my attention a report that they
24 have or they consider what they initially considered
25 work product. It's a letter. I think it's a letter

1 or report.

2 MR. STAGGS: Yes, Your Honor, it's a
3 letter.

4 THE COURT: And they wanted to, want to
5 turn it over but they wanted my thoughts about it
6 before it became an issue. After scanning it I
7 determined it was, should be turned over to the
8 State. My understanding they have been, it has been
9 given to the State. I was told it came in the 28th
10 of January or something like that.

11 MR. STAGGS: I believe we have 29th.

12 THE COURT: I know y'all have not had
13 opportunity to review it; but with respect to
14 receiving it, anything you want to say?

15 MS. MCDUFFIE: Your Honor, we did file
16 reciprocal Rule 5 in this case a period of time.
17 We've also requested any and all documentation from
18 the Defense multiple times before this trial; and
19 during the course of this trial, they related did
20 not have this information for us. Your Honor, we
21 were prepared to rest our case. Your Honor haven't
22 had opportunity to review this. Should this
23 testimony be offered we ask that we be allowed to
24 present from ---

25 THE COURT: My understanding this intern

1 an expert who is going to testify next week. Y'all
2 have the weekend or today, whatever time today to
3 review it. I'm not gonna -- if there's anything
4 that's in this report you think requires some action
5 on your half, your behalf, I'm certainly gonna
6 consider that and ---

7 MS. MCDUFFIE: Thank you, Judge.

8 THE COURT: You present, would deal with
9 it on the fly more than likely, which you would have
10 the opportunity to do anyway; but I mean, you review
11 it. If there's something you think is objectionable
12 I know y'all think his testifying is objectionable
13 and we're gonna have to address that then so
14 whatever issues in that report that you think
15 related to that.

16 MS. MCDUFFIE: We just be given latitude
17 on reply since we couldn't address this.

18 THE COURT: Well, I'm not gonna -- you
19 were given this 30 days ago. I'm gonna give you the
20 same opportunity to do what you need to do.

21 MS. MCDUFFIE: Thank you, Judge.

22 THE COURT: Now we also are gonna -- my
23 understanding the State is getting ready to rest and
24 we will take up some motions after that. At that
25 time the Defense asked, asked that we have some time

1 for their client to, before they start putting up
2 their evidence, to be able to engage in some
3 conversation so we will honor that on a reasonable
4 basis so let's bring the jury in if we could.
5 Anything else y'all want to do with respect to what
6 we talked about this morning, where we go from here?

7 MS. MCDUFFIE: Nothing from the State,
8 Your Honor.

9 MR. STAGGS: No, Your Honor.

10 THE COURT: All right. Also, my
11 understanding the State, I mean, the Defendant has
12 four or five, six witnesses this morning, all of
13 which they say are very short and all of which
14 relate to issues that we've talked about. We'll
15 have to address those before they testify, the point
16 being that they tell me what they are, what will
17 come before the jury today, will be time wise will
18 not be limited.

19 MS. PINNOCK: That's correct, Your Honor.
20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 9:50 p.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: All right, good morning,
25 ladies and gentlemen, nice to see you this morning.

1 Sorry to keep you waiting but we had some issues we
2 needed to take up before we brought the jury in.
3 All right, let me ask you the same old question I've
4 been asking you every day. Has anybody had any
5 conversation about this case, anybody done anything,
6 I mean, been approached by anybody to discuss the
7 case since we left yesterday?

8 (There was no response.)

9 THE COURT: Anybody read anything, seen
10 anything on TV, listen to anything on the radio
11 about the case?

12 (There was no response.)

13 THE COURT: Anybody done their own than
14 investigation or made any internet inquiry, computer
15 inquiry about this case?

16 (There was no response.)

17 THE COURT: Okay. Ladies and gentlemen,
18 you will recall when we completed the afternoon
19 yesterday the State was still in the process of
20 putting up its case in chief.

21 Ms. McDuffie, anything? Or one of my
22 solicitors?

23 MS. SIMPSON: Your Honor, at this time the
24 State would rest.

25 THE COURT: All right, ladies and

1 gentlemen, that means the State has now completed
2 the presentation of their evidence in their case in
3 chief and which means that they're finished with
4 putting up their evidence. At this point in time it
5 doesn't preclude they may want opportunity to offer
6 something reply if the Defendant puts up any
7 evidence now have to take up some matters of law
8 with all the parties since the State has concluded
9 its presentation of its evidence. I'm gonna ask you
10 to step back to the jury room. I'm going to tell
11 you that this may make a little bit of time,
12 hopefully half hour or something like that so you'll
13 have to bear with us a little bit; but we have to do
14 this. It may run a little longer than that, but
15 please don't discuss the case. We've invested a
16 good bit of time, thumb point, large part of the
17 evidence is completed. Since the State has now put
18 up all their evidence, y'all step back in the jury
19 room, don't discuss the case. We'll be with you
20 just as soon as we can.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 9:52 p.m., and the following
23 proceedings commenced in open court.)

24 THE COURT: All right. Who is gonna go?

25 MS. PINNOCK: Please the Court, Your

1 Honor. At this time the Defense moves for directed
2 verdict for the charges on homicide by child abuse
3 viewed in a light most favorable to the State.
4 Judge, I believe the State has failed in proving
5 that Mr. Gaddist was the cause of the injury that
6 ultimately led to K.H. [REDACTED]'s death. They
7 presented evidence or medical experts admitting they
8 could not time exactly when these injuries occurred.
9 The evidence shows that the child was largely with
10 Mr. Gaddist and there for a very short amount of
11 time before he noticed that she was symptomatic.
12 And then at that point he attempted to do everything
13 he could by contacting the mother, trying to do CPR.
14 The child was taken to the hospital and three days
15 later was pronounced brain dead. I think failure to
16 be able to time specifically when these injuries
17 occurred does not meet elements of the statute,
18 Judge, that Mr. Gaddist wasn't the one that
19 inflicted those injuries. We have no medical
20 certainty about time of these injuries. All we know
21 is that they occurred, at some point she became
22 unresponsive. All the doctors were questioned I
23 believe by Mr. Strickler about, you know, can you
24 say 7:30, can you say it's 8:30, 9:30. All the
25 responses were no. The State is required to produce

1 evidence that show that Mr. Gaddist was the cause of
2 those injuries, and I think at this point because
3 they presented their entire case they have, they
4 have failed to meet this element. Cause of death is
5 not an issue, Judge, it was blunt force trauma to
6 the head. The State has also failed to provide
7 information Mr. Gaddist was the cause of that blunt
8 force trauma to the head. I believe, Your Honor,
9 based on those failures of the State at this point I
10 don't think the case should go in front of the jury
11 because I don't believe they offered any substantial
12 circumstantial evidence that Mr. Gaddist caused the
13 blunt force from trauma that is the cause of death
14 which was testified today by the pathologist and
15 other medical personnel in the State's case in
16 chief.

17 THE COURT: All right. Anybody want to
18 respond?

19 MS. MCDUFFIE: Thank you, Your Honor.
20 Taking the evidence in a light most favorable to the
21 State, we believe that we have met our burden, Your
22 Honor. The evidence shows that this defendant was
23 the only person home with the child at the time the
24 injuries occurred. Every single doctor testified
25 that the point -- while they couldn't tell you the

1 minute when these injuries, that the child would
2 have instantly been symptomatic, lost consciousness,
3 lost ability, the brain, in brain function.
4 Immediately Mr. Gaddist himself admitted when the
5 child loses consciousness, starts breathing, it is
6 because he is doing a violent act against the child
7 at that moment in time. Your Honor, we ask the case
8 be submitted to the jury.

9 THE COURT: All right. Well, the standard
10 for a directed verdict motion is there any evidence
11 and criminal side any substantial circumstantial or
12 any direct evidence, and it's not whether they
13 failed to prove it or not; but ultimately, is there
14 any evidence that goes to the jury. The jury will
15 determine whether proved it or not proved it beyond
16 a reasonable doubt. There is evidence that your
17 client was the person with the child. At the time
18 the child, noted was given that the child was in
19 distress, that he was the only one with the child at
20 that time. There is evidence that, well, it may not
21 be able to say it occurred at 10:59 or 9:59 or
22 whatever the situation; but the results would be
23 immediate. And in fact, one of the doctors, I think
24 it was Doctor Rosa, testified that it did happen.
25 The other ones were a little more flexible as to

1 time, but they all said it was immediate and they
2 all said that it would not, she could not have
3 survived for any more extended period of time
4 because she wasn't breathing and was not, at that
5 time I think had no pulse, was cold to the touch.
6 At least one of the EMS people I think testified to
7 that, or one of the firefighter.

8 There's evidence in the case that your
9 client is the one that had the child, shock the
10 child, shook it, and then expended for extended
11 period of time, extended being two minutes in a
12 violent way. While he didn't intend, according to
13 his, didn't intend it to happen, the child, he did
14 it until the child became unconscious. So I think
15 it meets the standard which is there is some
16 evidence that allows it to go to the jury and I'll
17 deny your motion.

18 MR. STAGGS: Thank you, Your Honor.

19 THE COURT: Anything further?

20 MS. PINNOCK: Yes, sir. We renew all of
21 our previous objections and motions, specifically
22 but not limited to, our motion to exclude autopsy
23 photos. And under South Carolina case law 104, Your
24 Honor, our motion to exclude the phone calls, your
25 rulings did not have jurisdiction to hear that

1 motion. We did make that part of the Court's record
2 so we would renew that motion as well because we
3 still believe that under the law you did have
4 jurisdiction to hear it. Our motion to exclude the
5 testimony from the prior injuries to K.H. [REDACTED],
6 I, it's our position that the, your ruling was
7 inconsistent with what the request was, the injuries
8 that were spoken about. I do believe that did limit
9 our ability to further explore those injuries
10 because part of the injuries were kept out. Another
11 part that was kept, was allowed to be testified
12 about and there was some confusion about what that
13 ruling was based on, from both sides I believe, so
14 we will renew that motion to exclude any testimony
15 about that. Your Honor, we would renew our motion
16 ---

17 THE COURT: Let's address some issue by
18 issue, okay.

19 MS. PINNOCK: Okay.

20 THE COURT: All right, with respect to the
21 jurisdiction, I mean, again, based on my belief I
22 had no jurisdiction. There's nothing I can do about
23 it. As I told you, this court was prepared to give
24 you ample opportunity to go to the Court of Appeals,
25 and so I will -- they, they were, and they were

1 prepared to hear anything that you filed on that
2 basis. They dismissed the matter because it says it
3 wasn't proper for appeal, no order, but y'all had
4 that opportunity to go see whether it, they had
5 jurisdiction; and if there were reviewing authority,
6 could have offered whatever you wanted to offer and
7 then could have made a decision if you elected. I
8 think that your client's, with the client's
9 authorization not to do so. If I don't have
10 jurisdiction I don't have jurisdiction, so I can't
11 do anything more than that.

12 What was the next one, the bruises.
13 Inconsistency and can, does, clearly there was
14 confusion and I probably was the most confused of
15 all because I know that the defendant had moved and
16 we had taken up motion in limine, did not allow any
17 evidence of a black eye and any evidence of a bite
18 that had occurred prior to the day of this incident
19 which was May 23rd. Y'all have presented me a case
20 that said that any prior bad acts are not clear and
21 convincing. I didn't think any bad acts had
22 anything to do with this case and I excluded it, had
23 no knowledge or information that anything about
24 bruises, prior bruises, was an issue in this case.
25 I informed everybody that bruises of which the State

1 could tie in that were contemporaneously received
2 sort of the injuries or the incident that day would
3 be relevant. That, and would be appropriate if a
4 child has a injured skull and also has a injury to
5 the neck, those would be relevant. Bruises that are
6 the result, that occur as a result of this incident,
7 would be relevant and I think then appropriately
8 addressed. You brought up during your
9 cross-examination of Sergeant Faust, I think it was
10 Sergeant Faust yesterday, that wanted go into the
11 issue of some prior bruises she had for some other
12 injuries other than injuries that the doctors have
13 testified that occurred contemporaneously with the
14 brain injury and at the same time. You think that
15 was appropriate based on y'all's own motion. But
16 again, because bruises were really never addressed
17 prior to your addressing it, when they attempted to
18 bring up I allowed you to ask him did he have some
19 bruises somewhere on the body that I can't remember
20 on the ribs I can't remember what your question was,
21 but allowed you to do that. And they get up and
22 attempted to go into these matters and I stopped
23 them at that point in time. I agree there was some
24 confusion. It was with me as much as with you based
25 on the consistency or inconsistency of what y'all

1 were attempting to do in this case, but I treated it
2 the best I could based on what came up. What was
3 the other claim that you made? Jurisdiction.

4 MR. STAGGS: Yes, sir, so that could
5 include telephone calls.

6 THE COURT: Anything else?

7 MS. PINNOCK: The autopsy photos, our
8 objection to the ---

9 THE COURT: Okay, the autopsy photos.

10 MS. PINNOCK: Also those.

11 THE COURT: Well, I indicated that the
12 State could meet the criteria that that I would have
13 been, allow them to put in some photographs and they
14 actually came in with one third of the photographs
15 that I indicated that I might allow them to do if
16 they could tie it in to one being relevant it two
17 being assistance to whoever had the photograph in
18 explaining what it is they wanted to explain; and
19 three, it corroborating what it is their evidence
20 was they were testifying to. I think -- who was the
21 physician, doctor?

22 MS. MCDUFFIE: Durso. Durso.

23 THE COURT: Durso. She's the one that
24 introduced them and I thought she did so and so I
25 think that's appropriate. I note your exceptions

1 and those are my rulings. I hadn't changed my mind.

2 MS. PINNOCK: Yes, Your Honor. And we
3 would also renew our objections specifically to your
4 denial of us being allowed to go into the
5 examination of K.H. 2 done by Doctor Durso, the
6 treating physician in this case. We do believe that
7 it was relevant evidence understanding Your Honor's
8 ruling, and I would we doll her testimony about that
9 second examination was relevant. We do believe we
10 did have a right to go into that. With our right to
11 present our defense that was part of our defense.
12 We do have a right to a complete, present a full
13 blown defense in the constitution, Judge, so we
14 renew that. We renew our exception to your ruling
15 on that, Your Honor.

16 THE COURT: Well, I ruled that was not
17 relevant, some incident that occurred for some other
18 child at some other point in time and that child's
19 life is not relevant to the issue here as to whether
20 this child was injured and injured by circumstances
21 of your client so.

22 MS. PINNOCK: Yes, sir, just our position.

23 THE COURT: I understand. That's my
24 ruling, still my ruling.

25 MS. PINNOCK: And Your Honor, all of our

1 other previous motions and objections, again, we're
2 renewing. Begging the Court's indulgence. And
3 lastly, Your Honor, our -- well, Mr. Strickler is
4 gonna make his motion. The second, the written
5 statement specifically renewing that supporting that
6 was presented at pretrial, we are renewing objection
7 to that being admitted in evidence.

8 THE COURT: All right. Are you gonna add
9 anything on what you've already added on that
10 motion?

11 MS. PINNOCK: No, sir.

12 THE COURT: All right. Anything y'all
13 want to say to anything that I've already responded
14 to or any of these issues that she's raised?

15 MS. MCDUFFIE: No, sir, Your Honor.

16 THE COURT: On the second statement you're
17 talking about the one that was given to Sergeant
18 Isenhoward?

19 MS. PINNOCK: Yes. Well, we had a Jackson
20 v. Denno hearing and it was appropriately warranted
21 and this jury would ultimately make a decision the
22 ultimate decision; but I thought it was appropriate
23 to come in and so allowed and ruled.

24 All right, Mr. Strickler, what you want to
25 tell me?

1 MR. STRICKLER: Yes, sir, very briefly. I
2 just ask that you revisit your ruling on the
3 mistrial motion that I made regarding testimony
4 about bruises in this particular case.

5 THE COURT: I did something different than
6 what she just arguing some of.

7 MR. STRICKLER: This is specifically am
8 mistrial motion on my part. I'd just like ---

9 THE COURT: On the same basis of bruises
10 coming in that she argued that.

11 MR. STRICKLER: No, because my mistrial
12 motion was based on your ruling at trial on State's
13 witness testified that he observed bruises and an
14 objection at that point, Your Honor said if the
15 State can tie it together, then they can come in.
16 And I waited till the end of all the medical
17 testimony regarding the bruises and then moved for
18 mistrial because Your Honor ---

19 THE COURT: On the basis they can't
20 pinpoint exactly when it happened.

21 MR. STRICKLER: Exactly.

22 THE COURT: Either the bruises and/or the
23 primary injury.

24 MR. STRICKLER: Or -- yes, sir, all of
25 that. And specifically, Your Honor could reference

1 State's 118 we're talking about, not contusions that
2 we're testified to in the head; but these are marked
3 all over the body regarding contusions and abrasions
4 which I submit they could not tie them and associate
5 with the date and time of the incident itself; and
6 therefore, they are 404(b) failed under 404(b), 403,
7 401 and 402. And so that was the basis for my oral
8 earlier motion. I'm not adding any additional bases
9 for the motion for mistrial, but I do ask that you
10 revisit your decision in that regard and upon
11 further contemplation reverse your decision and
12 declare a mistrial in this case.

13 THE COURT: Anything y'all want to say?

14 MS. MCDUFFIE: Your Honor, we only talked
15 about bruises that had not been there prior. The
16 doctor testified that the when she cut into the
17 bruises they appeared to be, in her opinion,
18 inflicted the same time as the head injury based on
19 the 5ing promise. Further, the diagram Mr.
20 Strickler ---

21 THE COURT: There were a number of
22 bruises, some of which were on top of the head?

23 MS. MCDUFFIE: Yes.

24 THE COURT: Front and back, some of which
25 were on the buttocks area, if I remember correctly,

1 and she, and she actually dissected or went into it
2 and said that they were contemporaneously looking at
3 the color the other bruises were that they observed
4 and I can't remember exactly how they were observed
5 but doctors all testified that those bruises
6 occurred immediate and as a result of the injuries
7 that she received. Well, they could not pinpoint
8 that this happened at 8:59 or 9:59, whatever
9 circumstantially I think based on the evidence that
10 these are all immediate and with contemporaneously
11 with what is circumstantial evidence which will
12 allow it to go to jury and I don't think that that
13 was inconsistent with anything that we did. I
14 thought that there was testimony that would tie it
15 in; and as a result, I deny the motion for the
16 mistrial.

17 MR. STRICKLER: Thank you, sir.

18 MS. MCDUFFIE: Thank you.

19 THE COURT: Anything else? Now who is in
20 charge of security? Sergeant, I want to be able to
21 allow the defendant and one of his family members to
22 have some conversation. Do y'all care where it is?

23 MS. PINNOCK: No, sir, as long as we can
24 have a little bit of the privacy.

25 THE COURT: Can we put him in the jury

1 room right or can't put him in this jury room. I
2 need some point where they can have some
3 conversation. Do y'all yes, he did to be there with
4 him?

5 MS. PINNOCK: I was going -- yes, that is
6 for a minute.

7 THE COURT: Y'all -- do all of you need to
8 be there with him?

9 MR. STAGGS: I don't believe so.

10 THE COURT: Do y'all -- I don't want to
11 put him ---

12 THE DEPUTY: We can either go back here if
13 that's what you want, or we can go into the holding
14 area clear whatever conversation with officer)?

15 THE COURT: Y'all have any objection going
16 down to this jury room on the other side of Judge
17 Hood's office?

18 MS. PINNOCK: No, sir.

19 THE COURT: Okay, you got security enough
20 to do that? All right. The sergeant is going to
21 make a fast -- make sure everything is okay down
22 there; and if it is, he will put him in the jury
23 room. And we're gonna start within a half hour and
24 we're gonna try to keep in mind at this time.

25 MR. STAGGS: Thank you, Your Honor.

1 THE COURT: Do not under any circumstance,
2 Mr. Dye, don't let a jury member be on the phone or
3 outside the courtroom while they are moving this
4 defendant.

5 THE BAILIFF: Yes, sir, Your Honor.

6 THE COURT: We will stand in recess.

7 (WHEREUPON, a recess was taken from the
8 proceedings.)

9 THE COURT: All right, you want to swear
10 the defendant?

11 THE CLERK: Yes, sir. Please raise your
12 right hand.

13 WHEREUPON,

14 **ANTWAN L. GADDIST,**
15 having been duly sworn by the Clerk of Court,
16 testified as follows:

17 THE COURT: Your name is Antwan Lydell
18 Gaddist?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: L-Y-D-E-L-L?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Well, your name was not put on
23 the sentencing sheet; I'm writing it in. What is
24 your date of birth?

25 THE DEFENDANT: [REDACTED].

1 THE COURT: What does that make you today?

2 THE DEFENDANT: 35.

3 THE COURT: All right. Mr. Gaddist, of
4 course you've been here all week and we have
5 spent -- the State has put up their case in this
6 case, and you had opportunity to offer any evidence
7 that you wish to offer and ultimately have this
8 matter go to a jury and let the jury decide what
9 they're gonna decide. You understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And they've indicated to me
12 you wish to enter a guilty plea here today?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And of course you have had
15 three fine lawyers that have been by you I know this
16 week. I've had dealings with them last week so I
17 know they've been involved in this case for some
18 period of time. I assume you've had all the access
19 you need to have with them this week; is that
20 correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you've told them
23 everything you know about this matter?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: They've answered all your

1 questions?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: They've done everything you've
4 asked them to do?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you satisfied with their
7 services?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You understand that in the
10 course of this trial your lawyers have, in
11 attempting to represent you, have made certain
12 objections to rulings that I've made, and they've
13 attempted to do certain things with respect to
14 strategy in this case, and sometimes they were
15 successful and sometimes they weren't. And those
16 ones that you, or they, believe wouldn't be
17 successful, by entering the guilty plea you're gonna
18 give your rights up to have those matters heard on
19 appeal. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And that you -- this decision,
22 I mean, here today is going to, gonna be fine. You
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Of course you understand you