VOL I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Pickens County

Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANGELA D. BREWER,

APPELLANT

APPELLATE CASE NO. 2017-002563

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RECORD ON APPEAL

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	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	2016-GS-39-02265
	)	
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	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ANGELA DENISE BREWER,	)	**VOLUME I**
DEFENDANT.	)	
	)	

December 11, and 12, 2017
Pickens, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE; and a jury.

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

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I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes DW Witness
(IC) - Denotes In Camera

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to that subpoena.

MS. RAU: Thank you, Your Honor.

THE COURT: And whatever else information I need to put in the order to protect him. I think he -- my reading of the last paragraph is that since he meets exceptions that that should protect him on that.

MS. RAU: Thank you, Your Honor.

THE COURT: All right. Are you ready to proceed on the Jackson v. Denno?

MS. HINTON: Yes, Your Honor.

The State would call Lane Byers.

THE COURT: And I assume that y'all have made other arrangements for security in this court?

MR. LANE BYERS: What's the question?

THE COURT: Well, as far as -- are you going to be a witness in this case?

MR. LANE BYERS: Yes, sir. Since early on.

THE COURT: Well, I'd like -- since we've got jurors coming in that you'd make appropriate arrangements about security in here. And I don't know if I want you on the front desk.

MR. LANE BYERS: I've been in Family Court.

THE COURT: Okay.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

LANE BYERS,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE COURT: And I know y'all were talking there. I want to make sure -- I requested that since he is going to be a witness in this case that he not be security in this courtroom and, also, the front desk during the pending of this trial, so that jurors coming in and out don't see him and give him any --

MS. HINTON: Yes, Your Honor.

THE COURT: -- additional attention.

MS. HINTON: Thank you.

THE COURT: So I hope that doesn't mess you up too bad.

THE WITNESS: No. We've got it. We've already done it.

THE COURT: I knew y'all probably had. Okay.

MS. HINTON: Thank you.

DIRECT EXAMINATION

BY MS. HINTON:

Q Will you state your name for the record?

A Lane Byers.

Q And where are you employed?

A Pickens County Sheriff's Office.
Q And how long have you been there?
A All total, about 35 years, I think.
Q Okay. Were you employed there in 2014?
A Yes, I was.
Q And in what capacity?
A I was the lieutenant of the detective division on the adult side.
Q Okay. Did you respond to Cannon Hospital on October the 17th of 2014?
A Yes, I did.
Q Okay. And why did you respond there?
A I was called as a supervisor. The on-call detective could not make it. He was tied up. So they called me and I came out.
Q Okay. And what did you respond in reference to?
A There was a child death in the emergency room there at Cannon Hospital.
Q And when you got there, were there any family members present?
A Yes. There was -- the grandparents was only -- was the only family that I knew of that was there at that time.
Q So would that be the Defendant and her husband, Robby Brewer?

A Yes, it would.
Q And did you have an occasion to speak with them throughout this process?
A Occasionally, yes. They were right close -- there was adjoining rooms where the baby was in the one room, and they were in the next room to it.
Q At the time that you arrived and spoke to them, did you have any indication of, other than a child death, what other details you were dealing with?
A No, I did not.
Q Were you the investigator on this case?
A No, ma'am.
Q Did you obtain consent to search the home?
A I did with Sergeant Mike Hendricks.
Q And who did you obtain that consent from?
A From Robby Brewer.
Q And throughout that process, were Mr. Brewer and the Defendant cooperative?
A Sure, they were.
Q And did the Defendant make some statements to you regarding a timeline?
A She did. I was -- when I was waiting on -- I had called out Lieutenant Burgess due to this being more in her expertise. And as I was waiting, I was just trying to get some kind of timeline, something that we could go

ahead and get started with.
Q And did she provide that timeline?
A She did. She talked about the feedings that she did, what she had fed the child. And that she had put it down to sleep.
Q Did she, also, make a comment about the type of medication she was on at that time?
A She did. She didn't make it directly to me, but she was making it to someone else. And I was standing there when it was made.
Q And did she make any comments about the victim's demeanor that day?
A She said he was sickly. He was fussy. He was fretful and had been all day.
Q And did you Mirandize her at all?
A No, I did not.
Q Did you even know that she was a suspect at that time?
A No. I had no clue what had happened.
Q Was she allowed to leave the hospital on her own free will?
A Sure.
Q Did she appear to be under the influence at all when you spoke with her?
A It was hard to tell. She was crying and upset. So

it was hard to tell any influence that -- outside influence that would be on her.

Q Did her statement seem, at least, somewhat coherent?

A Yes.

Q I guess -- were they responsive to your questions?

A Sure, they were.

MS. HINTON: Lieutenant Byers, that's all I have at this time. Please answer any questions Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q Mr. Byers, I kind of missed -- I heard the last question the Solicitor asked you of were her answers responsive to your questions. And I think you said yes?

A Yes.

Q Okay. The question before that, I missed. I wasn't sure -- did that have to do with her responsiveness? Do you recall?

A What was the question before? I don't recall.

Q I don't remember either at this point in time. I thought it was, Did she change her story? But I --

A That was not the question --

Q Okay.
A -- I think I responded to.
Q Okay. If that's not the question you heard, then we're fine and dandy and on an even playing ground. Obviously, she was upset?
A Yes, sir.
Q I am speaking of Ms. Brewer.
A Ms. Brewer.
Q She was very upset, crying?
A Yes, sir.
Q A great deal?
A She was crying. She had -- I got there a little later, so she was still crying, but it was sort of soft crying at that time.
Q I'm sorry?
A She was sort of doing a soft crying. I mean, it was not like the traumatic part right there at that point.
Q Hysterical?
A I wouldn't call it hysterical.
Q But, certainly, more than just crying? She was tremendously upset?
A I would say just crying.
Q Okay.
A I'm not going to say she was tremendously upset.
Q Okay. Did you know anything about Ms. Brewer at that

point in time?

A I had never met her before then. I knew her husband somewhat, but I didn't know her.

MR. DEJONG: Nothing further.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. HINTON:

Q In addition to being sad, did you notice anything else about her state?

A Worried, maybe concerned.

Q Concerned with what?

A Just with the events that was unfolding around her.

MS. HINTON: That's all I have.

THE COURT: Thank you.

You may step down.

MS. HINTON: Judge, do you want to take these statements -- do you want me to argue after each statement, or do you want to hear the argument at the end?

THE COURT: If they're different -- so this is -- yeah. Let's argue --

You can step down.

THE WITNESS: Okay.

THE COURT: Let's argue each one since they're not related -- I mean, if the witnesses are related.

MS. HINTON: Sure.

So just for the record, Your Honor, this is a statement from October the 17th of 2014, made at Cannon Hospital to Lieutenant Lane Byers. She was not in custody at the time. It was not an interrogation. It was simply fact-finding questions. They did not know what they were dealing with at that time. She seemed at least -- at least, coherent enough to respond to his questions appropriately.

So we think it's, certainly, admissible under Jackson v. Denno as freely and voluntarily made. We would ask that it be admitted.

THE COURT: Okay.

MR. DEJONG: Your Honor, I can't argue that she was in custody at the time. I think this -- and I'm not arguing against it coming in. I can't think of any argument to make, in all candor. I think that's a matter for the jury to decide.

THE COURT: So -- and I think based on what I've heard that I will allow it. I think it meets the standard of Jackson v. Denno.

So I will grant that it is voluntary.

MS. HINTON: Thank you, Your Honor.

The State would next call Detective Michael Hendricks.

THE CLERK: Good morning.

THE WITNESS: Good morning.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

MICHAEL HENDRICKS,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

(WHEREUPON, there was no response.)

DIRECT EXAMINATION

BY MS. HINTON:

Q Would you state your name for the record?

A My name --

THE COURT: I apologize. Can we pull that microphone around?

THE WITNESS: My name is Michael Hendricks.

BY MS. HINTON:

Q Detective Hendricks, where are you employed?

A I'm employed at the Pickens County Sheriff's Office.

Q And were you employed there in 2014?

A I was.

Q And in what capacity?

A I was -- I worked for the special victims unit as an investigator.

Q Okay. And you did respond to the house at some

point; correct?
A I did, yes.
Q Okay. And did you -- and that was on October the 17th, 2014?
A Correct.
Q And did you speak at all to the Defendant at that time?
A Other than signing the consent form, no.
Q Did you have occasion to meet with her again on November the 6th of 2014?
A I did, yes.
Q And where did you meet with her?
A I met with her in my office at the sheriff's office.
Q At the sheriff's office. And were you alone?
A Yes. We were alone.
Q And was that audio and video recorded?
A It was, yes.
Q And have you reviewed that audio and video?
A Yes, I have.
Q Did you Mirandize Ms. Brewer prior to that interview?
A No.
Q Okay. And explain to me why you did not Mirandize her.
A It was my understanding that we were still trying to figure out what had happened to this child. We wanted a

timeline to help us understand that. At that time, we didn't know if a crime had been committed.

Q At that time, did you have any SLED toxicology reports back?

A I did not, no.

Q Did you have an autopsy back at that time?

A No.

Q Did the Defendant come in on her own free will?

A She did.

Q Did she willingly speak with you?

A She did.

Q Did you, also, obtain a written statement from her?

A I did.

Q At the top of that written statement, does it go over your rights?

A It does.

Q Did she indicate at all that she had any trouble reading or writing?

A No.

Q Was she able to write well?

A She was, yes.

Q Did she seem to understand what you were asking her?

A She did.

Q Did she seem under the influence of any drugs at that time?

A No.
Q Was she arrested on that day?
A No.
Q And you were present during the reenactment at her home on October the 17th; correct?
A Yes.
Q But that was not something you conducted; is that correct?
A Correct.
MS. HINTON: That's all I have. Please answer any questions Mr. DeJong may have.
THE COURT: Cross-examination.
MR. DEJONG: Thank you, Your Honor.
May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:
Q So are we talking about November the 5th? Is that when you're saying that you took the statement that was audio and video recorded?
A I believe it was November the 6th.
Q Okay. Now -- all right. That's fine. But on November the 6th, you did not Mirandize her?
A No.
Q Now, where was the interview held?
A At the sheriff's office?

Q Closed room?
A Yes.
Q Closed door?
A Yes.
Q And how were you dressed?
A I -- with a pair of slacks, button-up shirt.
Q Did you have your weapon on your waist?
A I did, yes.
Q And, certainly, you were -- you identified yourself as a Pickens County Sheriff's Office deputy or detective, did you not?
A I did, yes, sir.
Q And what was the educational level of Ms. Brewer?
A I could not tell you. I didn't ask her that question.
Q All right. How long did the interview last?
A It just -- estimating, I'd say a good hour.
Q All right. And when she came -- just so the record is clear. It was done at the sheriff's office. That's in the Pickens County Detention Center; correct?
A It's not in the detention center. I mean, it's at -- they're at the same place.
Q All right. Poorly asked question. In the same building as the detention center; correct?
A You're correct, yes.

Q All right. And when Ms. Brewer came in, do you know where she came in? Did she come in on the detention center level, the downstairs level, or where did she come in?

A I did not pick her up. I did not come in the building with her, so I have no idea.

Q Well, who escorted her down to the video -- or the interview room?

A I was asked by my lieutenant to interview her. Because we had two people there at the same time that needed interviewing.

Q I understand what your lieutenant asked you. I asked you who escorted her to the interview room?

A When she was -- she came into my office. How she -- who escorted her there, I have no idea. I can't remember that. I just know she walked into my office on her own free will.

Q Would she have had to have an escort?

A She would have had to have somebody to show her where to go.

Q Would that have been another police officer?

A I would imagine so, yes.

Q Well, certainly, she was in a closed room; right?

A Correct.

Q No windows?

A Correct -- wait. Yeah. There's a window in there, yes, sir.
Q Is there?
A (Witness nodded.)
Q Which wall is that window on?
A If you walk in the room, it's on your left wall if you're walking straight from the door.
Q On which wall?
A Your left. You're standing facing the door, it's on your left.
Q Okay. Now, were you the only officer in there with her?
A Yes.
Q Okay. Did you ever tell her she was free to leave?
A I felt that was the understanding.
Q Well, what would make you think that was the understanding?
A Because I didn't call and tell her to come there. And I explained to her from the beginning that we just wanted to sit down and get a timeline. Because they were upset on the incident date. And we felt it would be more appropriate to interview her at a later date when she had had the opportunity to calm down. That's the way I explained it to her.
Q That's kind of an ask first and Mirandize later, huh?

A Well, you have to understand, we didn't know at that time how this child had died. The best resource of that information was her.
Q Well, there was, certainly, other ways of doing that other than bringing somebody to the Pickens County Detention Center -- or the sheriff's office, isn't there?
A I would disagree.
Q You couldn't go out and talk to her?
A We have policies and -- and ways we do things. And one of those things is we bring them down to the sheriff's office where we can record it so we can remember what she had to say.
Q And it's, also, a more coercive environment, isn't it?
A Just -- I mean, that's your opinion.
Q Well, you had your weapon on, didn't you?
A I did, yes.
Q You identified yourself as a Pickens County sheriff's deputy?
A I did.
Q How big is that room?
A It's a fairly large office. There's, actually, two people that have desks in that office.
MR. DEJONG: One moment, please, Your Honor.
(Pause.)

MR. DEJONG: Nothing further, Your Honor.

THE COURT: Is this the one where I'm going to have to listen to the statement?

MS. HINTON: No, Your Honor -- I mean, not unless the Defense requests it. But the one I was speaking of that I know he wants you to watch is a different one.

THE COURT: Okay.

MS. HINTON: Just brief redirect, Your Honor.

REDIRECT EXAMINATION

BY MS. HINTON:

Q Detective Hendricks, does your office have -- or I'm sorry. Does your building have formal interrogation rooms?

A They do, yes.

Q Is that what you took Ms. Brewer to?

A No.

Q Okay. You mentioned that she was upset at the hospital and so y'all brought her in later to speak with her. Was this her first interview?

A It was her first interview with me. They spoke to her at the hospital trying to get an understanding of what happened. Other than that, I don't think she had been spoken to.

Q And what was your understanding of their ability to gather information from her the night that this happened?

A It's very -- it's a very delicate process when you're dealing with somebody when a child has just died, because they're very upset. And it's a very sensitive environment. And so a lot of times, we do follow-up interviews when -- when we feel like it's a little more appropriate to ask certain questions.

Q And, again, was she cooperative?

A She was, yes.

Q Did she readily provide you with information?

A She did, yes.

MS. HINTON: That's all I have, Your Honor.

THE COURT: All right. Now, did -- there's a written statement that you're offering in and an oral statement. It's my understanding that the written statement has the Miranda rights on it?

MS. HINTON: It does.

Your Honor, we would not be admitting that as evidence. But it does have a waiver of rights form on it. You can see her writing on it in the interview. But we would just seek to admit her oral statement.

THE COURT: Is that -- I guess explain to me when the timing of those two statements and that writing is. I'm a little confused on that.

MS. HINTON: Throughout the video you mean?

THE COURT: Yes. When --

MS. HINTON: So he questions her for -- my calculation is 35 minutes and 45 seconds. They talk about what happened. And then, at that point, he asked if she'd be willing to give a written statement as to the timeline that she provided. He even offers to provide her the notes as she dictated it to him.

She then spends about 20 minutes writing her statement. And then there's a brief discussion after that. And then the interview is completed.

THE COURT: All right. And the statement has the Miranda rights on it?

MS. HINTON: It does, Your Honor. I'm happy to mark it as a Court's Exhibit.

THE COURT: I'd like to see that. But he -- in the interview, did he ever read that to --

MS. HINTON: Not to my recollection, Your Honor.

He provides it to her and asks her if she can read and write. I do think, in her defense, she says, I can't write well, which does not seem to be an issue. They even comment on it afterwards. But she never indicates that she cannot read, but they're not read aloud.

(WHEREUPON, Court's Exhibit No. 2 was marked for identification and admitted into evidence.)

THE COURT: Do you contradict anything she's told me about -- as far as the statement goes, Mr. DeJong?

MR. DEJONG: Your Honor, I have a real problem with no Miranda.

THE COURT: That's not what I'm asking you.

MR. DEJONG: Well, I'm sorry. I didn't hear you.

THE COURT: I asked you did you have any -- do you contradict any of the facts that she just told me?

MR. DEJONG: I can't contradict that that Miranda -- or potentially Miranda is on the head of the statement. But I can say there was no indication, at this point in time, that she ever read it.

If you'd look at the video, he does the interview --

THE COURT: I wasn't asking for argument.

MR. DEJONG: Okay. I'm sorry.

THE COURT: I'll hear from that in a minute.

MR. DEJONG: Okay.

MS. HINTON: And, Your Honor, this is marked as State's -- Court's Exhibit No. 2.

THE COURT: Okay. Any other additional testimony? Then we'll get to the argument phase.

MR. DEJONG: Thank you, Your Honor.

THE COURT: I was trying to make sure I didn't need to review the video. If you agree to what she said was on the video, then I don't need to do that.

MR. DEJONG: And I'm not trying to be disrespectful. Can you use the microphone, Your Honor? I'm having a hard

time hearing you back here. It's not on.

THE COURT: It says it's on.

Is that better?

MR. DEJONG: Much better.

Thank you, Your Honor.

THE COURT: I'm going to have trouble having to do this. I've not used a microphone. So I'll just talk louder.

MR. DEJONG: Thank you.

THE COURT: All right. Anything else from this witness?

MS. HINTON: No, Your Honor.

Just in addition to the statement, there is another Court's Exhibit that I believe Mr. DeJong and I have agreed upon. And there is a significant amount of down time where she's writing her statement.

So for efficiency purposes, we would propose that the jury not be required to sit in silence and watch that.

MR. DEJONG: I have no objection to that if Your Honor allows the statement in, Your Honor.

MS. HINTON: And that's Court's Exhibit No. 1, Your Honor.

THE COURT: Okay. Anything else of this witness?

MS. HINTON: No, Your Honor.

THE COURT: All right. You may step down.

All right. I'll be glad to hear from you on these statements.

MS. HINTON: Thank you, Your Honor.

According to the detective's testimony, this statement was, essentially, the first kind of initial interview. Because they were so upset at the hospital, they weren't able to talk to them at that time. It was not in a formal interrogation room. It was in his office. It lasted roughly an hour, perhaps, a little bit less than that.

She was aware that it was video and audio recorded. She happily discussed things with him. She did not seem hesitant in her questioning. She was provided with a written statement form that contains Miranda. She was not under arrest at that time. No toxicology reports had been received. No autopsy had been received.

So, at that point, they were not even clear as to what happened. Again, it was merely fact finding. Her statement was voluntary. And she was not arrested that day. She was, actually, arrested over a month later, Your Honor.

THE COURT: All right. I'll be glad to hear from you now, Mr. DeJong.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

My problem is this, she was asked to come to the law enforcement center by law enforcement. She gets to the law enforcement center, presumptively, based on Detective Hendricks' testimony, and is taken to an interview room with Detective Hendricks where the door is closed. Granted, she was told she was being video and audio recorded, sitting with a police officer that has his side arm on, who identifies himself as a Pickens County sheriff's deputy.

Now, I don't believe, Your Honor, that the test is what the police officer thought or what the deputy thought. The test is what the Defendant, in this case, who was not a defendant at that point in time, I concede that. But it was the appearance and what the Defendant considered was going on at that point in time.

Certainly, I don't recall -- and Your Honor can, certainly, watch the video. I don't really recall the front end of it that much. But, certainly, there was nothing about her being free to leave.

And I would submit, Your Honor, that the fact that she was sitting in that room with a police officer with the door closed, she would not have believed, at that point in time, that she was free to leave. Granted, she did not attempt to leave. But I, again, would suggest that from her perception, Your Honor, she was not free to

leave.

As far as that Miranda at the top of the statement form, Your Honor, if that is, indeed, Miranda, if you were to watch the video, there was no mention of that on the top of that particular statement. I don't believe -- I could be wrong. But I don't believe that Ms. Brewer filled out the top of that statement. She was handed the forms after having been asked if she would give a written statement, which she indicated she would.

But, again, I don't recall anything on the video about her reading the top part of that statement form or, again, even being asked by Detective Hendricks if she read the top of that statement form. And, therefore, I would submit, Your Honor, if the State is saying that is sufficient for Miranda, I would oppose that to the upmost. Because I don't think that is what Miranda is all about. You have to be advised of your Miranda.

So I would submit, Your Honor, that that statement should not be admissible.

THE COURT: Any follow-up?

MS. HINTON: Just that our argument is not that that is sufficient for Miranda, Your Honor. Our argument is, at that point, Miranda was not required because this was not a custodial interrogation. That is just merely an extra step that was taken by handing her that form that

supplies that information.

I think Mr. DeJong's argument -- the only argument he has is it took place at the sheriff's office. And that is only one small factor to consider in whether or not it was freely and voluntarily given.

THE COURT: All right. Let me mull over lunch.

I assume you're going to call Mr. Hendricks after lunch today?

MS. HINTON: Probably tomorrow, Your Honor.

THE COURT: All right. Let me mull over that over lunch then.

MS. HINTON: Thank you.

The State would call Detective Rita Burgess.

THE COURT: Is this statement -- just so I'll know before we start the testimony --

MS. HINTON: This is a separate statement given on December 18th of 2014, Your Honor.

THE COURT: December 18th?

MS. HINTON: Yes, Your Honor.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

RITA BURGESS,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: Rita Burgess.

DIRECT EXAMINATION

BY MS. HINTON:

Q Detective Burgess, where are you employed?

A With the Pickens County Sheriff's Office.

Q Were you employed there in 2014?

A Yes, ma'am.

Q Did you -- were you involved in this case with Ms. Angela Brewer?

A Yes, ma'am.

Q And, to be clear, does she have more than one name that she goes by?

A Yes. Angela Brewer and Angela Harrison.

Q Are -- but they are the same person?

A Yes, ma'am.

Q Okay. Did you have occasion to see her at the hospital on October the 17th of 2014?

A Yes, I did.

Q Okay. And what was her state emotionally?

A She was very emotional, crying, very concerned about Minor.

Q Was it your determination whether or not to get a statement from her that night?

A It was.

Q And what did you decide?
A Due to her emotional state and the fact that her grandson had just passed away, I chose not to take a written statement from her that very evening, and give her time to cope with and deal with the fact that her grandson had passed.
Q But to be fair, y'all did have some conversation at the hospital that night?
A Oh, sure, yes.
Q Was that subject to your interrogation, or how did that happen?
A No. It was just a matter of needing to obtain information as to what happened that day. She was the caregiver for Minor during the day. And I wanted to get that information from her as to his demeanor, how he was, things that took place with him throughout the day to give us an idea of possibly what had happened to him.
MS. HINTON: And, Your Honor, I apologize. I think I told you this was just to the December statement, but I did recall that she did speak with her briefly at the hospital as well on October the 17th.
BY MS. HINTON:
Q Did she -- did her answers seem responsive to your questions?
A Yes, they did.

Q Was she cooperative at that time?
A Very cooperative.
Q Did you, again, have occasion to meet with her on December the 18th of 2014?
A Yes, ma'am.
Q Did she drive herself there?
A No, ma'am. When I made contact with her by phone, she did not have transportation. And we offered to give her a ride to the sheriff's office.
Q And did you go pick her up?
A Yes, I did.
Q Were you alone?
A No. Agent Christine Cauthen with SLED and I went and picked her up.
Q When y'all go and pick her up from her residence, do y'all have any conversation about the case from her residence to the police department?
A No, ma'am.
Q When you get to the police department, where do y'all meet with her?
A In one of the interview rooms at the sheriff's office.
Q Okay. So would that be one of the formal interrogation rooms we were speaking about?
A That's correct.

Q And when you get there, is it fair to say that Agent Cauthen took the lead on the interrogation?
A Yes.
Q But did you provide Miranda?
A Yes, I did.
Q Okay. And I've handed you a copy of State's Exhibit No. 1. What is that?
A That's a copy of the Miranda form that I used, which she initialled and signed.
Q Okay. Can you read that form?
A Yes, ma'am. At the top, it states, Your rights, Sheriff's Office, Pickens, South Carolina, date, December 18th, 2014. Time is 11:46 a.m.

It then reads, Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions, and to have him or her with you during questioning.

If you have no money to pay a lawyer's fee, the Court will appoint one to represent you without cost, if you wish. If you decide to answer questions without a lawyer present, you still have the right to stop answering at any time. You, also, have the right to stop answering at any time until you talk to a lawyer.

There's, also, a waiver of rights that reads, I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I'm doing. No promises or threats have been made to me. And no pressure or coercion of any kind has been used against me.

Q Did she initial and sign that form?

A She did.

Q Okay. Were you present for that?

A Yes, ma'am.

Q Who else was present?

A Agent Cauthen with SLED.

Q Prior to this Miranda, did y'all ask her if she was under the influence of anything?

A I don't believe we asked her anything like that before her Miranda, no.

Q Okay. Do you recall her telling you, at some point, that she had taken an Oxycodone at 6:00 that morning?

A Yes.

Q At the time y'all began this interview, did she appear to be able to understand what y'all were discussing?

A She did. She seemed very coherent.

Q Okay. Did she have coherent responses to your

questions?
A In the beginning, yes.
Q At some point, does it become clear that she is under the influence of something?
A Yes, it does.
Q Okay. And, at that point, do y'all break in the interview, or what do y'all do?
A She made a few statements that were -- that were incoherent. At that point, we stopped the interview. And I stepped out of the interview room and spoke with a judge concerning an arrest warrant.
Q Okay. Do you recall whether she was offered anything to eat or drink during that interview?
A I do not recall right offhand.
Q Okay. Did she willingly provide information to y'all?
A Yes, ma'am.
Q And this was audio and video recorded; correct?
A Yes, ma'am.
Q About how long did the interview last? Do you recall?
A I don't recall. I want to say 45 minutes to an hour. But I don't recall for certain.
Q And do you recall, at some time, her asking for a lawyer?

A Yes.
Q Okay. And when she asked for a lawyer, what did y'all do?
A The interview ended. And I spoke with Judge Dow concerning a warrant.
Q Did you obtain a warrant that day?
A Yes, ma'am.
Q Was she arrested that day?
A Yes, ma'am.
MS. HINTON: Detective Burgess, that's all I have for you.
Thank you.
THE COURT: Cross-examination.
MR. DEJONG: Thank you, Your Honor.
May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:
Q So who went out and picked up Ms. Brewer?
A Agent Cauthen and I went to pick her up.
Q How far was the ride?
A It's probably not even five miles.
Q Okay. Was there any discussion about the case on that ride?
A No, sir.
Q Now, I'm going to jump forward here. During -- from

the time you first saw Ms. Brewer that day --
A On the 18th?
Q Yes, ma'am.
A Yes, sir.
Q Of December, I believe?
A Yes, sir. That's correct.
Q Did she take any medication?
A Not in my presence.
Q Okay. Well, from the time you picked her up until the interview was terminated, she was in your presence, wasn't she?
A Yes, sir.
Q So she did not take any medication?
A That's correct.
Q All right. Now, would you agree with me that, initially, when the interview started -- and I realize Agent Cauthen did most of the interviewing, but Ms. Brewer's speech was somewhat slurred at that point in time?
A In the beginning, she was very coherent, and alert, and talking just like you and I are now.
Q All right. Well, how long did that last?
A Without looking at the actual video, I couldn't give you a specific time. Maybe 30 minutes.
Q You would agree with me, would you not, Detective

Burgess, that there was a steady and gradual decline in her ability to speak and her speech being slurred? Would you agree with that?

A That's correct.

Q All right. And you've been a sheriff's deputy for a number of years now, haven't you?

A 27 years.

Q A long time?

A Yes.

Q So you've done a lot of interviews, and all that good stuff; right?

A Yes, sir.

Q But based on your training and experience, you didn't see anything unusual about Ms. Brewer when you started this interview?

A When it first started, no.

Q All right. Well, she, obviously -- well, let me ask you this. Did she tell you what she took that morning?

A She stated Oxycodone at 6:00 that morning.

Q But later on in the interview, she shared something else, didn't she?

A She may have. I'd have to go back and review.

Q Did she tell you she took a Valium?

A Yes, she did.

Q And that was way back on the other end of the

interview, wasn't it?
A Yes.
Q And did she tell you what time she took that Valium?
A I -- I don't recall her giving me a time.
Q Okay. Now, when you were going over the Miranda statement with her, you read it to her?
A Yes, sir.
Q Did she ever read it?
A I read the Miranda to her. And as I read each line, I mark it. I then turn it around to her and tell her to reread it for herself. If she understands each line, to initial on each line. And then if she understands the waiver and chooses to speak with us, to sign at the bottom.
Q All right. But as far as the individual rights, she did not read them out loud, did she?
A She did not read them out loud.
Q She did read the waiver out loud?
A Yes.
Q And then as she was initialling the waiver, you, actually, pointed out to her where -- excuse me. Let me back up. She initialled each individual right; correct?
A Yes.
Q And then when she got to the point of signing the waiver, you, actually, pointed out to her where she had to

initial, didn't you?
A Yes. If she chose to speak with us, she would need to initial that line and sign the form.
Q Yes, ma'am. So she, at that point in time, didn't know where to initial, did she?
A I can't say she didn't know where to initial.
Q But you, certainly, pointed it out to her?
A Right. A lot of times when we go over these forms, people do skip a line and we do point it out to them.
Q Yes, ma'am. I'm not asking you about a lot of times. I'm asking you about this case with Ms. Brewer.
A I did point that out, yes, sir.
Q And then without further ado, after you pointed it out to her and said, You sign there, she initialled; right?
A She initialed on the left-hand side of the form, which is what she was supposed to do. And then she signed the bottom of the form, which is what she's required to do.
Q But you told her what she's supposed to do?
A I asked her if she understood the rights, to initial on each line and to sign the bottom of the form if she chose to speak with us. And that is what she did.
Q But in view of the fact that she did not take any medication during the interview, she was already under the

influence of medication, wasn't she?
A She told us that she took the medication at 6:00 a.m. And this interview started at 11:46 a.m.
Q Yeah. But that was the Oxycodone; right?
A That's correct.
Q Not the Valium?
A That's correct.
Q Do you know what dosage of Valium she took?
A I do not.
Q So you had very little conversation with her at the hospital on the evening of October the 17th; is that correct?
A That's correct. Just enough to get information on his condition throughout the day.
Q Okay. Well, what was her response to that?
A She said that he had been battling with ear infections off and on for a little while. He had been fussy. They were concerned that he was getting sick again. And that when she put him down for his nap, when she went to wake him back up several hours later, she could not get him to respond.
Q So that was the extent of that?
A She did make mention of having fed him that morning an apple around 11:00. She gave him lunch around 12:00. It was a grilled cheese or a cheese sandwich, I believe

she said. And then around 1:15, she provided him with a cup of pink lemonade.

Q Did what now?

A Do you need me to repeat all of it?

Q Not all of it. She provided him a what?

A She said she gave him half of an apple around 11:00 or 11:15. Around lunchtime, she gave him a cheese sandwich. And then she gave him a cup of pink lemonade around 1:15.

Q She was talking about the pink lemonade. Did she share with you what cup Minor drank that out of?

A I don't recall her saying what cup.

Q Okay. Did she ever tell you that on many occasions that this child drank out of her cup?

A Not on that particular day, she did not.

MR. DEJONG: All right. Thank you, ma'am.

THE COURT: Any redirect?

MS. HINTON: Just real briefly.

REDIRECT EXAMINATION

BY MS. HINTON:

Q At the hospital on October the 17th, she, also, made additional statements that this shouldn't be happening, didn't she?

A That's correct.

MS. HINTON: That's all I have for this witness, Your

Honor.

THE COURT: All right. You may step down.

THE WITNESS: Thank you.

MS. HINTON: Your Honor, the State would call Agent Christine Cauthen.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

CHRISTINE CAUTHEN,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: Christine Cauthen.

DIRECT EXAMINATION

BY MS. HINTON:

Q Agent Cauthen, where are you employed?

A I'm employed with the South Carolina Law Enforcement Division, special victims unit and child fatalities.

Q Were you employed in that capacity in 2014?

A Yes, ma'am.

Q And did you arrive to Cannon Hospital in regards to [redacted] Minor ?

A Yes, ma'am.

Q And while you were there, did you meet with Angela Brewer?

A Briefly, yes, ma'am.
Q Okay. And what was the basis of that?
A Just to get an idea of -- of the relationship of this child to her, and to find out exactly what had occurred during the day with this child.
Q Okay. And to be clear, is SLED called out on every child fatality?
A We try very hard to report to every child fatality in our area.
Q And why is that?
A Just to assist the local agencies. Sometimes, it's a little overwhelming in getting medical paperwork, and those kind of things, and to be a liaison to assist with the -- with a lot of these with medical problems. So, sometimes, we have to deal with forensic pathologists. Sometimes, we have to deal with forensic child abuse specialists. And we know and work with a lot of those people. So sometimes, we can be an in-between.
Q And to be clear, just because you guys respond, that does not mean that every case ends in an arrest; correct?
A Definitely not, no.
Q Okay. When you spoke to the Defendant at Cannon, did she cooperate with you?
A Yes. She was very visibly upset. It was hard to get a lot from her on that particular evening.

Q Okay. But did she answer the small amount of questions that you asked her?
A Yes.
Q And you did not Mirandize her; correct?
A No.
Q At that point, did you know what you were dealing with, other than a child fatality?
A Not a clue.
Q Okay. On that same date of October the 17th, 2014, did you, also, respond to her residence?
A I did.
Q And what was the purpose of that?
A The purpose is to do what's called a reenactment with the people that were with the child at that time, just so we can get a timeline, or an understanding that you visually see. Because, sometimes, people will tell you things, but you can't quite visualize them until you do a reenactment.
Q And just because you do a reenactment, does that mean that somebody is going to be arrested?
A No.
Q Did you do a reenactment with Ms. Brewer?
A Yes.
Q And did you let her know that that was being recorded?

A Yes.
Q Did you ask her if she was willing to do it?
A Yes.
Q Was she willing?
A Yes.
Q Okay. Did y'all record that reenactment?
A We did.
Q Did you Mirandize her for that?
A No, ma'am.
Q And did you, also, have some conversation with her about dropping her pills while y'all were out there?
A Yes, we did.
Q Was that Mirandized?
A No.
Q And how did y'all even figure out the -- that pills were even a possibility?
A Because of the toxicology results from the autopsy.
Q Okay. So was that a conversation that occurred later?
A Yes, ma'am.
Q And was that on December the 18th?
A On December the 18th was our second interview with her, yes, ma'am.
Q Okay.
A And that -- I knew what the results were at that

time, yes, ma'am.

Q So at what point did you have the conversation -- or was it you that had a conversation with her about whether or not she dropped pills, or were you just provided that information from a different interview?

A I believe during that initial interview, she had talked about she had never dropped pills, that she kept pills in her -- her Oxycodone in her pocketbook.

Q And you're referring to Detective Hendricks' interview? Is that what you're referring to?

A Yes.

Q Okay. When did you receive those SLED results? Do you recall?

A No, ma'am, I do not. I'm sorry.

Q Would it surprise you if it was December the 12th?

A No.

Q Was it prior to you meeting with her on the 18th of December?

A Yes, it was.

Q And did you go with Rita Burgess to pick her up on the 18th?

A Yes, ma'am.

Q And did y'all have any conversations between her house and the law enforcement center regarding this case?

A No, ma'am.

Q When you met with her, y'all had some just general conversation prior to Miranda; correct?
A Yes, ma'am.
Q And, in fact, she's -- at some point, she starts to talk to you about the case, and you stop her and tell her you need to Mirandize her; is that correct?
A Yes, ma'am.
Q And did you Mirandize her?
A No, ma'am. Lieutenant Rita Byers [sic] used her Miranda forms from her department at that time.
Q Were you present for that?
A I was.
Q Did Ms. Brewer appear to understand what was going on with that?
A Yes, ma'am.
Q Did you ask her prior to that whether or not she had taken any medication?
A I'm not sure if it was prior to Miranda or after Miranda. But I did ask her if she was under the influence of any alcohol or drugs at that time. And she advised me she had taken Oxycodone that morning.
Q At what time?
A I believe it was 6:00 a.m.
Yes, ma'am, it was.
Q Sorry. Did you ask her that because you were

concerned, or is that just a standard question you ask?
A That's a standard question that I ask usually -- well, it is a standard question -- I'm sorry -- not usually.
Q At the beginning of this interview, did she appear coherent to you?
A Yes, ma'am.
Q Did she appear to understand what you were asking her?
A Yes, ma'am.
Q Was she answering your questions?
A Yes, ma'am.
Q At some point, do you notice that she does not appear to be coherent anymore?
A Yes, ma'am. She seemed to be falling asleep.
Q And what did you do at that time?
A I -- I don't remember if I asked her at that time if she had taken anything else and she didn't tell me, or if I just asked her if she was sleepy. But I know that we, actually, left the room at that point to take a break, to get something to drink. I asked her if she wanted something to eat. I think we got her a Sprite. And then I walked her outside to see if we could wake up some.
Q And when you walked her outside, did y'all discuss anything?

A No, ma'am.
Q So everything you discussed, was that video and audio recorded?
A Yes, ma'am.
Q Regarding this case?
A Yes, ma'am.
Q And when she comes back in and y'all get on the subject of her being on Valium, did you bring it to her attention that you had asked her that question before?
A Yes, ma'am.
Q Did she explain to you why she didn't tell you before that she was on Valium?
A I think she told me that it didn't affect her and so, therefore, she didn't need to tell me. And I told her, apparently, it did.
Q Did she tell you at what point she had taken Valium? Do you recall?
A I know just before we picked her up, but I can't remember exactly what time she told me. I want to say 10:00, maybe.
Q And what time was this interview? Do you recall?
A 11 something, close to lunch.
Q Okay. But you did offer her food and drink?
A Yes.
Q And y'all did take a break?

A Yes.
Q At some point, do you recall her asking for a lawyer?
A Yes, ma'am.
Q And did -- what did you do when she asked for a lawyer?
A I told her that was well within her rights. And we packed up. And I left the interview room.
Q Are you aware of whether or not she was arrested that day?
A She was arrested.
Q Did you -- State's Exhibit No. 1, I believe I took it back. Did you witness this Miranda?
A Yes, ma'am.
Q Okay. Is that your signature on it?
A It is.
Q So prior to you all taking a break, did she appear to understand what was going on and be coherent?
A Just before the break, she began to be sleepy. And I couldn't understand some of the stuff she was starting to say. So that's why we took the break.

MS. HINTON: Agent Cauthen, that's all I have. Please answer any questions Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q How long have you been a SLED agent, Agent Cauthen?

A I've been with SLED five years. I've been in law enforcement 25.

Q Okay. So is being in law enforcement for -- I don't know if that 25 includes SLED or we jump it up to 30 if we include SLED. Either way, I gather you've done a lot of interviews over that period of time?

A Yes, sir.

Q Okay. And you're telling me, based on your training and experience, you didn't notice anything unusual about Ms. Brewer when she -- you started this interview?

A No, sir. She seemed fine when we started the interview. It just started sliding downhill.

Q You didn't notice any slurred speech?

A No, sir.

Q Slow speech?

A Not in the beginning.

Q Well, I -- so you go in -- and this part puzzles me. You go in and tell Ms. Brewer that you are there only to try to determine what happened, based on -- as I recall the interview, based on your job description; right, that is to gather information?

A I'm sorry. I didn't hear that. Try it one more

time. I apologize.
Q Sure. You went in there and told her it was your job to gather information on child fatalities; right?
A Uh-huh.
Q Is that your job?
A That's part of my job, yes, sir.
Q All right. Well, my question to you is, if that was your job and that's what you were doing, why do you take a police officer with you?
A Well, my job is to investigate child fatalities.
Q Is that what you told Ms. Brewer?
A I'm not sure exactly what I told Ms. Brewer.
Q Okay.
A That's clearly my job.
Q But, nonetheless, Detective Burgess gives her her Miranda; right?
A Yes, sir.
Q Detective Burgess backs off. You do the interview, don't you?
A I believe so, yes.
Q All right. And your -- your statement to her was, whether it was to investigate or whatever, but that was child fatalities; correct -- you told her it was your job to investigate child fatalities in the state?
A Yes, sir.

Q All right. Not to gain information that you could use against her in court. You didn't share that with her, did you?
A I believe the Miranda shared that with her in the beginning.
Q Ma'am, my question is, you didn't share it with her, did you?
A No.
Q Thank you.
So at one point in time -- well, let me ask you this. Would you agree with me that as this interview progressed, Ms. Brewer's speech and demeanor became more and more confused, her speech became more slurred, the whole nine yards; correct?
A Yes, sir.
Q And that started occurring for a good while before you took the break, didn't it?
A I don't think it was a good while. I think it was a few minutes maybe. I'm not sure.
Q Well, it wasn't -- you didn't just suddenly say, oh, you look sleepy, let's go take a break?
A No, sir.
Q Something was going on --
A Yeah. I had asked her.
Q Pardon me?

A I had asked her if she was sleepy.
Q Yes, ma'am. I know you did. But the point of it is, you had seen something before that. And then it became progressively worse that you asked her if she needed a break?
A Yes, sir.
Q All right. Now, once you took that break, you came back and you continued to ask her questions, did you not?
A Yes, sir.
Q Pardon me?
A Yes, sir.
Q When it was clear to you, at that point in time, that she was having a difficult time or under the influence of something?
A It was clear that something was going on, but I wasn't sure until I asked the question.
Q All right. Now, I believe it was after the break, at some point in time, you said, We need to get this together so we can finish this. Do you recall that?
A No, sir.
Q Okay. At some point in time, you shared with her, I can't help you unless you tell me the truth. Do you understand -- do you recall that?
A I'm sure I did say that.
Q So you were, in essence, telling her you would help

her, were you not?

A I don't -- I don't know. I told her we couldn't get to the bottom of it.

Q But your words were, I can't help you unless you tell me the truth?

A I -- I'm sure I said that, yes, sir.

MR. DEJONG: Thank you, ma'am.

THE COURT: Any redirect?

MS. HINTON: No, Your Honor.

THE COURT: And this is the one I need to review the statement?

MS. HINTON: It is, Your Honor.

I would like to put a little bit of argument because I think this is a Jackson v. Denno, as well as a 404(B) analysis, so.

THE COURT: I'll be glad to hear from you.

MS. HINTON: Okay.

THE COURT: Or I can hear from you after I review the thing in the morning.

MS. HINTON: It's entirely up to you.

THE COURT: I may have to hear both of them -- both times. So I'll give you an opportunity right now.

You may step down.

THE WITNESS: Thank you, sir.

MS. HINTON: So just briefly, Your Honor. I think

there's been just now some comment on interrogation tactics. Under Beckwith v. United States, which is 425 U.S. 341, the good-guy approach, as they referred to it, it is recognized as a permissible interrogation tactic. That's cited again in State v. Parker, which is a South Carolina Court of Appeals case from Colleton case. It's opinion number 4475. It's a 2008 case.

So the State would opine that these interrogation tactics are 100 percent acceptable, and have been upheld throughout our court system.

Your Honor, she was Mirandized. She was -- it was, certainly, an interrogation. She was not yet in custody, but she was subsequently arrested. I believe she freely and voluntarily spoke to law enforcement officers. When she asked for an attorney at the end, they closed up their -- their laptops and left the room. She was well advised of her rights. She was coherent at that point. So the State would argue that the -- that it was admissible under Jackson v. Denno.

At some point, Your Honor, the State concedes that she becomes, clearly, under the influence of something. So the State would seek to admit that under 404(B) of other wrongs or acts.

And, Your Honor, the Court of Appeals for the Fourth Circuit has held that the other bad act must be relevant

to the issue, such as an element of the offense, and not offered to establish general character. It must be necessary in the sense that it's probative of an essential claim or element of the offense. It must be reliable. And then you, obviously, do a probative versus unfair prejudice analysis.

Your Honor, the State would argue that this is a case regarding -- and I know you know limited facts at this point. It's an Oxycodone overdose. The State's argument is that the Defendant was not honest or forthcoming about how she uses her Oxycodone. And that to prove motive, intent and lack of mistake or accident that it is essential that the State be allowed to show this video to the jury not for the point of showing, you know, this is how she acts, but to show that she does not seriously take this medication and its effect seriously.

She tells the interviewers that she was prescribed Valium. She didn't tell them because it doesn't affect them. They have a long discussion about how it clearly does affect you. What does it make you do? It mellows me out. Well, that's an effect.

So the State would argue that it's an element in that we have to show some sort of negligence on her part and extreme indifference. And that this video -- the second half of the video goes to show her motive, her intent, and

her absence of mistake or accident in dealing with these drugs and in having them end up in the grandson's sippy cup.

So that is the State's brief argument, Your Honor, on why this should be admissible.

THE COURT: Do you want to say anything at this point?

MR. DEJONG: I would prefer to reserve my argument until after Your Honor reviews the tape, Your Honor.

THE COURT: Anything else we need to address at this point?

MS. HINTON: Not on this, Your Honor.

Just logistically, if you want to try to insert it into your laptop -- I don't know if it will work. We're happy to offer our laptop. Like I said, it's saved on the desk top.

THE COURT: Yeah. We'll try that before we start back after lunch.

MS. HINTON: Okay. And it is State's Exhibit No. 18, Your Honor.

THE COURT: All right. Anything else before we break for lunch?

MS. HINTON: Just so you're aware, it was brought to my attention -- I didn't personally see it, but there was some media coverage this morning about selecting a jury.

So just so you're aware.

THE COURT: Right. I was made aware of that, but we have not gotten any requests. And I will let y'all know as soon as that happens.

MS. HINTON: Thank you, Your Honor.

THE COURT: And usually, you know, under the limitations of the rules, I do allow media coverage. But I have not received anything up to this point.

Anything else?

MR. DEJONG: Yes, sir. If you would, please. This might be a little bit premature -- well, let me back up.

This idea of law enforcement referring to themselves as being with the special victims unit, I take great offense to that, Your Honor. It's prejudicial to my client. That has been something that has come, if memory serves me, in relatively recent times.

And, obviously, there is a TV program, Law & Order Special Victims Unit. And I think that is exactly what they're playing on when they say we are a member of the Pickens County Sheriff's Department Special Victims Unit. That doesn't mean anything to a jury, unless they play that through the filter of -- filters of their mind with this Law & Order Special Victims Unit.

And I don't want to get too far off on the TV show. But that TV show, Your Honor, rarely shows anybody going

to trial. Usually, it's somebody is arrested and read the credits. And that really just bothers me that we're using that terminology in light of that TV show, which, from my understanding, is a very popular TV show, which I would suggest is watched by many people on this jury panel and probably on our jury.

So I just object to the use of that terminology, Special Victims Unit.

THE COURT: All right. Well, I mean, I've never seen the program, so I don't really know what you're talking about. So, I mean, I think if that's what their unit is called -- how do you know that they didn't start calling them all over the country and then they realize, oh, that's a good -- so why don't we use that name for the TV program?

MR. DEJONG: Well, I never heard it before this TV show, Your Honor. Maybe everybody is calling it that now based on the TV show. I don't know.

THE COURT: Well, unless you can show me more prejudice than that, I'm going -- I'm not sure. I guess you're doing it as a motion in limine?

MR. DEJONG: I'm sorry, Your Honor?

THE COURT: I guess this is in the form of a motion in limine?

MR. DEJONG: Yes, sir.

THE COURT: All right. I'm going to deny that.

MR. DEJONG: Thank you, Your Honor.

The other -- we may be a little premature. But when Your Honor asks if there's anything else, I always like to put it out on the table. And that, Your Honor, is going to be with regard to the testimony of Dr. Fulcher, who is the pathologist in this case.

As I understand it, Your Honor, the autopsy, I believe, was done on October -- 10/18, I believe, of 2014. Dr. Fulcher did not sign off on his report, if I am looking at it correctly, until November the 17th of 2014.

Now, herein lies my problem, Your Honor. Dr. Fulcher --

THE COURT: Let me stop you right there. I asked y'all, specifically -- I don't want to deny these -- I don't care about lunch. But I don't want to deny this court staff of a lunch. And we're getting well into -- we're down to a 45-minute lunch now.

MR. DEJONG: I'll hold it, Your Honor.

THE COURT: I don't mean to cut you off and all that, but that's kind of --

MR. DEJONG: I want them to have lunch, too.

THE COURT: To me, it doesn't matter. I don't mind missing lunch. I probably need to.

MR. DEJONG: Sure. That's fine.

your Jackson v. Denno ruling --

THE COURT: I was getting ready to do that.

MS. HINTON: I'm sorry.

THE COURT: No. And I need to make sure I'm clear on these.

Okay. On the -- there was -- one portion of it related to Lane Byers overhearing things at the hospital. And I ruled on that and said any of that information was admissible. And I don't think there was a contest on that.

The second related to Michael Hendricks asking -- getting a statement at the sheriff's office. And I believe that was a few days later.

MS. HINTON: On November the 6th, Your Honor.

THE COURT: Okay. November the 6th. But, at that time, there was no information back as far as any toxicology report?

MS. HINTON: That's correct.

THE COURT: All right. It looks like to me -- are y'all familiar with State v. Navy?

MS. HINTON: Not particularly.

THE COURT: It sounds like -- in State v. Navy, it was, actually, a homicide by child abuse as well where they -- they had two parts of that. And the first part of it, they had him at the sheriff's office and they were

just getting a fact-finding mission. There wasn't any charges brought. And, at some point, it switched to being kind of a -- more suspect involved.

And they said the first part of the statement was clearly admissible, was not custodial, and Miranda was not required. But that the second part was just not -- and Mr. Hendricks -- or Officer Hendricks, it never got to the point of, hey, we know you did it, or anything like that. It was just fact-finding questions as far as I recall.

MS. HINTON: That's the State's opinion, Your Honor.

Now, I will say at the very end, there's kind of a -- a blanket question of, did you do this? But there's not a lot of pressing, or harping, or things like that. But in full disclosure, there is --

THE COURT: Do I need to review it then? Or you're not going to call him --

MS. HINTON: We're not calling Detective Hendricks today, Your Honor, no. He would be, basically, first thing tomorrow. I just don't want to mislead you.

THE COURT: No. I understand.

MS. HINTON: We would still say it doesn't amount to a full blown interrogation, but there are, I guess, I would call tougher questions.

THE COURT: If you're not going to call him today, I want to make sure we're -- I have a better understanding

of that.

How long is the video of that one?

MS. HINTON: Judge, if you cut out what we put in Court's Exhibit No. 1, which cuts out about 20 minutes, it's probably only about a 30-minute interview all tolled. And then the second one is more like an hour and a half, two hours.

THE COURT: I think I may want to review it then just to be sure on that.

And I'd ask y'all to look at State v. Navy, which is 688 S.E.2d 838, which is what I'm leaning on for my analysis at this moment, so.

MS. HINTON: And then in addition to the statements that were made to Lane Byers, I think both Rita Burgess and Christine Cauthen testified that they were, also, part of some conversation on that same day, both at the hospital and at the home.

THE COURT: Right. And I find that those were not custodial. And those are admissible as far as it goes.

So, therefore, I need to determine the statements to Michael Hendricks and the -- the video statement to Rita Burgess and SLED -- Cauthen, is it?

MS. HINTON: Yes, sir.

THE COURT: Cauthen. Or Rita Byers, whichever you go by. Sorry.

MS. RITA BURGESS: That's okay.

THE COURT: I just had to harass her.

So are we clear on everything? That doesn't mess anybody up as far as what you're presenting today?

MS. HINTON: No, Your Honor.

THE COURT: All right. Anything else then before we bring the jury in from the State?

MS. HINTON: Not from the State, Your Honor.

MR. DEJONG: Not from the Defense, Your Honor.

THE COURT: And just for your purposes, Mr. DeJong, you're going to have to convince me that she's not -- I mean, not now, but for your purposes, you're going to have to convince me that she should not be in the State's custody tonight. Just -- I'm letting you -- I'm giving you a heads up.

MR. DEJONG: I will do my best to accommodate you, Your Honor.

THE COURT: Okay. Just to let you know where we're headed.

All right. If the jury is all here, bring them in.

(WHEREUPON, the jury came into open court at approximately 2:14 p.m.)

THE COURT: All right. Ladies and gentlemen, I hope everybody had a good lunch. We worked very diligently through ours, most of it. We did get a little bit of a

THE COURT: Yes.

OPENING STATEMENTS

MS. NEWTON: Thank you, Your Honor.

May it please the Court.

Mr. DeJong.

Ladies and gentlemen, like they mentioned earlier, my name is Caroline Newton. And I'm one of the assistant solicitors here in Pickens County.

Today, we're here for the case of the State of South Carolina v. Angela Brewer. The Defendant has been charged with the crime of homicide by child abuse.

And today, Brandi Hinton and I are representing the State in prosecuting the Defendant for that crime. It's our privilege and our honor to do so.

It's a crime in South Carolina for a person to cause the death of a child under the age of 11 by committing child abuse or neglect, and the child's death occurred under circumstances that show an extreme indifference to human life. Today, and the rest of this week, we intend to prove to you that on October 17, 2014, the Defendant did just that to her 14-month-old grandson, Minor.

On October 17th, 2014, the Defendant was the only adult with Minor that day. She was in charge of watching her two youngest grandchildren. She had them all day. And we intend to prove to you and the evidence will

show you that on October 17th, 2014, while in her care, Minor died.

And as with any child death in South Carolina, test results were done on Minor after he died. And those results will show you that Minor died from an Oxycodone overdose, the exact medication that his grandmother, Angela Brewer, was prescribed.

Now, we have the burden of proving this case, like the Judge just mentioned. We have the burden of proving this case beyond a reasonable doubt. And later on, the Judge is going to instruct you on what that burden means.

But the law doesn't require that we prove that Angela Brewer committed this case beyond any doubt or beyond a shadow of a doubt. Rather, it's proof that leaves you firmly convinced of the Defendant's guilt. And it's a burden that we gladly accept. It's not an impossible one to overcome. It's been the burden of proof in every criminal trial in the United States. And every defendant that's ever been convicted of a crime in this country was convicted because a jury like you determined that that defendant was guilty beyond a reasonable doubt.

Basically, proof beyond a reasonable doubt is proof that would not cause a person to hesitate to act. Ultimately, your verdict, like the Judge mentioned, is going to depend on what you think of the testimony and the

evidence, not what I think, not what Mr. DeJong thinks. But you're the jury and you get to be the judge of the facts.

And so I think the Judge stressed it, but if he hasn't, your role here today is extremely important. And on behalf of the State of South Carolina and Minor's family, we want to thank you for being here today.

Homicide by child abuse is different -- a different crime than a crime that you may be familiar with, another homicide or murder. It's different because murder requires malice aforethought or an evil and depraved heart. That's not what we have here today.

Angela Brewer didn't wake up on October 17th, 2014, thinking how can I kill my grandson today? That's why homicide by child abuse is different. It's different because her actions on that day were so neglectful that they resulted in an extreme indifference to her 14-month-old grandson's life.

Now, Angela Brewer walked into this courtroom today the same way you and I did, as innocent people. And over the course of this trial, you're going to hear from multiple witnesses and everyone involved in this case. And once you hear the testimony, and see the evidence, and hear in detail Minor's toxicity levels, then you'll get to decide whether or not she gets to leave as an innocent

person.

And when Brandi comes back up here at the end of this trial, we are going to ask you on behalf of the State of South Carolina to do justice and find the Defendant, Angela Brewer, guilty of homicide by child abuse.

Thank you.

THE COURT: Mr. DeJong.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

Ms. Hinton.

Ms. Newton.

You're not here today to find justice. Remember that oath you just took? You will well and truly try this case on the facts and the law. That's what you're here for today. You're not looking for anything else.

What you're here for today, ladies and gentlemen, is to determine when all is said and done, has the case -- has the State proven their case beyond a reasonable doubt?

And I'm not going to belabor reasonable doubt right now. We'll talk about that a little more at the end of the trial. I am not a law giver. Ms. Newton is not the law giver. Ms. Hinton is not the law giver. We may discuss law. But His Honor sitting up there in the black robe, he is the law giver. And you will take the law from him as he instructs you, not from us.

At this point in time, ladies and gentlemen, there are absolutely zero facts, if you will, before you to determine. His Honor has shared with you that the fact that Ms. Brewer was arrested is not even to be considered by you.

Indeed and, in fact, but for the fact that we have to keep a paper trail, we could tear up that arrest warrant as far as what we're doing here today because it is totally meaningless, just as is the indictment that His Honor read to you. That is totally meaningless for what we are doing here today. Because it is not evidence. It is nothing at all other than, as His Honor shared with you, a piece of paper which is a charging document only. So I ask you, do not consider the fact of arrest or an indictment when you, ultimately, start deliberating on this case.

I shared with you earlier, ladies and gentlemen, before y'all were the fortunate ones to get seated in this jury box that I today have the pleasure of representing Ms. Angela Brewer. She is seated at counsel table. She has been introduced to you. I would like to take it one step further than that, though, if I may.

I do, indeed, represent Angela Brewer. But I, also, indeed, represent the innocent Angela Brewer. Again, don't let that arrest warrant, don't let that indictment

creep into your mind.

Now, how can I stand here and say she is innocent? I'll tell you how. She is innocent because that is what the law of this great land that we live in says. Every client that comes in this courtroom has an important, substantial right, not because I say so -- no disrespect to His Honor -- not because he says so. That's what the law of this great country says.

Sometimes, that presumption of innocence, ladies and gentlemen, is likened to a cloak of righteousness. I use a little different analogy, but, oftentimes, in the law that's what we use.

What I would ask you to do is look at Ms. Angela Brewer. She is seated there dressed in a top and slacks, but she has something much more important. It is because of that presumption of innocence, ladies and gentlemen, that she is covered in a cellophane wrap from the very soles of her feet to the top of her head to the tips of her fingers and toes. And that cellophane wrapping is known as the presumption of innocence. It does not leave Ms. Brewer when I sit down in a few minutes and hush. It does not leave Ms. Brewer after you've heard a witness or several witnesses. It does not leave her.

Indeed, ladies and gentlemen, that cellophane wrapping on Ms. Brewer follows her back into this jury

room when you decide -- when the Judge says, start deliberating. And it does not leave -- that presumption of innocence does not leave until or unless you have found that the State has proven each and every element of its case beyond a reasonable doubt. And, again, His Honor will charge you on that. We will talk more about it in a little bit.

Now, part of that presumption of innocence, ladies and gentlemen -- Ms. Brewer sits at counsel table with me and Mr. King. And she walks in this courtroom and has nothing, zero to bring before you.

Because of that presumption of innocence, she is not required to testify. Indeed, and, in fact, again, under the law of this great country, she cannot be required or forced to testify, whether she does or not at this moment in time, I don't know. We'll see that as the case progresses. But, again, I ask you to put in your mind that she has no duty to bring anything before you as the fact finders of this case today.

This case, ladies and gentlemen, is what I would consider a -- what we call a circumstantial evidence case. The State comes before you and alleges that Ms. Brewer, through negligence with some -- not malice aforethought, that she had a total and extreme indifference to the child's life.

Now, I think you will find that Ms. Brewer was the only caregiver there for most of the day. Beyond that, the State wants you to make a quantum leap because she was the only person there and that this child died -- the child did die, that she did it. They've got to do more than that. They've got to prove beyond a reasonable doubt that she did that.

I guess we're all belaboring the point a little bit. And I'll belabor it a little bit more.

Thank you for being here, especially this time of the year.

There are so many things to be done in all of our lives, and I know in each of your lives. But your being here is so fundamentally important. Some people take issue with me. I believe it was the great late Winston Churchill one time said jury service, what you're doing today, is the highest service you can provide for your community, your state, your country in peacetime. I'm not sure we're in peacetime. Maybe we can paraphrase it a little bit.

I would say what you are doing today -- I would tell you voluntarily, but it wasn't voluntarily. What you're doing today is so fundamentally important and it is, indeed, the highest service you can provide to Pickens County, the State of South Carolina, and the United States

of America as a noncombatant. It is that fundamentally important.

But for the 14 of you at the moment sitting in this jury box, there would be no need for His Honor, there would be no need for me, there would be no need for the Prosecutors. But, ladies and gentlemen, you are the sole finders of fact in this case.

I'm not going to go into what the State alleges at this point in time. We'll watch it unfold as we go through this trial. I will ask you to remain attentive. You have been more than gracious and attentive so far listening to me. I deeply appreciate it. But in the discharge of your duties as the jury, I would ask you to remain that attentive.

And when this case goes into your hands, and the Judge says you can start deliberating, after you have done your due diligence, I would ask you to bring back a verdict of not guilty for Ms. Angela Brewer.

Thank you so much for your time.

THE COURT: All right. The State may call its first witness.

MS. NEWTON: Thank you, Your Honor.

We would call Deputy Billy Trotter to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand, please.

WHEREUPON,

BILLY TROTTER,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: I'm Deputy Billy Trotter.

DIRECT EXAMINATION

BY MS. NEWTON:

Q Deputy Trotter, where are you employed?

A I'm employed with the Pickens County Sheriff's Office.

Q In what capacity?

A I'm a road patrol officer.

Q And how long have you been working for the sheriff's office?

A I've been working for the sheriff's office eight years.

Q Here, let me have you speak directly into that microphone. Okay.

A Okay.

Q Prior to starting with the sheriff's office, where were you employed?

A I was employed with Parker District Fire Department in Greenville, South Carolina.

Q And how many years were you with the fire department?

A 16 and a half.
Q And were you working on October 17th of 2014?
A I was.
Q And where were you dispatched to?
A I was dispatched to the address on Swiss Entrance to an infant not breathing.
Q And what time did you arrive?
A 5:53.
Q And when you got to that residence, tell me about how you entered the scene.
A I pulled up. I was met on the porch by a white female, who directed me inside. Once I stepped in the door, I observed a white male with a small infant laying in the floor. The male was on the telephone.
Q Okay. And what -- what was he doing?
A He was on -- on the telephone with our communications office. He was actually -- they were talking him through CPR. He looked up at me and asked me for help when I stepped inside the door.
Q Okay. And what did you do once you got inside?
A When I stepped inside, I had him stop CPR momentarily so I could check the vital signs of the infant to see if I could detect any breathing, or pulse, or anything, which I did not. And then, actually, I helped him with CPR until the ambulance arrived.

Q Okay. What was the condition of the child when you arrived?

A The child when I opened the door had a -- the first thing I noticed was, like, a blue-gray, waxy appearance.

Q Okay. And I think you mentioned this, but you -- was the baby breathing?

A No. The baby was not breathing and no pulse.

Q Okay. And how long were you there before EMS arrived?

A I would say four to five minutes.

Q Okay. And what did you do when EMS arrived?

A When I heard the ambulance coming, I told the gentleman to step back. I got the baby up on my arm, cradled its head. I went out to the ambulance continuing CPR. And as they backed in, I met them. And we went straight into the back of the ambulance.

Q And how long were you in the back of the ambulance?

A We were in there for a good while. When something like that is happening, time is irrelevant. I would say probably 10 to 15 minutes, at the minimum.

Q Okay. And what, if any, changes did you observe in the baby's condition while you were in the --

A There were never any changes. I continued CPR in the back of the ambulance while the ambulance attendants were getting their equipment and stuff together. They told me

to continue what I was doing. And once they got the baby hooked up to the monitors and everything, then I stepped out of the ambulance.

Q Okay. And did you have an opportunity to gather information from the people at the residence.

A I did get the man and woman -- I did get their names.

Q Okay. And did they provide you with any timeline throughout the day?

A No, ma'am.

Q Okay. In your training and experience, did you -- you stated that the baby had some waxy blue color?

A Yes, ma'am.

Q Are you familiar with an approximation of --

MR. DEJONG: Your Honor, I'm going to object to this. He has not been qualified as any expert in medicine, or medical care, or anything else. And I think she is calling for speculation on the part of the witness, Your Honor.

THE COURT: Well, I'm not sure what the question was.

MS. NEWTON: Okay. I'll rephrase.

THE COURT: All right.

BY MS. NEWTON:

Q From your experience at the fire department, had you seen children's deaths before?

A Yes, I have.

Q And in that experience, did the waxy blue color indicate anything?
A That there was a very good possibility the child was deceased.
Q Okay. And when did you -- or when you left the residence, did anyone leave with you?
A When I came out of the back of the ambulance, the white male, who is sitting back there on the bench, and Ms. Brewer were outside. I told them that the ambulance was going to Cannon Hospital. And they left following the ambulance.
Q Okay. At the time that you were in the back of the ambulance, did you ever see the Defendant female outside?
A No, ma'am, I didn't.
Q Okay. So your only involvement with her was in the house; is that correct?
A Yes, ma'am.
Q Okay. And you mentioned your arrival time, do you remember when you were dispatched?
A At 5:47.
Q And how did you travel to the residence?
A I had blue lights and siren until I got into the subdivision. And I cut them back as is what we normally do.

Q And then when you got out of the vehicle, how did you enter the house?

A I got out and walked up to the house, not just real slow, but at a brisk pace. I saw the female standing at the door.

MS. NEWTON: No further questions. Please answer any questions Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q Now, I understood you to say when you got there, you were met by a white female on the porch?

A Yes, sir.

Q So she was outside?

A Yes, sir. She was on --

Q So you did have contact with her outside the house; right?

A Yes, sir.

Q Okay. And did you later identify this white female?

A Yes, sir. Before I left the scene, I got them to give me their names.

Q Who was it?

A She said she was Angela Brewer.

Q All right. She met you on the porch. What was her demeanor? Describe her.
A She was excited looking, said her baby was inside not breathing.
Q Was she upset?
A She did not appear to be highly upset, no, sir.
Q I see. And was she crying?
A I don't recall that she was, no, sir.
Q Well, how did they know you were going to Cannon Memorial?
A The ambulance attendants told me they were going to Cannon. When I stepped out, they were outside at that point. I told them that they were going to Cannon.
Q So, again, you had other contact with Ms. Brewer and Robby Brewer outside of the house; right?
A Yes, sir.
Q Okay. Did you ever -- well, you did go inside the house; correct?
A Yes, sir. I went into the living room.
Q And, I guess, for purposes of the record, we need to go back and do this. The white male that was in the house, did you identify him by name?
A Yes, sir, before I left the scene.
Q Yes, sir. But who was that white male?
A He told me his name was Robby Brewer.

Q All right. So when you got into the house -- well, let me back up. When you got there, Ms. Brewer met you on the porch?
A Yes, sir.
Q And you went on in the house. Did she follow you into the house?
A Yes, sir, she did.
Q All right. And you said Robby was on the telephone, Robby Brewer. Was he on speaker phone, or did he have it to his ear, or --
A No. He had it up to his ear. He was talking to someone. I asked him -- I said, Who are you speaking with?

He said, 911.

And I told him -- I said, Tell them I'm here.

Q Well, you indicated earlier that that person was trying to direct him how to give CPR, didn't you?
A He was on the telephone with communications that were giving him CPR instructions.
Q You couldn't hear that, could you?
A That's what he told me. He said, I'm on the phone with 911. They're telling me what to do.
Q I see. And where was the child at that point in time?
A Laying in the floor.

Q Okay. And Robby was trying to do CPR?
A Yes, sir.
Q Okay. And Ms. Brewer was in the room?
A Yes, sir.
Q Okay. And then you take over CPR; correct?
A I assisted Mr. Brewer. I did the chest compressions and let him do the breathing.
Q Okay. And then the ambulance gets there and you take the child out to the ambulance?
A Yes, sir.
Q Now, are you saying that Robby and Ms. Brewer did not follow you out to the ambulance?
A I honestly couldn't tell you. Because I was busy with the child in the back of the ambulance.
Q Yes, sir. So you don't really know where they were when you took that child to the ambulance, do you?
A No, sir.
Q Okay. And as I believe you said, times become a little fuzzy when you're dealing with an experience like this; right?
A Yes, sir.
Q And you're a seasoned police officer; right?
A I would say so, yes, sir.
Q All right, sir. Did you go to the hospital?
A No, sir.

Q Okay. Once you left -- what was this address again?

[redacted] here in Pickens; is that correct?

A Yes, sir.

Q Once you -- once the ambulance left, and Ms. Brewer and Robby left, did you go back in the house?

A No, sir.

Q Okay. Did you, at that point, leave?

A Yes, sir.

Q And did you have any more involvement with this case?

A I was called back a couple hours later by Detective Byers.

Q To do what?

A Just to give them a rundown of what I observed when I got there.

Q All right. But you had no further involvement with either Ms. Brewer or anything else about this case, other than giving Detective Byers a rundown; correct?

A No, sir.

Q All right, sir. And as to what happened in that residence on October the 17th of 2014, you have no personal knowledge?

A No, sir.

MR. DEJONG: Thank you, sir.

THE COURT: Any redirect?

MS. NEWTON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. NEWTON:

Q Deputy Trotter, you testified earlier that you weren't aware of who was outside. But do you have any recollection of the Defendant screaming at the ambulance?

A No, ma'am, I don't.

MS. NEWTON: Okay.

THE COURT: All right. Thank you.

You may step down.

MS. NEWTON: Your Honor, may this witness be excused?

MR. DEJONG: No objection, Your Honor.

THE COURT: All right. Call your next witness.

MS. NEWTON: Your Honor, next, the State calls Mark Pless to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand, please.

WHEREUPON,

STEVEN MARK PLESS,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: My name is Steven Mark Pless.

DIRECT EXAMINATION

BY MS. NEWTON:

Q Mr. Pless, if you'll speak directly into that

microphone so we can hear everything.
A Okay.
Q In what capacity were you employed on October 17th, 2014?
A As a paramedic for Pickens County EMS.
Q Did you have a title within being a paramedic?
A No, ma'am, just as a paramedic.
Q How long have you been a paramedic?
A 24 years this past February.
Q And does employment as a paramedic require a certain degree of training?
A Yes, it does. It takes, at least, two years.
Q And then once you -- is it a certification that it's -- the label of it after the two years?
A It is. It's a certification. And then we are required to do further training each year in order to maintain that certification.
Q Is that training done monthly?
A There is some of it done monthly. There was two hours monthly, and then there were other courses we had to take.
Q Okay. And when were you dispatched to the scene in question?
A It was around 5:41, 5:42.
Q And how did you travel once y'all were dispatched?

A We came emergency traffic up there.
Q And what does "emergency traffic" mean?
A Lights and sirens.
Q When did you arrive at the residence?
A It was about 13 or 14 minutes. So it would have been around 5:53, 5:54, somewhere in that range.
Q Okay. And what happened upon your arrival?
A When we pulled in, the deputy was carrying the child down and said they had been doing CPR on him. And we opened the back of the ambulance to let him continue.

And I asked the male standing on the porch what had happened. And I was told that he had been asleep since about 1:00. And I asked if he had any medical history, if he took any medication, if he was allergic to any medication. I got no answers to all that.

And then I got into in the back of the ambulance where my partner and the other people were there and we continued CPR.

Q And what was the condition of the child when you arrived?
A He wasn't breathing, and he did not have a pulse.
Q Okay. Did you -- you said -- you mentioned the grandfather. Did you ever see the Defendant?
A I did not. I saw the deputy, and I saw a male.
Q Okay. What was the appearance of the baby?

A He was pale, his skin was kind of moist. He was a little cold to the touch -- or a little cool to the touch.
Q Okay. And you said that y'all worked from the back of the ambulance?
A Yes, ma'am.
Q What is the benefit of working right there, rather than just immediately taking off to the hospital?
A There's a lot of things that have to be done. One of those is taking control of the airway where, you know, if the patient does recover and they throw up, that nothing gets down in the lungs. But we, also, need to give medications and start IVs in order to be able to get the heartbeat to start.
Q And what did you do to this particular child while you were in the ambulance?
A The first thing we did was continue the CPR. And my partner, I believe, was doing the ventilation. She was up at the head. And we started a needle in his bone in his leg. That's the fastest and easiest route to do that.

Then he was given Epinephrine every three to five minutes. That's a standard. And we attempted to intubate him a couple of times, put a tube down his throat. And both of those were successful going in, but they did not give the response that they were supposed to, so they were removed. And then once that was done, we started towards

the hospital.

Q Okay. Can you back up and tell me a little bit about the intubation process that you attempted on the baby?

A Okay. What we do is with adults, the tubes have cuffs on them. The pediatrics do not have cuffs on them. It's called a laryngoscope. And we insert it down into the throat, lift the tongue up. Once we raise the tongue up, you can see the white of what's called vocal cords leading down into the trachea. And once we visualize those, then we pass this tube in between those.

Q Okay. And in this instance, did the tube attach to the vocal cords?

A No, ma'am. Once we got it in -- you could see it go in, but we had breath sounds in the chest. But, also, we had them in the stomach. And that's an indication that it did not close up around the vocal cords.

Q Does that give an indication to the baby being deceased?

A It can --

MR. DEJONG: Your Honor, I object. She's leading.

THE COURT: Rephrase your question.

BY MS. NEWTON:

Q What indication does that -- does that lack of attachment indicate? What does that give you?

A It can be one of two things. It can either be the

vocal cords are no longer able to seal, that the time of cardiac arrest has been too long, or that the tube size is too small.

Q In this instance, did you do that once or more than once?

A We did it more than once. The first time, we used a tube. And once I got this back, we realized it could be too small. So we put a five and a half inch, which was the largest that we carry for a child this size.

Q Okay.

A And then I got the same response the second time. There was air in the lungs and in the stomach.

Q Okay. You mentioned earlier about CPR. Is vomit normal during CPR?

A It can be if CPR is done, especially prior to us getting on the scene. A lot of times the airway has not opened up completely. And just the force of air causes some of it to go into the stomach. Or if the head is not positioned correctly, it can cause -- that creates an avenue for the vomitus to come back up.

Q And does the appearance of vomit give any indication of whether the child was alive or dead?

A Not necessarily.

Q And as a result of your training and experience, could you tell if the baby had recently died?

A Given the fact of his skin temperature being cool, it had been a little while. The other thing, we gave medications, but the cardiac monitor was showing what's called asystole, which is flat line. And, typically, with the medications we had given, we should have gotten some form of response.

Q And how long were you on scene for?

A At least, 30 minutes before we left to go to the hospital. I'd have to look at my notes to see exactly how long we were there.

Q Okay. Can you look at your notes?

A We arrived on the scene at 5:53. And then we transported to the hospital at 6:23. So we had been there right at 30 minutes.

Q And when you first came into contact with the baby, was the baby dead?

A By all definition, yes. There was no pulse, and he was not breathing.

Q Okay. And you mentioned about normal vomit. Is it common to have an appearance of vomit even when a baby is dead?

A Yes.

Q And did the condition of the baby ever improve while he was in your care?

A No, it never did.

Q And did you -- I think you stated earlier that you never saw the Defendant; is that correct?
A No, ma'am.
Q Do you remember any screaming at the ambulance?
A No, ma'am.
MS. NEWTON: Okay. Please answer any questions Mr. DeJong may have.
THE COURT: Cross-examination.
MR. DEJONG: Thank you, Your Honor.
May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:
Q So I gather your entire attention and focus was on this child; right?
A Yes, sir.
Q A hundred percent?
A Once we got him in and I got into the back, I never got back out.
Q Well, who was outside -- not outside, you can't really say, can you?
A I know who was there when I arrived on the scene. But once I got in the ambulance, I never got back out.
Q Yes, sir. You can't say Ms. Brewer never came out, can you?
A True.

Q So the first person you saw when you got there was, I gather, a police officer; correct?
A Yes. There was a sheriff's deputy and the -- who I found out later was the grandfather. I didn't know who he was at the time.
Q Did you ever go in the house?
A No, sir.
Q Did you ever go up on the porch?
A No, sir.
Q So you remained in the ambulance and the child was delivered to you by a police officer?
A The police officer was carrying him. And I stopped long enough to speak to the grandfather to ask about medical history, medications, and allergies. And then I got in.
Q When you got there -- you say you got there at 5:53?
A If I can look at my notes?
Q Surely.
A Yes. We were there at 5:53.
Q Okay. And the police officer was already there?
A Yes, sir.
Q Do you know how long he had been there?
A I have no idea.
Q Now, how much -- what kind of medication were you putting into this child?

A Epinephrine.
Q What?
A Epinephrine.
Q Okay. Epinephrine?
A Yes, sir.
Q And did you give him that more than once?
A Yes, I have.
Q How many times?
A Over the years, or in this particular call?
Q I'm sorry?
A Over the years, or in this particular call?
Q In this particular case.
A I'll have to look and see.
Q Pardon me?
A I'll have to look and see the number that I gave.
Q Please look.
A Six doses.
Q And I don't know. Do those come in CC's, or what do they come in?
A They come supplied in one milligram. Because of his size, it's based off of his weight. And he was given .1 milligrams six times.
Q Given .1 milligrams six times?
A Six times, yes, sir.
Q Thank you, sir.

Did you ever talk to Ms. Brewer?
A No, I did not.
Q The only person you talked to was -- well, do you know who you talked to, other than the police officer?
A Who I found out later is the grandfather. I didn't know who it was at the time.
Q Pardon me?
A I did not know who it was at the time.
Q I understand. Who was the grandfather? Do you remember his name?
A Oh, no, sir. I never even got a name. I just knew the person there was the grandfather.
Q Okay. And if I understood you correctly, one of the first things you do is clear the lungs; is that correct?
A One of the first things we do is continue breathing, yes, sir.
Q Okay. Well, sometimes it all happens quickly. So the first thing you do -- and you continued the CPR; right?
A Correct.
Q And then you worry about -- or are concerned about clearing the lungs, or the mouth, or the airways, I guess?
A Only if it's necessary.
Q Okay. Well, in this case, did you find vomit in the child's mouth?

A Later on, not initially.
Q Okay. So that wasn't something you checked for initially; right?
A No, sir. It wasn't present initially.
Q So if it was not there initially, then you can't really say when it got there, can you?
A We have no way of knowing.
Q All right. So then to say whether that vomit was there -- and if that vomit would indicate he was deceased, it would equally indicate that he was still alive, wouldn't it?
A No, sir.
Q How so?
A Vomit doesn't decide whether they're alive or dead.
Q Pardon me?
A Vomitus doesn't decide whether they're alive or dead, the presence or absence of it.
Q Well, that's what I'm saying. Simply because there was vomit, you can't say he was deceased at the time you got there?
A Oh, no, sir. It was the fact that he wasn't breathing, and he did not have a pulse.
Q I understand that. But the vomit had nothing to do with that determination, did it?
A Oh, no, sir.

Q Okay. Did the grandfather, Robby, indicate whether or not he had been there during the afternoon or the day?
A No, sir. I never asked.
MR. DEJONG: Thank you, sir.
THE COURT: Any redirect?
MS. NEWTON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. NEWTON:
Q Was the baby administered any other medication besides the Epinephrine?
A Let me look and make sure. But that's the only one I remembered.
No, ma'am. That was the only thing that was given, medication.
Q And just -- so did you administer Oxycodone?
A No, ma'am.
Q Did you provide any caffeine to the baby?
A No, ma'am.
Q And would the baby have been given any methamphetamine?
A No, ma'am.
MS. NEWTON: Okay. No further questions.
THE COURT: You can step down.
MS. NEWTON: Your Honor, may this witness be excused?
MR. DEJONG: No objection, Your Honor.

THE COURT: All right. You can be excused.

All right. Call your next witness.

MS. NEWTON: Your Honor, the State calls Deputy Lane Byers.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

LANE BYERS,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

State your name for the record, please.

THE WITNESS: Lane Byers.

DIRECT EXAMINATION

BY MS. NEWTON:

Q And where are you employed?

A At the Pickens County Sheriff's Office.

Q And how long have you worked in law enforcement?

A About 35 years now.

Q Okay. And in what capacity were you employed on October 17th, 2014?

A I was the lieutenant over the male side of the investigation division, the detective division.

Q And what location did you respond to on that evening?

A I was called to respond to Cannon Hospital emergency room to a death.

Q Okay. And who was there when you arrived?
A The coroner was there. The -- Mr. and Mrs. Brewer, the grandparents, were there. The child was in another room there. And there was a young lady. I didn't know who she was until later, but she was a SLED agent. Christine Cauthen was there.
Q Okay. And what team were you involved with at the sheriff's office? You mentioned lead detective over something. What was that called?
A We had at one time -- and both sides has it, the adult side had a homicide investigative team. Any time there was a homicide or an investigation that required any kind of death that looked suspicious, we had a team that went out. They, also, had the same team on the juvenile side that do the same thing, so they had training with juveniles.
Q And as a result -- you were not on the juvenile team; correct?
A No, I was not.
Q So as a result of that, did you do anything to provide the others came and assisted?
A Well, when you first get there, you start gathering evidence the best you can, asking questions, trying to get a timeline, trying to get something going to give us an understanding of what has happened prior to. And I was

doing that.

I had contacted Lieutenant Burgess to come out. Because there's mandates by the state for a death of a child that have to be followed. And I had no clue what that is. And I'm not going to mess it up by trying to guess at that. So I had already called her out.

But during the meantime, while she was responding with her team, I was just asking basic questions of what had transpired during the day.

Q Okay. And did you obtain a consent to search the residence?

A Yes. Later on -- actually, after another detective showed up from the lieutenant's team, Sergeant Michael Hendricks, the -- he and I presented to Mr. Brewer a consent to search to go out to the house to see what was there. And he signed the consent order for that.

Q Was that written --

A It was a written order. It's, actually, a form that we fill out. And it's worded -- and he writes his name at the top. We fill out who could possibly be going out there. And there's words in there that you don't have to sign this. It gives the address that you're going to. And they sign it and -- to give us permission to go in.

Q So you were freely given that permission?

A Yes. It's either that or we have to get a warrant.

And we was in the investigative state. So we had to find out what we had at the house to see what we had.

Q While you were at the hospital that night, what other family members arrived?

A The daughter -- a little bit later -- I think they were in Georgia. But the mother of the child and her husband came in just a little bit later. They was responding from Georgia. But due to the distance from where they were, it took a little while for them to get there. So they came a bit later.

Q And by "they," do you mean the mother and the father?

A The mother and the father.

Q Okay. And during your interaction with the Defendant -- you said Ms. Brewer is that the Defendant; is that correct?

A Yes, it is.

Q What information did you gather from her?

A Basically, the address of the home, who had been there that day. And from what I gathered from her, everybody had left. And I think even Robby had gone -- Robby Brewer, her husband, had left for a little while.

And she said the baby was fussy and fretful. And that she had fed him some food, you know, a couple times during the day. And just basic details of what the day was like, the best I could get from her.

Q And do you remember any specifics about those foods, and details, or anything?

A I -- I don't remember the exact times. I wrote those down. But there was times, like in the morning, she gave him half of an apple. I think later on around lunchtime, he obtained -- she gave him a cheese sandwich. And I think she heated it up in the microwave to make it softer. And then probably a little after lunch, she gave him a drink. It was a Kool-Aid brand of lemonade that she gave him to drink.

Q Okay. And for times, would it help if you looked at your notes?

A That would help tremendously, yes. Because I wrote them down.

Thank you.

Okay. The times on this -- I think about 11:00 to 11:30, she said she gave him half an apple. At 12:00 noon, it was the cheese sandwich that had been softened. And at about 1:15, after lunch, p.m., she gave him some pink lemonade, which was a Kool-Aid brand of that.

Q And did she mention how the -- how the baby had been acting that day?

A She said he had been fussy. She acted like he was sickly. And she had been -- you know, he had been just fretful, you know, how a baby will get when they're

feeling bad.

Q Did she provide you with any information about herself? Did you hear that at the hospital?

A I was asking different questions. I mean, I didn't know her. I never knew her. But we was just trying to get some basic information. She -- in the questions, there was some -- it wasn't directed to me, but she was talking to several of us that were standing there. By that time, the lieutenant had arrived and the SLED agent was on the scene already when I got there.

So they was sort of giving -- we was going through some things, what medication are you on? What medication? And I don't remember all of it. I just remember one of them being OxyContin that she was prescribed for her to take. That's the only one I can remember.

Q Okay. And did you have any reason to Mirandize the Defendant or any other family members that you were talking to?

A I was doing an investigation, fact finding. I didn't have anything to do a Miranda about.

Q Did you even know the Defendant was a suspect at that time?

A No. I had no clue. We had no clue what had happened.

Q Okay. What were your observations of the family

members that were at the hospital that night?

A The mother was distraught, I mean, terribly so.

Q And just to be clear. When you say "the mother," do you mean the baby's mother?

A The baby's mother was distraught, and, I mean, terribly, and the father. By the time they got there and saw the child, they were, obviously, just gone beyond emotions.

Mr. Brewer, Robby Brewer, you could see he had been crying. He wasn't saying much to us. He just answered questions when we asked. And I noticed that Ms. Brewer, she had been crying, also. She had been acting like -- you know, like, she had some tears in her eyes, but she was -- I didn't see her crying.

Q And how -- how would you characterize how she appeared to you?

A Curious about everything we was doing, sort of worried about some stuff. It was just like -- I've been doing this a long time. She paid a lot of attention to what we were up to, what we were doing. And it just come to mind that that was curious.

Q Okay. And the residence on your consent to search, is that within Pickens County?

A I don't have it here with me. It's [redacted]. It's in Pickens County. That's north of

Pickens. It's not in Pickens, but it's within the Pickens County Sheriff's jurisdiction.

MS. NEWTON: Please answer any questions Mr. DeJong may have.

THE WITNESS: Thank you, ma'am.

MR. DEJONG: May it please the Court, Your Honor.

THE COURT: Yes.

MR. DEJONG: Thank you.

CROSS-EXAMINATION

BY MR. DEJONG:

Q You've been a detective -- or you were a detective -- are you still a detective?

A No, sir, I'm not. I've stepped away from that now.

Q Hung it up?

A Finally.

Q So in 2014, how long had you been a detective?

A I was a detective for 26 years at the end of 2016. So it was about 24 years I had been a detective.

Q Well, I'm curious. So you were the lieutenant over the detectives at that point in time; is that correct?

A Yes, sir.

Q And you were the -- were you the first one to respond to the hospital?

A Not the first one. I was the first Pickens County Sheriff's Office officer that responded.

Q Okay. So there was no other law enforcement before you got there. You were the first law enforcement?
A I was the first one. There was another one that had been called out. He was another detective that was on call. And he, actually, got tied up in another county, so they called me. Being a supervisor, it was my job to come on out and see what we could do.
Q How long were you involved in this case?
A Just an hour or two at the hospital.
Q Well, I'm kind of curious. As the lieutenant of the detectives for Pickens County and being the first officer that arrived at the hospital, did you ever file a written report?
A I probably didn't. I turned everything over to Lieutenant Burgess.
Q May I see your notes there for a minute?
A Sure.
Q Well, this allegedly occurred on October the 17th, 2014; right?
A That sounds correct, yes, sir.
Q So that's been a shade over three years?
A Right.
Q And you didn't file a written report?
A No. I called out a team. And then I turned over --
Q And that's all you've got are those notes?

A That's it.
Q I glanced through the notes hurriedly, but I could not see any mention of it in your notes about OxyContin, or Oxycodone, or whatever?
A I didn't take notes on that. That was someone else that was asking those questions. And I happened to be still standing there before I walked off.
Q So that was not shared with you?
A It was shared in my presence.
Q I'm sorry?
A It was shared in my presence.
Q But you didn't make a note of it?
A No. Somebody else was taking notes on that.
Q Right. But you're here today to testify to it; right?
A I answered the request about it, yes.
Q All right. And other than your notes, did you review anything else before you came in here to testify today?
A No, sir.
Q You didn't review anybody else's notes?
A I looked at mine to make sure --
Q Yes, sir. I understand that. But you're telling me that more than three years ago, and those are the notes you took, you spent an hour, hour and a half on this case. You don't write something down that you heard that might

be important to the case?
A Those notes was being put in place by another detective. Actually, Lieutenant Burgess was standing there when it happened. So it was getting to be her investigation at that point.
Q As far as the parents of the child, did you ever confirm where they were -- or where they were coming from at the time this incident allegedly occurred?
A I did.
Q And how did you confirm that?
A I asked them where they came from.
Q Other than asking them where they came from, how did you confirm it?
A They said they was coming from Georgia.
Q Pardon me. Okay. Now, let's talk a little bit about demeanor of -- I gather when we're talking about the demeanor, we're talking about the demeanor of Ms. Brewer; right?
A That was one of the persons, yes. That was one of the persons there.
Q And, as I recall, you said she seemed interested in what you were doing?
A Yes, sir.
Q And maybe a little worried?
A Yes, sir.

Q Do you remember they had to take her out of the waiting room and take her to another waiting room because she was creating such a ruckus?
A I don't recall that. They were in the room right beside -- the baby was in this room -- his room was adjoining. The baby was in this room and they were right here, which is a curtain.
Q And that would have been, basically, the waiting area at that point?
A That's in the -- it's in the emergency room.
Q Do you recall her being removed from that room?
A I don't recall that at all.
Q It's not in your notes, is it?
A Well, it didn't happen. I didn't see it.
Q So you recall OxyContin or Oxycodone, but not anything about her being moved out of the waiting room; right?
A Well, I never saw her get removed. I did hear the other.
Q Pardon me?
A I heard about the Oxy [sic], but I don't know anything about her being removed.
Q Well, were you there for the duration when somebody law enforcement-wise was talking to her?
A I was there for a little bit. And then when they

came in, I stepped out and left.

Q According to you, as I understand it, Officer Byers -- correct me if I'm wrong. You said Ms. Brewer shared that the child was fussy?

A Yes.

Q Okay. And I think you used another word as well, which eludes me at the moment.

A I don't remember.

Q Fussy?

A Fussy. I mean, it was whining.

Q Okay. Not that he had been sick or anything like that. He was just fussy; right?

A There was -- no. She just said he -- she thought he might have been coming down with something.

Q Right.

MR. DEJONG: Thank you, sir.

THE COURT: Any redirect?

MS. NEWTON: None from the State. Your Honor.

THE COURT: All right. You may step down.

MR. DEJONG: No objection to him being excused, Your Honor.

THE COURT: You may be excused.

We've been going a good little while. Let's take an afternoon break here, just a few minutes. And then we'll get back to the testimony.

Now, do not discuss the case. And if y'all will -- the 12 original jurors, if y'all will pick your Foreperson. And if you'll write that on a piece of paper and give it to the bailiff.

All right. But don't discuss the case. We'll bring you right back out in just a few minutes.

(WHEREUPON, the jury was excused from open court at approximately 3:26 p.m.)

THE COURT: All right. We'll be at ease for about 10 minutes.

(WHEREUPON, Court's Exhibit No. 3 was marked for identification and admitted into evidence.)

(WHEREUPON, a break was taken.)

THE COURT: We attempted to review the video and we were not successful.

MS. HINTON: That was which one, Your Honor?

THE COURT: The one that -- I don't have the Michael Hendricks video. Let's see if we can work that one. The other one, I could not. It keeps saying needs backup, or the DVR, or something.

MS. HINTON: Okay. We had problems, too, Judge. You are -- I don't know if Mr. DeJong has any objection. But we did download it to our desktop here on the laptop so that we didn't have to insert a CD.

So if you want to take this with you to watch it, we

don't have any objection to that.

THE COURT: I'll probably --

MS. HINTON: And then --

THE COURT: I'll probably just get here in the morning and watch it.

MS. HINTON: And then Mr. Hendricks should -- Detective Hendricks' interview should work. It's a normal player.

MR. DEJONG: I think I had to download the VLC player. I think I, finally, got it to play on that.

THE COURT: Well, our computers don't allow us to download anything.

MR. DEJONG: I'm sorry, Your Honor.

THE COURT: They don't. And we can't --

MS. HINTON: It's convenient. But we'll leave the laptop, Your Honor.

THE COURT: You can just leave it. I'll probably watch it in here.

MS. HINTON: Okay.

THE COURT: Okay. The Hendricks' video works. We can get it to work. Before we leave today, instruct me how to use that.

MS. HINTON: Sure.

THE COURT: So Hendricks is what's been marked as Defendant's Exhibit No. 17.

MS. HINTON: State's, Your Honor.

THE COURT: I'm sorry. State's. And then the interview of Angela Brewer is State's Exhibit No. 18.

All right. Anything before we bring the jury in from the State?

MS. HINTON: No, Your Honor.

THE COURT: Anything from the Defendant?

MR. DEJONG: Not on behalf of Ms. Brewer, Your Honor.

THE COURT: Okay. Ask them if they're ready.

(WHEREUPON, the jury came into open court at approximately 3:41 p.m.)

THE COURT: Okay. Sarah Williams, you're the Foreperson.

I hope -- I didn't tell you this before, but it's not a pay raise, or anything. You don't get any more than the rest of them.

Thank you for serving in that capacity.

The State may call its next witness.

MS. NEWTON: Thank you, Your Honor.

The State would call Robby Brewer to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

ROBBY BREWER,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: Robby Brewer.

DIRECT EXAMINATION

BY MS. NEWTON:

Q Mr. Brewer, who are you married to?

A Angela Brewer.

Q And is that the Defendant?

A Yes, ma'am.

Q Okay. On the day that Minor died, did you see him that morning?

A Yes, ma'am, before I went to work.

Q Okay. Did you give him anything to eat or drink that day?

A No.

Q When did you leave your house to go to work?

A Around 5:00, 5:15, something like that.

Q Okay. And where were you working that day?

A I was working for my cousin, Preferred Choice Heating and Air.

Q Okay. And was that in Pickens County, or was that somewhere else?

A Greenville County.

Q Okay. And did you drive on Highway 183 to get to Greenville that day?

A Uh-huh.
Q Okay. And did you work that entire day?
A Yes, ma'am.
Q Make sure you speak into the mic. Okay.
A All right.
Q Did you talk to your wife on the phone some throughout the day?
A I usually talk to her around lunchtime, off and on some.
Q Okay. And when you talked to her at lunch, who was there?
A I guess her, and Kayson, and Minor.
Q Okay. Did she tell -- did she indicate anything going on at the home? Were the boys asleep?
A I think they was asleep.
Q Okay. Where were Kayson and Minor's parents?
A Gone to Georgia to do some work.
Q Okay. And when you got off work, did you call your wife on your way home?
A I did.
Q And while you were driving home, what happened?
A We was talking like normal. And then she said that Minor was still asleep. And I said, Well, you might want to wake him up, you know. If you don't wake him up, he might have a hard time going back to sleep at night, so,

you know.
Q About what time did you get off work that day?
A I probably got back to the shop -- I probably left the shop around 4:10, maybe something like that.
Q And when y'all were on the phone and you were learning that he wouldn't wake up, about what time was that?
A By the time I got to where I was at and realized he wasn't waking up, it was probably 4:20 maybe.
Q Okay. And, at some point, were you near the Spinx in Dacusville on 183?
A Yeah.
Q And that's about when you were learning he wasn't waking up?
A Yeah.
Q And how long does it take to get to your house from that location?
A Well, at this particular day when I realized that something was maybe not quite right, thank God there wasn't no Pickens County around. But I put the pedal to the metal. And it took me probably -- maybe 10, 12, 15 minutes, at the most, to get home.
Q Okay. What time did you get to the house? Do you remember?
A I don't remember exactly what time it was. But when

I come in the door, it was -- all this started going on. So I -- you know, if I was at the Spinx around 15 after or whatever, it was probably around 4:30 when I got home, I guess.

Q Okay. But you don't really know an exact time?

A Not an exact time.

Q Okay. When you walked into the house, what did Minor look like?

A Well, when she handed him to me, I noticed his lips was blue, you know. I knew something wasn't right. I just didn't know what wasn't right. I didn't know what was happening.

Q Okay. And what did you do?

A I grabbed him and put him on the couch and started doing CPR on him.

Q Okay.

A I don't know how to do CPR, but I was trying something.

Q Okay. And then what happened?

A Then my wife got on the phone with 911.

Q So you called 911 after you got home?

A Yeah. As soon as I got home and found out what was going on, she called 911.

Q Okay. Where were you when the sheriff's office deputy arrived?

A He was still on the couch. And I was still trying to administer CPR.
Q Okay. What did you do when the ambulance arrived?
A I -- by that time, the police officer done took over doing everything. When I was giving him mouth compressions, he was doing the chest compressions. As soon as the ambulance got there, he grabbed him up and took him out to the ambulance.
Q Did you go to Cannon Hospital that night?
A Yes, ma'am.
Q Okay. And then, at some point, you came back to your house; is that correct?
A Later -- yeah, way later that night.
Q Do you remember a reenactment happening at your house?
A Yeah.
Q Okay. Do you know what medications your wife was prescribed?
A She was prescribed several different medicines. I couldn't call them all.
Q Okay. Where did she keep her medications?
A Some of them was in a day-by-day box, you know, like, Monday through Thursday, whatever. But the main medications was in her pocketbook.
Q Okay. What do you mean by "main medications"?

A Narcotics, I guess you'd say. Strong medicine.
Q What narcotics were those? Do you know?
A OxyContin.
Q Okay. And how was your wife with OxyContin -- you said they were in her purse. How was she with those?
A I'm not understanding the question.
Q Did you -- did you know where her medication was at all times?
A Yes, she did, yeah.
Q Had you ever seen her drop any of her OxyContin pills?
A Nope.
Q Had you ever seen your wife give anyone her pills?
A No.
Q Okay. Has your wife ever given you any of her prescription pills?
A Nope.
Q Okay. When y'all were at your house that night, do you remember talking to a DSS caseworker?
A Yeah.
Q Okay. Do you remember telling him that you crawl on your hands and knees and under houses every day, so you, sometimes, take about a fourth of her pain pill?
A I don't remember telling him that.
MS. NEWTON: Okay. Please answer any questions

Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q Mr. Brewer, how long have you and Angie been married?

A 12 years.

Q Were you together for any period of time before you got married?

A About a year, I guess, maybe.

Q You've been together some 13 years, give or take a little bit?

A Yeah.

Q You say you saw Minor on the morning of October the 17th, 2014, before you went to work --

A Yeah.

Q -- correct?

Do you know where he was? And by that, I mean do you know what room he was in when you saw him?

A He was already up out of the bed in the living room playing.

Q I'm sorry?

A He was already in the living room by the time I got ready to go. He had just got up. I saw him for a brief

second.
Q Okay. Did you notice anything unusual about him?
A No.
Q Okay. When you talked to Angie at lunchtime, do you know whether or not you were on the speaker phone?
A I don't know.
Q Pardon me?
A Nah. More than likely, I was. That's the only way she talked to anybody was the speaker phone.
Q Well, in talking to her, could you hear or did you notice anything unusual going on in the background?
A No.
Q Could you hear either of the children?
A No.
Q And then I'm not quite clear. You were on your way home. Did you call Angie, or did she call you?
A I called her.
Q You called her?
A I always call her when I leave the shop.
Q Okay. So y'all talk quiet often, I gather; right?
A Uh-huh.
Q All right. And I'm not asking you what she said. But over the phone, can you describe her tone of voice, or what was going on with her? Again, I'm not asking you what she said. Okay. Was she calm? Mild?

A Well, nothing out of the ordinary.
Q Okay. Is that the case even when she told you Minor wouldn't wake up?
A Nah. She done started getting hysteric by that time.
Q And by disturbed, what do you mean?
A He just wasn't waking up.
Q Pardon me?
A He just wasn't waking up.
Q Well, again, was she calm? Was she crying? Was she hysterical?
A She was pretty upset at that time.
Q Okay. So it took you from -- now, when y'all first started talking, were you at the Spinx in Dacusville?
A Nah. I called her, originally, when I left the shop in Greenville.
Q Okay. So then when she became frantic or anxious, you were roughly at the Spinx station in Dacusville?
A (Witness nodded.)
Q And it took you approximately 12 to 15 minutes to get home?
A (Witness nodded.)
Q Okay. I'm sorry. You have to answer out loud.
A Yes, sir.
Q This lady has got to get everything you say down.
A Yes.

Q Well, when you walked in the house, where was -- where was Minor?
A Angie was holding him.
Q Okay. What was her demeanor? How was she acting then?
A All to pieces.
Q Pardon me?
A She was all to pieces then.
Q All to pieces?
A Yeah.
Q Can you tell this jury a little --
A Very upset.
Q Very upset?
A Yeah.
Q Was she crying?
A Oh, yeah.
Q Now, when you got there, what did you do?
A She turned to me. And I just got him away from her.
Q Okay. What did she do?
A She was still in a panic mode.
Q Okay. To your knowledge, did she ever make a phone call?
A Soon after that --
Q Pardon me?
A Soon after that, one of us, I don't know if it was

her or me made the statement call to 911. I'm not clear on which. But immediately, we got 911 on the phone.

Q To your knowledge, did she call 911?

A Yes, sir.

Q And, again, I'm not asking you what she said. But just as far as your end was concerned, how was she acting when she called 911?

A So distraught that the 911 lady told her she needed to calm down so she could tell her what was going on.

Q Now, once the officer, I guess, it was -- was it Officer Trotter that got there first. Do you know?

A I know it was an officer. I don't remember his name.

Q Okay. Once he got there, did you continue to try to administer CPR?

A I was still doing CPR when he got there.

Q Yeah. But let me ask you this. So Angie called 911; right?

A Yeah.

Q And when she called 911, do you know whether or not she was or was not on the speaker phone with 911?

A She was on the speaker phone. Because they was trying to tell me how to do the CPR.

Q Okay. And that was on the speaker phone; correct?

A Yeah.

Q All right. Once this officer took Minor out to the

ambulance, where did you and Angie go?
A I was running out back and forth in the yard.
Q How about Angie?
A She was standing close to the porch.
Q Did she ever go to the ambulance?
A She never made it to the ambulance.
Q Okay. Now, other than Minor, how many -- well, let's ask that -- how many children lived in the house with you and Angie?
A At that time?
Q At that time, October the 17th of 2014.
A There was four of them.
Q Do you know what their ages were?
A One month, 14 months, five, and eight, maybe.
Q Okay. Now, let's see if we can put some names to those. Okay. One month, what was that child's name?
A Kayson.
Q 14 months, what was that child's name?
A Minor.
Q Five-year-old, what was that child --
A Keegan.
Q And I think you said eight years old, what was that child's name?
A Cory.
Q Now, other than the children, did anyone else live at

the house there with you?
A Yes.
Q And who was that?
A Cally and Michael.
Q Who's Cally?
A My stepdaughter.
Q Okay. Is that Ms. Harrison -- I mean, excuse me. Is that Ms. Brewer's daughter?
A Yes, ma'am.
Q I made that slip. Prior to you being married, what was Ms. Brewer's name, last name?
A Harrison.
Q Okay. So Cally Harrison was Ms. Brewer's daughter?
A Uh-huh.
Q And she lived in the home with you?
A Yeah.
Q And then who was the other person?
A Michael.
Q And did all of these children belong to -- that's not a good choice of words. Were all the children biological children of Michael and Cally?
A I don't know how to answer that.
Q Okay.
A Some -- biological, some was Michael's. And biological, some was Cally's.

Q All right. Well, I probably didn't ask the question very good. Was Michael the father of all the children?
A No.
Q Which ones was he the father of?
A Kayson and Cory.
Q Okay. And -- well, obviously, Cally was the mother to all of them; right?
A Not Cory.
Q Not Cory. Okay. Now, how long did Michael, and Cally, and the children live with y'all?
A About a month that time.
Q Okay. Had they lived with you in the past?
A Yeah.
Q Even when they weren't living with you, did Angie take care of the children?
A Yeah.
Q All four of them?
A (Witness nodded.)
Q Okay. You have to answer out loud.
A Yes. I'm sorry. Yeah.
Q All right. And as far as providing medical care for the children -- I'm going back now to this month around October the 17th, 2014. Who provided the medical care for the children?
A Cally and Michael.

Q Okay. Did you or Ms. Brewer have anything to do with the medical care?
A No.
Q Okay. Did you ever see Angie give any of these children medicine?
A No.
Q Okay. To your knowledge, did you and/or Angie have any medicine for these children?
A There might have been some in the house for the children.
Q Were you and Angie in possession of that?
A No.
Q Who was in possession of that?
A It was sitting on the counter.
Q Pardon me?
A It was in the medicine cabinet or on the counter.
Q Okay. Well, let's talk about the medicine a little bit. Angie kept some of her medication on the counter?
A Just a day-by-day pill box.
Q Okay. And some of it, she kept in her pocketbook?
A Uh-huh.
Q The ones that she kept in her pocketbook, did you ever see them on the counter?
A No.
Q To your -- well, when you were around, were they, to

your knowledge, always in her pocketbook?
A Yeah.
Q Now, the home you lived in -- I can't remember the address, Swiss Entrance, whatever it was. What was the number on it? Two --
A 226.
Q 226?
A Uh-huh.
Q Can you describe that home for us a little bit?
A It was a double-wide mobile home, just an old double wide. You pull into it. You go in the front door, it's a living room. Off that was my master bedroom. You got a kitchen, dining room opened up. You go down the hallway, bathroom to the left, and a bedroom on the back, and a bedroom on the other side in the back.
Q So --
A It was [redacted], not [redacted].
Q [redacted]. Thank you, sir.
So going by your description, the master bedroom would have been to the front end. Would that be fair to say?
A Yeah. As soon as you walk in the door to the left.
Q Okay. And then the other two bedrooms were on the other end?
A Yeah.

Q Of the home?
A (Witness nodded.)
Q And who stayed in the master bedroom?
A Me and my wife.
Q Okay. And who stayed in the other bedrooms?
A Cally, and Michael, and the two little ones stayed in the one on the back on the right. And Cory and Keegan stayed in the bunk beds in the one on the left.
Q So Minor and Kayson -- well, did they sleep in the room with Michael and Callen?
A Yeah.
Q Did -- well, once the ambulance left, what did you and Angie do?
A During that time, we had called Cally and Michael to let them know what was happening. And just as soon as the ambulance pulled out, we pulled out behind them.
Q And did you follow the ambulance to the hospital?
A Yes, sir.
Q And which hospital was that?
A Cannon Memorial.
Q Do you recall talking to any police officers while you were at Cannon Memorial?
A Not when we first got there.
Q I'm sorry?
A Not at the first time we got there.

Q Were there any police officers there when you and Angie first arrived?
A I don't remember. It was so scary. I don't even remember, to be honest with you.
Q Okay.
A I'm sure there was. I was in a pretty bad state of mind. I wasn't thinking about no police.
Q Do you recall police officers coming later on when you were at the hospital?
A Yeah. They came to me -- I don't really remember it. But they said they came to me and asked me about going back to the house.
Q Okay. Did they ask you for consent to search the house?
A Evidently, they did. But I was in a state of mind, you know, it wouldn't have mattered no way if that's what they needed --
Q I'm sorry?
A I said it wouldn't have mattered anyway. I would have signed it.
Q Well, when you were at the hospital, did you stay close to Angie?
A Oh, yeah.
Q What was her demeanor? How was she acting?
A Shock. We was pretty much in shock.

Q Do you recall, at some point in time, they asked her to leave the room and go to a different room, or a waiting room?

A No.

Q You don't recall that?

A No.

Q Were any medical procedures performed on you and/or Angie that night?

A I can't recall if they took blood that night at the hospital. They took blood there. And we had to go to DSS and all that. So I --

Q Well, if they did take blood, to the best of your recollection, did they take it from both of you?

A Yeah. I'm sure.

MR. DEJONG: All right. Thank you, Mr. Brewer.

THE COURT: Any redirect?

MS. NEWTON: Just one question. Your Honor.

REDIRECT EXAMINATION

BY MS. NEWTON:

Q You said "Minor," is that a nickname for Minor?

A Yes. That's what we called him.

THE COURT: All right. You may step down.

You may call your next witness.

MS. NEWTON: Thank you, Your Honor.

The State calls Callen Harrison to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

CALLEN HARRISON,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: Callen Harrison.

DIRECT EXAMINATION

BY MS. NEWTON:

Q Okay. Callen, make sure you speak up into that microphone for us. Okay.

Where were you living in October of 2014?

A With my mom and stepdad.

Q Okay. And who is your mom?

A Angela Brewer.

Q And that's the Defendant; correct?

A Yes.

Q Okay. And who's your stepdad?

A Robby Brewer.

Q Okay. Who all was in that house?

A It was me and my fiancé, at that point in time, Michael Lusk, and our four boys, and Angie, and Robby.

Q And who are your four boys?

A It was Cory L., Keegan C., Minor [phonetic]

[redacted], and Kayson L..
Q And --
A [redacted] is [redacted].
Q And so who's the -- is -- was your fiancé the dad to three out of the four boys?
A No.
Q Okay.
A He was the dad to two.
Q Okay.
A He was the dad of Cory and Kayson.
Q But he had -- [redacted] had his last name; is that correct?
A He signed [redacted]'s birth certificate, and he took responsibility for [redacted].
Q So [redacted] knew Michael as his dad?
A That's the only dad he knew.
Q Okay. In October of 2014, how old was Kayson?
A Kayson was right at a month old. He was born on [redacted]. He was born in [redacted], so -- well, it was right at two months.
Q And how old was [redacted]?
A He was 13 months.
Q Okay. When was his birthday?
A [redacted].
Q Of what year?

A 2013.
Q Okay. How old was Keegan?
A Keegan was five -- I want to say five. He was born in 2009, so yeah.
Q What grade was he in?
A He was in kindergarten at that point in time, I think.
Q Okay. At what school?
A He went to Dacusville.
Q And how old was Cory?
A Cory was about eight.
Q Okay. What school did he go to?
A To Dacusville Elementary.
Q Do you remember what grade?
A I think he was in second.
Q Okay. Let's back up to the night before on October 16th of 2014. What happened that night?
A I know Keegan had gotten sick. And me and Michael ended up taking him to the hospital.
Q What kind of sick was he?
A I'm not really -- I'm not really sure. I don't remember that.
Q Okay. So fast-forward after the ER to that morning, the morning of October 17, 2014. Where did -- where did you go?

A We woke up. We woke up late. And when we woke up, we had to take Keegan and Cory to school. But because Keegan had had a fever the night before, I was going to make sure they would let him go and let him stay, because of the fact he had had a fever. And we had to put money on Cory's lunch account anyway.

So we both we went. And when -- I went into the nurse with Keegan. And Michael had went to the lunchroom with Cory.

Q Who stayed at home when you went to school?

A Kayson and Minor stayed with my mom.

Q And was that pretty common for your mom to watch your kids?

A Yeah. She would watch them all the time if we needed to go do something. And, sometimes, she just wanted to spend time with them, so.

Q Where did you go when you left Dacusville Elementary?

A We went back to the house. Because they wouldn't let Keegan stay because he had had a fever within 24 hours.

So we went back to the house. And we were going to drop Keegan off. That was the plan, was to, actually, drop Keegan off and Keegan stay there, too. Because I had to work for two hours.

So I was going to go to work after that. And then we were going straight to Georgia.

Q Okay. So when you got back to the house, how was Minor acting?
A He was fine. He was running and playing.
Q Was he sick?
A No. He was -- he had run up to me and hollered "momma," and was smiling and laughing. He was fine.
Q How long was it before you left for work?
A It wasn't but just a few minutes. And then Keegan didn't want to stay. He pitched a fit. He didn't want to stay. He wanted to go with us. So we ended up taking Keegan with us.
Q When you were there or that morning, did you give Minor any food or drink?
A No.
Q So you said you went to work. Where was work?
A Off of -- it was in Liberty. I think it was -- yeah, it was Golden Creek Road.
Q What type of work were you doing?
A I was doing home health at that point in time.
Q So you sat with someone for about two hours?
A Yeah.
Q Who went with you?
A Michael and Keegan went with me. Because I had knew my clients. And we have known each other for a while. So it was -- she didn't have an issue with me bringing them

with me.

Q Okay. And then what did you do after you left work?

A When I got off, I called my mom before we even pulled out of the driveway and checked on the boys. And she said they were fine.

Q Could you hear the kids in the background?

A Kayson, of course, not. I mean, unless he was screaming, you wouldn't have been able to hear him anyway. Minor, I think, was playing at that point in time.

Q And about what time was that?

A I want to say it was around 12:00.

Q At that time, was there any indication that he was sick?

A No, ma'am.

Q Then where did you go?

A We went to -- we went through Anderson to get to Georgia. And we stopped by McDonald's because -- well, we were all hungry. But we was going to make sure Keegan ate something before we left to go all the way into Georgia.

Q Why were you going to Georgia?

A My dad's girlfriend, at that point in time, had two trailers up there that she was going to get tore down. And she told us that we could get the stuff that we needed to like remodel our house. And there was furniture and all in that.

Because we were, actually, renting a house across the street from Angie and Robby. And we were trying to remodel it and get power cut on so we could move there.

Q At some point, did you get a phone call from your mom?

A Yes.

Q Okay. What happened after you got that phone call?

A We dropped everything, like, we started throwing everything, like, shutting the trucks [sic], and getting Keegan loaded up, and trying to make everything where it wouldn't move. But we were trying to leave. We wasn't worried about anything else at that point in time. We didn't even lock the doors on the trailer back. We left them all standing wide open.

Q And where did you go?

A We headed straight towards Cannon.

Q Okay. What happened at the hospital?

A When we, finally, got there, the truck didn't even get stopped. I'm not even really sure -- Michael still had Keegan. I run in the hospital. And when I run in the hospital, they were trying -- everybody was trying to stop me. There was a bunch of people outside. And they were trying to stop me. And I wouldn't stop. I ran straight to the window and was trying to find him.

And then Michael's stepmother and his sister-in-law,

actually, was trying to tell me where he was at. And they were trying to show me where Minor was -- where I thought that Minor was. And they kept telling me to go to this room, go to this room.

So they took me to the room. And when I walked in the room, I seen Robby and Angie, and Robby's mom and dad, and Robby's sister. And there was a few other people. But the main people I seen was the coroner. I seen the two pink shirts and it said "Pickens County Corner." And I knew, at that point in time, he was gone. And there was nothing I could do.

Q At some point, did you have a conversation or interact with DSS that night?

A Yes. I think so.

Q And throughout -- after that night, at some point, did you learn about what was in Minor's system?

A They come to the house --

MR. DEJONG: Objection, Your Honor, to what anybody told her.

THE COURT: Sustained.

BY MS. NEWTON:

Q Yeah. Don't tell me anything that somebody told you. But were you made aware of what was in his system?

A Yes.

Q Okay. Did DSS -- did something happen that you were

made aware --
A DSS came and removed the kids. They come and got Keegan, Cory, and Kayson and put them in protective custody.
Q Okay. And what was your interaction with the Defendant, like, when you were made aware of that?
A I wasn't really sure at that point in time. I didn't want to believe that anything had happened. Because at the hospital, it was always -- I mean, Angela told me as soon as I walked in the door that it was SIDS, it was SIDS.
Q Is there anything in particular that the Defendant said to you that you remember?
A She just kept telling me that it was SIDS over and over again, that it was SIDS. That they said it was SIDS.
Q Have you ever seen the Defendant drop any of her Oxycodone pills?
A Yes. I'm not sure if it was Oxycodone, but I know she's dropped pills.
Q What kind of pills -- so you don't know any distinguishing -- were they any type of certain pills?
A I know there was a bunch of pills. I mean, she would drop pills. And we would search for pills until we found them.
Q Were those pills that she kept in her purse?

A The pills that -- the main pills that I remember were in a bag in a, like, different colored floral-looking bag. I know she did have the day -- like the days of the week pill containers.

Q Okay. So -- and where was that bag of pills kept?

A The bag of pills, she usually kept it in her room.

Q Okay. And did you see her keep pills in her purse?

A I thought all the pills were in the full bag.

Q Okay. At any time you've ever seen a pill get dropped --

A We would search for it until it got found. Because I didn't want the kids getting ahold of it.

Q Did you guys have a dog?

A She had -- we had a dog, an outside dog. But she had two inside dogs.

Q Okay. Did -- in your interactions with your mother after Minor died, did your mom ever make statements to you about how he could have gotten her pills?

A She said that he may have picked one up off the floor.

Q And --

A But that would have been the only way that he would have got it is he got it off of the floor.

Q Okay. Tell me a little bit about your mom's schedule during the day.

A In the mornings, she would wake up and she would -- I mean, sometimes, she would be up -- she would be up watching TV. But she would usually get the kids in the morning and I would go to work. And she would keep Kayson and Minor for me.

Because I got released to work, like, two weeks after Kayson was born. And it was -- I mean, by the clock, you could bet at 1:00, she was watching Days of Our Lives. And it was her TV shows after that. She was on the phone with my aunt most of the day.

Q So every day during the week, she was watching --

A Days of Our Lives.

Q Okay. And how did your mom act when she was watching those TV shows?

A She was fine.

Q Was your mom -- during those shows going on, was your mom doing other things, cooking, or anything like that, or just watching TV?

A She would, basically, be there sitting watching TV. She might during a commercial get up and fix her ice and go get a Dr Pepper and pour it in her cup. But usually, she would sit back down by the time it came back on.

Q And those shows were on every weekday; is that correct?

A Yes, ma'am.

Q Do you have any close friends or any family members named Laura that you know of?
A I don't.
Q Who -- tell me a little bit about who fixed the drinks for the kids in the house?
A Usually, if -- well, I mean, if she was the one that was watching the kids, then it would be her. And if me and Michael was there, then, I mean, of course, we would do it. We would cook and feed them, or she would cook and feed them.
Q How -- around that time, do you remember your mom fixing pink lemonade?
A Yes.
Q Okay. When did that start?
A It had been about a week, two weeks when she had got the -- started on the pink lemonade.
Q And who -- do you remember her seeing -- or giving the kids any pink lemonade that day? Did you see any of that?
A I know she would fix it in, like, a gallon. And she would make that for the kids. Because the kids would always drink all the tea. And she didn't want to give them the Dr Pepper's because, number one, they didn't need it anyway. They would, literally, sit there and drink all day. So she had made the pink lemonade for the kids.

Q Tell me a little bit about Minor's schedule. What was his normal schedule?

A Minor would wake up usually about the time that we would wake up to get the kids to school. So he would wake up while we were getting them ready. And if he didn't, then he would stay in his Pack 'n Play.

But he would get up and play. And he would usually take a nap around 11:00, anywhere between 11:00 and 3:00, around that area. And then he would be up until we put him to bed at night.

Q You said you had been back to work since Kayson was born, like, two weeks after?

A Yeah. It was right at two and a half weeks.

Q How often did your mom watch both kids all day?

A Well, it wouldn't have been that long because of the fact that he was -- I mean, he was still a baby baby, so.

Q And when you would work, was that mostly in the two-hour shifts? Is that pretty common?

A Yeah. I think it was on Wednesdays that I would work four hours, instead of two.

Q Who fixed the pink lemonade in the house?

A In the gallon?

Q Yes.

A Angela.

Q Did anyone else ever fix the pink lemonade?

A Not to my knowledge.
Q Did you give Minor any drink or food that day?
A No. We were running late that morning.
Q And even when you came back to the house with Keegan for that amount of time, did you give him anything to eat or drink?
A I think I went to start and she told me that she would get it. Because we were -- I was trying to hurry up so we could get back.
Q And you said -- when was Minor's birthday?
A [redacted].
Q And was he able to open his own sippy cups?
A No.
Q Was he able to fix his own food?
A No.
Q Drinks?
A No.
Q And just to clarify. For the napping that Minor did, he would just go down any time between 11:00 and 3:00, or would he nap for that entire time?
A He would go down somewhere in between that time. I mean, he'd sleep anywhere from an hour to two hours. Some -- it was just pretty much how tired he was, or how early he woke up, or what time he went to bed.
Q Okay. And you said earlier that DSS had taken your

kids into protective custody. Did you get your kids back?
A Yes.
Q Okay. When did you get those -- when did you get them back?
A DSS come the first week of November and took the kids and put them in protective custody. But, thankfully, they were able to be put in protective custody with Michael's mom. But they were only there for about two weeks before we could get them back.
Q Okay. Who's "we"?
A Me and Michael Lusk.
MS. NEWTON: Okay. Please answer any questions Mr. DeJong may have.
THE COURT: Cross-examination.
MR. DEJONG: Thank you, Your Honor.
May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:
Q So October the 16th of 2014, you took Keegan to the emergency room?
A Yes, sir.
Q Was he running a fever?
A Yes, sir.
Q All right. But you don't know what was wrong with him?

A I don't remember what was wrong.
Q Was he throwing up?
A I'm not sure.
Q Do you know if he had any problems with his bowel movements, such as diarrhea?
A Honestly, I'm not sure exactly why. I mean, I know he had had a fever because of the fact that the nurse wouldn't let him go back to school since he had had a fever. But I don't remember exactly what was wrong with him.
Q So that I'm clear, all four children lived with your mom, Robby, and you, and Michael. It was -- except for being at school 24/7; correct?
A Cory would -- well, yeah, because Cory's mom wouldn't get him that much.
Q Now, so you took Keegan and Cory to school. What time did you leave the house to take them to school?
A I know they were late to school. And we were running late. We woke up late.
Q Okay. But do you remember what time you left the house?
A I don't remember.
Q Okay. But they were late for school?
A Yes.
Q What time did school start?

A They had to be there -- were supposed to be there by 8:00.

Q 8:00. Well, do you remember what time they got there?

A No, sir.

Q And you're telling us that Michael went with you when you took the children?

A Yes, sir.

Q And the school said, no, Keegan can't come to school today; right?

A Yes, sir.

Q So then you go back to the house?

A Yes, sir.

Q So how long do you stay at the house before you leave to go to your work?

A It was just a few minutes. We weren't there long.

Q Okay. Well, what time did you have to be at work?

A It was -- as long as I was there two hours, it really didn't matter.

Q Well, do you remember what time you got there?

A No, sir.

Q Okay. Now, did you see Minor before you left to take Cory and Keegan to school?

A Yes.

Q And how was he acting then?

A He was fine.
Q Okay. And when you, and Michael, and Keegan came back, how -- did you see Minor then?
A I sure did.
Q And how was he acting then?
A He was completely fine. He had run around the couch and was patting my legs and wanting me to pick him up.
Q Was there any indication he was running a fever at that point in time?
A No, sir.
Q Being his mother, was he fussy?
A No.
Q Okay. Now, when you got up on the morning of October the 17th, you said you didn't feed Minor. Did you feed Kayson?
A He -- no. I don't think we fed him either.
Q So your mother was, in one sense, the sole caretaker for Minor and Kayson; right?
A What do you mean the "sole caretaker"?
Q Well, she fed them, she got them, she dressed them, all of that stuff; right?
A No.
Q All right.
A She was not the sole caretaker of them.
Q Well, when the children needed medical treatment or

care, who got that for them?
A Mostly, me and Michael.
Q Okay. And as far as medications, who gave the children medications?
A Mostly, me and Michael. But she had on occasions, yes, she had.
Q And on occasion, to your knowledge, what did she give them?
A She has gave them Tylenol before. She has -- I mean, just Tylenol, ibuprofen, again, was pretty much all they were allowed to have.
Q All right. Now, so if you called your mom, as I understood your testimony, right before you were leaving to go to Georgia, you said that was about noon; right?
A (Witness nodded.)
Q You have to answer out loud.
A Yes, sir.
Q Okay. So did you work two hours?
A Yes, sir.
Q Did you work any more than two hours?
A No, sir.
Q Okay. So if you were leaving Liberty for Georgia -- by the way, where in Georgia were you going?
A Elberton.
Q Elberton?

A Yes, sir.
Q So if you were leaving Liberty, your place of employment at noon, and you worked two hours -- let's work backwards. You would have gotten there around 10:00; right?
A Yes, sir.
Q Okay. When you dropped the children off to school, how long did you stay there at the school?
A At the school?
Q Uh-huh.
A Maybe 20 minutes, 30 minutes.
Q How far is the school from where you were living at that point in time, that is living with Angie and Robby?
A About 20 minutes.
Q Okay. So, again, we know they were late. We don't know how late they were; right?
A Yes, sir.
Q But, again, trying to work backwards, you had to be home for more than a few moments, didn't you, after you took them to school?
A I remember being there a few moments.
Q Huh?
A I said I remember being there a few moments. I know we weren't there too long.
Q Well, when you, and Michael, and Keegan got back from

taking Cory to school, who went in the house?
A I think we all did, I think.
Q So you, Michael, and Keegan all went into the house?
A I think so.
Q All right. And so it took some time to figure out that Keegan wasn't going to stay. He was going with y'all; right?
A Yes.
Q And were you having any discussion with Angie during that point in time, that is your mother, or talking to Keegan, or talking to Michael? Or what were you doing?
A I mean, I'm sure I was talking to everybody.
Q Okay. Where was Michael?
A I don't remember.
Q Okay. Well, do you remember -- at this point in time, do you know how many sippy cups Minor may have had?
A Minor had several sippy cups.
Q Pardon? Had several sippy cups?
A He had several sippy sups.
Q And at different times, different people in the household filled those sippy cups up?
A Yes.
Q It could have been you; right?
A Yeah. I filled his sippy cup up.
Q Or Michael?

A Michael has filled his sippy cup up.
Q Or Angie?
A She's -- I mean, all the adults in the house had filled his sippy cup.
Q That's what I'm trying to say. Yeah. When you left for Georgia that morning, did he have any sippy cups?
A I don't think so.
Q Okay.
A I'm not sure.
Q Okay. Well, aside from the sippy cups, did you ever see Minor drinking from Angie's cup?
A Yes.
Q What kind of cup did she have?
A Usually, the little plastic, like, throw-away cups. But she would reuse them like Dodge's or QT.
Q Okay. Do you know what she drank?
A Dr. Pepper.
Q Anything else?
A Usually, just Dr. Pepper.
Q So she was -- really liked her Dr. Pepper?
A Yeah.
Q Okay. After you left for Georgia -- excuse me one moment.

After you left for Georgia, how many times did you talk to your mother on the phone?

A I'm sure several.
Q So it was more than one phone call?
A I know I called her after -- as we were -- well, before I even pulled out of my client's house, I called her then. And then I want to say we called her about at McDonald's.
Q Okay. Well, do you recall what time those calls would have been?
A I don't know.
Q Well, when you called, could you hear any noise in the background?
A Huh-uh.
Q Pardon?
A No, sir.
Q Did you hear any fussy children?
A No. She told me that she was going to lay -- Kayson slept most of the time anyway. And she told me that she was going to lay Minor down for a nap.
Q And Minor was 14 months at that point?
A He was 13 and a half months.
Q Was he walking?
A Yes.
Q And walking, he pretty much had the run of the house?
A Not usually. I mean, he was usually in eyesight at all times.

Q Okay. But he had access to the whole house; right?
A Usually, yes.
Q Okay. Were you on any medications?
A I was on a few. I'm not really sure what they were.
Q Were you on Lortab?
A I think so.
Q Were you on Hydrocodone -- well, I guess Lortab is Hydrocodone. I stand corrected. OxyContin?
A I think so. I know I gave a list of all the medicines that I had in the house.
Q So, to the best of your recollection, on October the 17th of 2014, you were on -- you had a prescription --
A I had a prescription, but I wasn't taking them.
Q But they were in the house?
A They were across the street in the other house.
Q Well, you weren't living at that house, were you?
A No. But if I didn't take them, I didn't see a point in them being there.
Q Okay. When you got to the hospital on the evening of October the 17th of 2014, you indicated you saw your mother; is that correct?
A Yes, sir.
Q How was she acting? I'm not asking you what she said. I'm just asking you how was she acting?
A She was crying.

Q Was she upset?
A She was upset. She was crying.
Q Okay. And what was it -- I couldn't really hear. I'm sorry. I have a hearing problem. But you said she was saying something over and over again. What was that?
A "They said it was SIDS" is what she said. That is -- her exact words was, "They said it was SIDS."
Q Okay. And you said there had been occasion where your mom dropped pills?
A Yes.
Q How many times would you say that was?
A She had done it a couple of times. And me and Robby had both looked for pills.
Q Do you know what those pills were?
A As I told her, I'm not really sure.
Q Okay. Now, you, also, said that your mom kept certain pills in a bag?
A Yeah. She kept most of her medicines in a flowery different-colored bag.
Q You said "most of her medicines." Where did she keep the rest of them?
A Most of them was in that bag. And she had the little day and week container.
Q Were you aware that she kept any in her pocketbook?
A Yeah. I think so. I mean, I think she kept her day

of the week one.
Q And as far as these meds, do you know what she was taking?
A I know she was taking a bunch -- a few of them.
Q And so we're clear. To the best of your knowledge, were all those pills prescribed to her?
A Yes. To my knowledge, they were.
Q And I gather your OxyContin was, also, prescribed to you; correct?
A Yes.
Q Do you know -- do you know if your mother had an -- her aunt or had an aunt by the name of "Laura" or "Lauren"?
A I know there was a Laura that she talked to, which, to my knowledge, she hadn't talked to her in years. And I thought she was, actually, my older brother's father's family.
Q Okay. But, to your knowledge, she hadn't talked to her in a long, long time?
A Yeah. I don't have anything to do with them.
Q Okay. Now, you normally work two to four hours a day?
A I did at that point in time.
Q So what -- did you have a normal go-in time?
A Usually, it was just whenever. Like, they would tell

me if they had things planned, or doctor's appointments. And we would work around each other's schedules.

Q Well, when you weren't working, what did you do?

A When I wasn't working, I was with the kids.

Q Okay. Now, I think Madam Solicitor asked you about your mom's schedule. And you said something about she watched Days of Our Lives?

A Yes, sir.

Q Just about every day?

A Every day.

Q I guess it's just on five days a week; right?

A Yeah.

Q All right. But when she watched Days of Our Lives with -- well, when she would watch Days of Our Lives, do you know where the children were?

A They were in the living room with her when she would watch them.

Q And, to your knowledge, was she still keeping an eye on them?

A Yes. That's usually when she would try to get them to go to sleep so she could watch Days of Our Lives.

Q And I may have asked you, I don't remember if I did. So forgive me if I'm being redundant. Did Minor still take naps in the afternoon?

A Yes.

Q Okay. So it would not be unusual for him to take a nap in the afternoon?

A No, sir.

Q Okay. Who woke Minor up in the mornings?

A It would depend. Usually, if I tried to go and wake the kids up or she woke the kids up -- because, I mean, we just -- if she woke up before we did, she would come in there and tell the boys to start getting ready, and wake us up and tell us we needed to get up and get ready.

So if the kids woke him up from being loud, or if she just woke him up from being loud or -- he just -- he woke up whenever.

Q Okay. So as I think I understand you, you, Minor, the two boys, Keegan and Cory, and I guess Michael all kind of got up at the same time?

A Yeah, usually.

MR. DEJONG: One moment, please, Your Honor.

(Pause.)

BY MR. DEJONG:

Q You say you believe you talked to your mother -- well, I don't know -- you gave us a number, but more than once during the day by phone on October the 17th; correct?

A Yes.

Q Did she ever give you any indication that Minor was sick?

A No, sir.
Q Did she ever give you any indication that Minor was running a fever?
A No.
Q Did she ever give you any indication that Minor needed medication?
A No.
MR. DEJONG: Thank you so much, Ms. Harrison.
THE COURT: Any redirect?
MS. NEWTON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. HOPKINS:
Q Ms. Harrison, you said that you did have an Oxycodone prescription. Were you taking that on October 17th, 2014?
A No, ma'am.
Q So where were those pills?
A In the house across the street with the rest of our stuff.
Q The house that --
A It was really crowded over there. So we tried to keep as much as we could over in that house to keep it out of the way over there.
Q But that house over there didn't have any power; correct?
A No.

Q Were the kids ever over there that day that you know of?
A No.
Q Did your mom go to that house when you weren't there?
A No. She didn't -- I don't think she even had a key.
Q Did you ever see Angela, the Defendant, voluntarily give Minor her cup to drink out of?
A Yes.
Q Okay. And did you ever have a conversation with your mom about Minor being sick?
A No, I don't think.

MS. NEWTON: Okay. No further questions.

THE COURT: Thank you.

You may step down.

All right. Ladies and gentlemen, we're going to break for the day. So, at this time, you can go back to your jury room.

Again, four things I'm going to tell you every day. Do not discuss the case. Do not do any type of research. Do not pay attention to any media coverage of this event -- or this trial. And if you're contacted, please, let the bailiff know.

Other than that, we've got some matters we've got to go over in the morning. So I'm going to ask you to be back in your jury room at 10:00.

THE COURT: And no live feeds.

UNIDENTIFIED MALE: (Unidentified male shook his head.)

THE COURT: And, again, I'm just going to kind of go through this. No pictures of the jury. You know, no pictures of the attorneys discussing anything at their table. And you can be -- and when we're off the record, then you're not to be filming.

UNIDENTIFIED MALE: (Unidentified male nodded.)

THE COURT: I'm sure they're the same rules that y'all normally deal with. Any questions from you?

UNIDENTIFIED MALE: (Unidentified male shook his head.)

THE COURT: I know you're going to do what you're supposed to do. I was just kind of letting you know on that.

All right. Now, let's talk about the statements. First of all, let's talk about Michael Hendricks' statement. Like I said, I have reviewed that -- oh, let me sign the media order.

(Pause.)

THE COURT: All right. I've signed your order there.

All right. I'll be glad to hear from you on the Hendricks video.

MS. HINTON: Your Honor, the State has reviewed State

v. Navy, as you asked us to do. And I believe you are correct that this case is on point with the issues that we have.

I would say that this is distinguishable from State v. Navy in that Detective Hendricks, at that time, had no idea of the autopsy results or the toxicology results. So even more so, it was less of an interrogation and more of fact finding.

And I believe you notice in the video, he says, We're meeting with you now because you were so upset at the hospital. We didn't want to address it at that time. I think everything is within a fact-finding set of questions. So the State would argue it's admissible under State v. Navy and Jackson v. Denno.

THE COURT: Anything from the Defendant?

MR. DEJONG: Your Honor, my only argument on that particular statement is I think, again, when it comes to custody, we have to look at it from the perception of the person being interviewed, not the perception of a law enforcement officer. And I think her perception would be, under the circumstances, that she was in custody.

Granted, they asked her to come in. She did come in. She went down to this interview room. You have seen the video. I don't know who she met with first. And neither does Detective Hendricks, apparently, based on his

testimony yesterday.

But she goes in the interview room. She's told, I believe, that she is being videoed -- it's audio and video. He is sitting there. "He" being Detective Hendricks is sitting there with his side piece on, one door in and out. Again, you saw the location of the tables and the seating.

And I would simply submit, Your Honor, that she should have been Mirandized, based on her perception that she was in custody.

THE COURT: I think, like I said, State v. Navy and even in the case of State v. Williams -- by the way, it is a wonderful case. It has a whole laundry list of factors to consider. That's another one we found. That's a good one for your notebooks, by the way.

But I think there's even less restrictions discussed in the State v. Navy case. I mean, it's not an interrogation. I think that the casualness of the statement is kind of extenuated by the fact that the officers are changing clothes in the background all the time -- with his tie and coat.

I think I'm going to find that that is not custodial, and that that statement comes in.

So subject to your objection.

All right. And then, finally, the statement of --

given to Officer Burgess and Officer Cauthen on, I think, December the 18th, was it?

MR. DEJONG: Yes.

THE COURT: All right. I'll be glad to hear from you. And there's no question there was Miranda given at some point.

MS. HINTON: That's correct.

Your Honor, it's the State's argument that it's admissible under Jackson v. Denno because she was Mirandized. She waived her rights. And, at that point, she was competent to do so. The State does not deny that at some point in the video, she clearly becomes under the influence of some sort of drug, as she tells the officer, it's Valium.

So the State thinks up to what I have marked as 12:28:11, which is when they exit the room for her to go walk around, get a snack, that that is admissible under Jackson v. Denno.

The State would argue that the second half of that video is admissible under 404(B), as we discussed yesterday, to go to show intent and lack of accident and mistake when it comes to the injuries that occurred to Minor. So that's the State's argument, Your Honor.

The State has a concern that if the entire video is not admissible that we are misleading the jury, that we

have two lead detectives who did, essentially, nothing in this case. So the State thinks, at least, a portion of that is coherent and is admissible.

So we would ask that if you're not going to admit the entire video, which we think is admissible, that you would, at least, admit it until they get up to walk out of the room and take a break to give some sort of -- something that we can both agree on as to why the video ended at that point.

THE COURT: All right. Mr. DeJong.

MR. DEJONG: Thank you, Your Honor.

The fact that you have two lead detectives here who, extensively, did nothing if you don't let the statement in, I don't find that to be a very compelling legal argument, Your Honor. That's the State's problem, not mine.

And, certainly, I think to allow it in, I think you have to look as the video progressed -- even though I would submit, Your Honor, that at the outset when Ms. Brewer first gets on camera, her speech is already slurred. She, obviously, was under the influence by her statement at the very -- pretty much close to the end of it that she had taken a Valium, as I recall, not too long before Agent Cauthen and Detective Burgess picked her up to take her to the law enforcement center.

Being under the influence of that medication, however, and at what point, number one, Your Honor, I think it certainly goes to her making a knowing and -- the word just eludes me, but making a knowing -- knowingly giving up her rights under Miranda.

Certainly, the rest of it, being under the influence of that particular drug, which, again, we have nothing other than it was a Valium, certainly, goes to the voluntariness of her statement. And I don't think it goes to the voluntariness of half of the statement, Your Honor. I think it goes to the voluntariness of the entire statement.

Because, again, I think you have to go back and look at that knowing and intelligent waiver of her Miranda rights. And being under the influence, I don't think she could make a knowing and intelligent waiver of her rights, Your Honor.

And then, certainly, the latter part would be the voluntariness of the statement, Your Honor. And I would move that it not be allowed from the beginning to the end, Your Honor.

THE COURT: All right. In reviewing the video, I believe -- there's no question, I think, at the first of it there is some little slurring, I think. But I think that -- her responses to the question and her general

conversation, I think shows that it is voluntary, that she knows what's going on.

And there's definitely a point where, I guess, you know, the influence of the Valium seems to kick in more based on what she said, if she took it at 10:00 to 11:00. Because she definitely, at some point, becomes almost incoherent and mentions something about a 300-degree fever. I mean, I think there's -- definitely, after the break, it's much worse. I mean, there's a distinct difference.

So, you know, but I don't -- I have a problem with a couple of points in there. I don't know if you want to address any specific areas. But I had -- you know, there is some conversation that goes on before the Miranda rights are read to her. And I don't know if -- you know, how crucial they are. They're a little bit of kind of small talk. But some of it is substantive. I marked it. It's -- the Miranda rights were given at 11:49.

So I don't think anything prior to that point -- I'm not going to allow that in. I don't think it's real substantive. I think out of an abundance of caution that until the Miranda rights are given -- and, like I said, what I wrote down was 11:49.

I don't know, again, how this case is going. I don't know if there's any issue with the coroner. Because

there's a discussion in there about what the coroner found. And I don't know if that's something -- I mean, I assume that's coming in and there's no issue with what the coroner found from the Defendants [sic].

I mean, y'all don't object to that portion? Because she talks about this is what the autopsy showed.

MR. DEJONG: I'm sorry, Your Honor?

THE COURT: I said, there's, also, a point where they talk about --

MR. DEJONG: Yes, sir.

THE COURT: -- this is what the autopsy showed, which, I guess, is beneficial to you, I think. But, you know, if that's going to be an issue. I mean, that's -- I don't know if you can get that in through this video. I didn't know how y'all were dealing with that.

MR. DEJONG: That autopsy report -- not to interrupt -- that is kind of fanning out a little bit. My understanding -- Ms. Hinton has graciously shared with me that the coroner will be her second witness this morning.

And my whole thrust without arguing it at this point in time are the lab reports. Because that's what it seems everything is based on. It's not SLED lab reports. I'm talking about the NMS lab report, which is a forensic lab out of Willow Grove, Pennsylvania. That's what I'm talking about.

THE COURT: And that's not mentioned in -- when she talks about the autopsy, she's talking about the neurovirus and pneumonia. I was just making sure there wasn't an issue with that. It doesn't sound like there's an issue there.

The other thing I had some issue with -- and I realize they were anecdotal with the interviewer. But when she talks about other people's issues and -- I have some serious issues with the prejudicial value of that.

MS. HINTON: Sure.

And Mr. DeJong and I have, actually, discussed that prior to this. The State will concede that the banging of the head thing is probably not in line with what we're dealing with. And I have that marked as minute 12:10:15 to 12:10:28. So the State is fine removing that portion.

We do think that the Benadryl in the cup is significant. Because that is, essentially, what we have here, giving too much Benadryl, exchanging it for Oxycodone. Because of her reaction to those questions -- they're in a Q and A. She never denies that she did that. Instead, she hangs her head, talks about how that's my baby.

So the State does think that being more in line with what we have here as a drug overdose is a relevant line of questioning and is appropriate for her to ask.

THE COURT: Okay. Well, I mean, I don't -- I disagree with you. I don't think that some other case should be put in front of this jury as, oh, this is similar. Basically, this lady's pattern is following what we had previously with the Benadryl overdose.

MS. HINTON: Well, I guess as an interrogation tactic, Your Honor. But I guess, at that point, then where do we pick back up? I mean --

THE COURT: I have it at 12:12.

MS. HINTON: Right.

But I guess, at that point, what are we talking about? Because if we cut that out and she starts talking about that's my baby, that's not a -- that's misleading to the jury. Because that's not how that question flowed. Then it just looks like she's so sad about this child, not that she's nonresponsive to a line of questioning.

THE COURT: Well, you may have to cut it there. But I'm going to -- I'm not going to allow the anecdotes about other matters.

MS. HINTON: What about getting in a car accident, and all that?

THE COURT: I don't have a problem with that as far as -- you know.

MS. HINTON: So just the portion about the prior case of Benadryl?

THE COURT: The two child abuse incidents she mentions.

MS. HINTON: And you have it at 12:12?

THE COURT: I've got 12:10 to 12:12. But that's --

MS. HINTON: Okay. And, Your Honor, obviously, prior to doing all of this and playing it for the jury, would you allow us to take a quick break?

THE COURT: Yeah. We'll figure out what we need to do. And did y'all hook it back up after --

MS. HINTON: We did, yes.

THE COURT: All right. So that's the first portion.

All right. You've got a -- we're still talking about the first portion.

MR. DEJONG: Okay. I'm a little -- I don't know if you have ruled on any of it yet, at this point in time, or are you saying you're ruling at a certain point and after that?

THE COURT: I am -- my ruling is that the -- the -- up until -- from the Miranda rights that were given, which I have as 11:49, until the break is admissible. But you're -- but not the part about the anecdotes, the two incidents where she mentions -- which I think are about 12:10 to 12:12.

As to the second part, I mean, I understand your Rule 404, but I'm not going to allow -- after the break, I'm

not going to allow it.

MS. HINTON: So how -- how do you propose that we address that? You know, it's not a real natural end to the interview, in my opinion. I mean, obviously, we can just cut it off and say, at that point, they ended the interview.

But I think it's important to let the jury know that there's a reason why they were sending it -- or there's a reason why the Court has ruled -- I guess I just don't want it to look like we're not showing the second half.

THE COURT: Well, you've got to be careful on anything you say there. Because I don't want them --

MS. HINTON: Right.

THE COURT: You know, I guess we deal a lot more with this in civil-type cases. But you don't want to let the jury think, oh, they ruled a bunch of stuff out and this lady admitted everything under the sun, too.

MS. HINTON: Right, right.

THE COURT: You've got to be careful on that. Let me think of something that we can say to the jury that we can discuss and all agree on.

MR. DEJONG: And I know Your Honor will share that before you say it.

THE COURT: No. That's what I said, something we can all agree on.

MR. DEJONG: I think now I understand your ruling. But there is something else in the early part of the tape. And I don't think it was pre-Miranda. I could be wrong. I don't have my times on it.

At one point in time, there was a discussion between Ms. Brewer and Agent Cauthen on what time she got up on that morning and what she did after she got up.

THE COURT: That was post-Miranda?

MR. DEJONG: Pardon me?

THE COURT: That was post-Miranda?

MR. DEJONG: Yes, sir.

And my objection to part of that is when they talk about her watching television, the agent asked her what she was watching. She said she was, I believe, watching ID. Well, then the agent goes on to ask her, well, what is ID about?

And then my client, as I understood the video, said, Well, that's a show that tells you how to -- I don't know.

THE COURT: How to kill someone and get away with it.

MR. DEJONG: Yes, sir.

THE COURT: I wrote it down.

MR. DEJONG: Yes, sir. And I object to that.

There's nothing further than that. It, certainly, has nothing to do with a child or children, any type of allegations of drug overdose, which we vehemently deny

that Ms. Brewer did. But, nonetheless, I would move that that be redacted, Your Honor.

MS. HINTON: I mean, Judge, are we going to start redacting every dumb comment she makes during her interview?

THE COURT: Well, that's more than just a dumb comment.

MS. HINTON: But, I mean, that's what she said.

THE COURT: I know.

MS. HINTON: It wasn't part of a question that was elicited. It wasn't harped on. It was mentioned. They -- oh, I'll have to tell my husband that. It was made in a joking manner. But that is part of the flow of the interview.

The fact that she gets up early is important to the State's case. The fact that she watches TV all the time is important to the State's case. And, at that point, we're starting to redact everything that has any relevance to our own case.

MR. DEJONG: Well, I do not agree with it, that it wasn't the result of questioning. She was asked what she did in the morning. And she said she took her medication, she watched television. They asked her what she watched. And then there was a follow-up question, as I recall, And what is that about? And that was her response was how to

kill somebody and get away with it.

MS. HINTON: And, Judge, the timing of her taking her medication is important to the State.

THE COURT: No. I guess the timing -- and I guess -- and I wrote it down because -- and I go back and forth with how -- I don't know exactly how I'm ruling at this point. Because, I mean, I think that she made it -- I mean, the saying of the program of what it's about -- I mean, that's the -- that's the statement that we're going to consider, not anything up to that point.

And I think the way I looked at it -- and this is just kind of my view of it. She said it in jest, yeah, I tell my husband all the time -- or something like that -- how to kill somebody and get away with it. But what you go back to is it's more prejudicial than probative. And I haven't made my mind up on that. I will let --

MR. DEJONG: It's still hanging, Your Honor?

THE COURT: It's still hanging.

MR. DEJONG: Okay.

THE COURT: So I will let you know on that one.

Anything else before we bring the jury in?

MR. DEJONG: Nothing, at this point in time, Your Honor.

But I think when they get through with this first witness, I'm going to have a matter to take up with the

Court outside the presence of the jury. I just wanted to let you know that.

THE COURT: All right.

MS. HINTON: And, Judge, just for scheduling, I don't know that this first witness will take a large amount of time. So I don't know if you would rather go ahead and hear it now, or if you wanted to hear that first witness.

THE COURT: The jury has been waiting. Let's go ahead and begin this first witness.

Anything else before we bring the jury in from the State?

MS. HINTON: No, Your Honor.

THE COURT: Anything from the Defendant?

MR. DEJONG: Not at this time.

THE COURT: All right. Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 10:23 a.m.)

THE COURT: All right. Ladies and gentlemen, I hope everybody had a good evening.

Thank you for your patience.

As mentioned, we had a few things we had to go over before we brought y'all out here.

Now, I do want to tell you -- this is just kind of a caveat. As you'll probably notice, at some point this morning, there is media coverage. And all I want to say

is that will not be distracting to y'all in any way.

And, also, he is fully aware that the rules are that y'all are not to be photographed or put on the news. So I wanted to tell y'all that so that y'all don't have to be concerned about it. This will be just everything else going on in the courtroom. But y'all will not be involved with anything to do with the media coverage. So that's not something you should be concerned about.

The State may call its next witness.

MS. NEWTON: Thank you, Your Honor.

May it please the Court.

We would call Michael Lusk to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

MICHAEL LUSK,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record.

THE WITNESS: Michael Lusk.

DIRECT EXAMINATION

BY MS. NEWTON:

Q Mr. Lusk, how many kids do you have?

A Me, total, I have three.

Q Okay. And who are they?

A It'd be Kayson L., Cory L., and Carter Degraw [phonetic].

Q Okay. And did you adopt the victim in this case, Minor?

A Yes, I did.

Q So he was the only father that you knew?

A Only father.

Q Or you were the only father he knew? Sorry.

A Yes, ma'am.

Q Can you tell me about what happened on the morning of October 17, 2014?

A We -- we got up late. We was running late to get the kids to school, and all.

Q Tell me a little bit about that. What happened? What went on?

A Well, we got up late. And Angie come in and she was telling us to get up, that we needed to get up and get the kids ready to go to school, and everything.

Q Okay. And did you take some kids to school?

A We took Cory and Keegan.

Q Okay. And what happened after you got to school?

A We took -- Callen took Keegan to the nurse's station. And I took Cory to the cafeteria.

Q And why were you taking him to the cafeteria?

A To pay on his lunch -- on his school -- for his food.

Q Okay. And about how long were you at school that morning?
A Probably 20 minutes, tops.
Q Okay. And where did you go after that?
A We went back to the house.
Q And when you say "the house," whose house?
A Angie's house.
Q And who was there?
A Angie.
Q Were any --
A And the kids, yeah.
Q Okay.
A Minor and Kayson.
Q And about how long did y'all stay there?
A I'd say we stayed roughly 15, 20 minutes, tops.
Q And then what happened?
A We left to go to Callen's work.
Q Who left?
A Me, Keegan, and Callen.
Q Did you -- when you were back at the Defendant's house, did you see Minor?
A Yes.
Q How was he acting at that time?
A He was fine.
Q Okay. What do you mean by "fine"?

A Running, playing like he always does.
Q Was he sick?
A No, ma'am.
Q And then you said you went to Callen's work?
A Yes, ma'am.
Q And then where did you go?
A When we left from there, we went to Georgia.
Q Why were you going to Georgia?
A To get some furniture and stuff out of a trailer that her father's girlfriend, at the time, told us we could get, and some materials and stuff to fix the trailer that we was working on.
Q Okay. When you were at the house that morning, did you give Minor anything to eat or drink?
A No, ma'am.
Q Okay. And then what happened when you were in Georgia?
A We -- we was getting stuff. We was getting stuff ready. And we got a phone call that Minor wasn't breathing.
Q Okay. And what did y'all do?
A We dropped everything and took off back to South Carolina.
Q And where did you go once you got back --
A Cannon Memorial.

Q All right. Are you and Callen still together?
A No, ma'am.
MS. NEWTON: Okay. Please answer any questions Mr. DeJong may have.
MR. DEJONG: Thank you, Your Honor.
May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:
Q So were you working at this point in time, Mr. Lusk?
A Not that I -- not that I -- if I was doing anything, I'd be working with my dad just here and there.
Q Were you under any kind of medical disability, or anything?
A No.
Q Were you on any medications?
A Not at the time.
Q Well, you say "not at the time," did you have any unused prescriptions around the house?
A No.
Q And you say -- well, let me back up here a little bit. So Angie comes in and, actually, wakes you and Cally up; right?
A Yeah.
Q Now, when she comes in to do that, are Kayson and Minor already awake?

A No. We had to get Minor up.
Q I'm sorry?
A We had to get Kayson and Minor up.
Q Well, who got the children up?
A We was getting them up -- in the process and she got them after that while we was getting ready.
Q Well, Minor and Kayson, they were not school age, were they?
A No.
Q So no need to get them ready?
A Well, they was in the room with us at the time.
Q Right. I'm with you on that. So what time did you leave the house to go to school?
A We probably -- it took -- we left probably 8:15, or so.
Q What time does school start?
A 8:00.
Q So you were there 20 minutes, tops. That would put you to 8:35; right?
A Not at the school.
Q Okay. Then I misunderstood what you said.
A I misunderstood what you said.
Q Pardon me?
A You was talking about at the house?
Q No. How long were you at the school? I'm sorry.

A About 20 minutes, or so.
Q So about the same. So that would put you at 8:35 leaving the school; right?
A We didn't sign the kids in until it was a little later.
Q All right. So what time did you get back to the house?
A Probably nine something.
Q Okay. And why did you go back to the house?
A Because Keegan didn't get to go to school that day because he was running a fever that night.
Q Did Minor use sippy cups?
A He did.
Q Did you ever fix any sippy cups for him?
A I did.
Q Did you fix a sippy cup for him on the morning of October the 17th --
A No, I didn't.
Q -- of 2014?
And how can you be so sure of that?
A Because Angie said she was going to fix his cup.
Q Okay. Then you -- how long were you at Cally's work?
A We stayed there for two hours.
Q And what time did you get there?
A I'm not exactly sure on the exact time.

Q Okay. Well, when -- what time did you leave for Georgia?
A We -- I'm not sure of the time we left for Georgia.
Q All right.
A It was probably around 12:00, or so.
Q But you have no independent recollection of that?
A No.
Q Okay. And Minor was playing and acting very normal; correct?
A Yes, sir.
Q Now, the night before, Keegan had been sick?
A Yes, sir.
Q And you took him to the emergency room?
A To the emergency room.
Q Which emergency room did you take him to?
A I think we took him to Easley.
Q Okay. Do you recall what doctor he saw there?
A I don't.
Q Okay. You say later in the afternoon, you received a phone call. Who was that phone call from?
A From Angie.
Q Now, could you hear that phone conversation?
A Not -- I heard -- because she had her on speaker phone, I think, at the time. Because she turned it on because she said that he wasn't breathing. And so she put

it on speaker phone trying to find out what was going on.
Q And could you hear how Angie was reacting to all that?
A She was upset.
Q What time did y'all get to Cannon?
A I'm not exactly sure what time. Because it took me about an hour and a half, where it takes usually two hours to get back.
Q And you were in Elberton?
A Elberton, Georgia.
Q When you got to the hospital, who was there?
A Everybody was there. Angie was there. Robby was there. My brother was there, his wife.
Q Did you see Angie?
A I did. When I got in the hospital, I did.
Q And what was her demeanor then?
A She seemed -- she was upset. Everybody was upset that night.
Q And upset is probably not a real good word for how --
A It's not.
Q Okay. Are you sure you went to school with -- with Cally to take the children to school?
A I'm a hundred percent sure.
MR. DEJONG: One moment, please, Your Honor.
(Pause.)

BY MR. DEJONG:

Q Let me ask you this. How many sippy cups did Minor have? Do you know?

A He had a few.

Q Pardon me?

A He had a few.

Q More than one or two?

A More than one or two.

(Pause.)

MR. DEJONG: Okay. Thank you, Mr. Lusk.

THE COURT: Any redirect?

MS. NEWTON: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. NEWTON:

Q Do you remember signing Cory into school that morning?

A I do.

Q When you arrived at school, is there a sign-in sheet you fill out?

A Yes.

Q Okay. I'm going to show you something. Do you recognize that?

A That's my signature.

Q And what date does it say?

A 10/17.

Q And what time?

A 8:40.
Q Okay. And this was the sign-in sheet that you filled out --
A Yes, ma'am.
Q -- is that correct?
MS. NEWTON: Okay. No further questions.
THE COURT: All right. You may step down.
MR. DEJONG: No objection to him being excused, Your Honor.
THE COURT: All right. Is there something we need to address at this point?
MR. DEJONG: I'm sorry, Your Honor?
THE COURT: Is there something --
MR. DEJONG: Well, I'm not a hundred percent sure. But, based on a prior conversation, I think this is the time I need to say something to the Court outside the presence of the jury, Your Honor.
THE COURT: All right. Is that correct?
MS. HINTON: Yes, Your Honor.
THE COURT: All right. We've got a matter we need to take up outside your presence.
So go back to your jury room. Do not discuss the case.
(WHEREUPON, the jury was excused from open court at approximately 10:37 a.m.)

THE COURT: All right.

MR. DEJONG: May it please the Court, Your Honor.

The -- and, obviously, I don't know everything that the coroner may testify to. But Madam Solicitor shared with me that one of the things, as I understand it --

And, please, Ms. Hinton, correct me if I'm wrong.

-- is as to the cause of death. And it's my understanding that the coroner would testify that the cause of death was homicide. I have a couple of issues with that.

Number one, I'm not sure when that determination was made. I was given an updated coroner's report subject to my Rule 5. I don't see a date on that particular updated coroner's report.

My problem with either the homicide, Your Honor -- and I will, also, parenthetically note that the updated coroner's report that I'm looking at says, "Oxycodone overdose." Well, the problem I have with that is, number one, I don't believe -- and no disrespect to the coroner, Your Honor. But I don't believe he's medically qualified to make that determination on his own.

What I think -- what I believe happened is that the findings came back from this outfit called NMS Labs in Willow Grove, Pennsylvania, and both Dr. Fulcher and, if this is what the coroner is going to testify to, used the

findings of NMS Labs to make the decision or the cause of death, whatever you want to call it, that they made.

Well -- and I guess I'm going to throw Dr. Fulcher in here, too, with the Court's permission, so I don't end up having to argue this twice, Your Honor.

My problem with that is this, number one, they're basing that on hearsay. To my knowledge, as far as blood toxicity, gastral fluids, any blood work, there was none of that done -- there was no testing done, except by NMS Labs. Now, first, I would submit that it is hearsay.

Secondly, Your Honor, I believe by allowing them to use those lab reports to base their findings on, that is depriving my client of her Sixth Amendment right of confrontation as to NMS Labs. And I base that in large part, Your Honor, on the United States Supreme Court case of Melendez-Diaz v. Massachusetts.

And I'll be happy to hand a copy of that up to the Court. It's a fairly voluminous opinion --

Oh, I'm sorry, Ms. Hinton. Do you want to look at this before I hand it up? It's not marked.

MS. HINTON: No.

Thank you.

MR. DEJONG: As is usual with the United States Supreme Court, it is a very voluminous statement. But that case, Your Honor, to me, is almost directly on point

with this case, especially with regard to Dr. Fulcher.

And, in that case -- that was a Massachusetts case. And in that case, Your Honor, the Defendant was charged with -- bear with me one second -- charged with distribution of cocaine, trafficking in cocaine in an amount of 14 to 208 grams. Now, the substance in that case was sent to the lab. I don't even know if there was a report that came back in that.

The State simply in Melendez-Diaz offered an affidavit as to what it was. And they said it was cocaine weighing a certain amount, or whatever. The United States Supreme Court says, no, you can't do that.

THE COURT: What type of case is the Massachusetts case? What's the charge?

MR. DEJONG: Distribution of cocaine and trafficking in cocaine, Your Honor.

THE COURT: All right.

MR. DEJONG: And the whole thrust of that case was the lab analysis. Well, here, I think the State is trying to back door in -- and I can go into that case a little bit more, but, certainly, Your Honor can read it.

What they're trying to do is back door these lab reports in. And my client is totally being deprived of her Sixth Amendment right of confrontation. And that's what Melendez-Diaz deals with, Your Honor. They say, no,

you can't deprive the Defendant of their Sixth Amendment right on these lab reports.

They say, you can say whatever you want to. And there's a rather lengthy discussion. They talk about the dissent. I think that was -- if I recall, that opinion was a six/three, six majority. I think there were three dissenters, maybe five to three, one concurring and a two dissent. I'm not really sure about that.

But they said -- basically, the bottom line is Melendez-Diaz says the Sixth Amendment is the Sixth Amendment is the Sixth Amendment. There's no way we can suspend the Sixth Amendment. The Defendant has an absolute right to confrontation when somebody does this lab analysis.

Now, again, I would share with the Court that, to my knowledge, other than a little bit of lab work that was done by SLED, there was no other testing.

So, in this case, I would submit that Dr. Fulcher did no independent testing. He relied and based his findings on this lab from Pennsylvania. And I would suggest that the coroner would, also, have done the same thing.

And just by way -- and, again, I don't know the date on this updated coroner's report. I may be missing it. But by way of a little background, Your Honor, the autopsy was done, I believe, on October the 18th of 2014.

The -- Dr. Fulcher's findings, as I saw the pathology report, was not signed until 11/17 of '14. Well, NMS Labs issued their report. And the date of that was 11/2/14, which was some 15 days prior to the pathologist issuing his report.

Now, again, I don't know what the coroner based his or her -- the statement of this was either two things. At one point, they suggest an Oxycodone overdose. And I don't really see homicide in there. But I assume the Solicitor is being forthright that the coroner would testify to that.

It just -- it just flies in the face of the Constitution, the Sixth Amendment, Your Honor, I would suggest, for them to allow these lab reports to be used when the person or persons that did the lab reports are not present in court and cannot be tested by cross-examination. And, again, that goes back to Melendez-Diaz v. Massachusetts. And that's exactly what the Supreme Court said, the crucible is cross-examination.

They, also, Your Honor, talk in that case -- and I think it was Ohio v. Roberts, if I'm not mistaken. In Ohio v. Roberts, they talk about reliability as being the indicia of introducing something.

And, again, in Melendez-Diaz, they said, no, in these situations, reliability has nothing to do with it. It has

to do with the Defendant's Sixth Amendment right of confrontation. And we're getting away from -- again, I think I'm right it was Ohio v. Roberts. And they said we're getting away from Ohio v. Roberts, especially in these cases. We're not talking about indicia of reliability. We are talking about the Sixth Amendment right of confrontation.

So I object to Dr. Fulcher's findings. He can testify to anything he found at the autopsy. I'm not objecting to that. What I am objecting to is, in his findings, he puts in the blood levels, and all that. That was not testing done by him.

And, again, I am assuming, Your Honor. I will readily admit that. But I am assuming that's, also, what the coroner based his or her findings on to say it was an Oxycodone overdose. And if they testify to homicide, they're basing it on the same thing, Your Honor.

THE COURT: Yes.

MS. HINTON: Thank you, Your Honor.

I'll start with Mr. Duncan. First of all, we would not elicit the cause of death being an Oxycodone overdose through him. We would elicit the type of death, which is listed on his report -- I can show it to Mr. DeJong -- as homicide. Because we think the coroner's office is vested with the authority to determine the type of death. That

is their purpose. That is their job. So that is as to Mr. Duncan.

As to Dr. Fulcher, first of all, Melendez-Diaz does not apply. That had to do with submitting affidavits in lieu of any person to testify. That does violate the confrontation clause.

However, we are going to admit Dr. Fulcher's testimony under 703, which says that experts can base their opinion on other experts or other documents. Even if those documents are not admissible, even if they are hearsay, he is allowed to rely on those for his own findings.

So that is why that is admissible. And it is distinguishable from Melendez-Diaz because we will have someone he can confront. And he can cross-examine him on the fact that these are not his own numbers, that they're from a different lab.

In addition to that, Mr. DeJong has his own expert on his witness list that did nothing in this case. So what is good for the goose is good for the gander. If he is allowed to bring a witness in to testify to someone else's findings and report, then the State has the same right to do that.

THE COURT: Any response?

MR. DEJONG: To say my expert did nothing is a gross

understatement, Your Honor. I have chosen not to call that expert.

MS. HINTON: Well, my point is she did nothing in this case. She's not a pathologist. She didn't test anything in this case.

MR. DEJONG: She was merely a consultant, if we want to get down to the bottom line. But it still goes down on -- even if you get over the hurdle of hearsay under what -- 702 or whatever it is, I still don't think you can bring it in. Because it's still a violation of my client's Sixth Amendment right to bring that in.

THE COURT: Let me -- all right. Let me look at the case you presented. And I'll let y'all know in just a second.

MR. DEJONG: Thank you, Your Honor.

MS. HINTON: And, Your Honor, just so you know, I do have multiple cases that do allow an opinion based on facts not in evidence.

THE COURT: Right. I mean, that's -- I'm not sure he disagrees with that. His is all Sixth Amendment. Let me look at this.

MR. DEJONG: May we be at ease, Your Honor?

THE COURT: You may be at ease.

MR. DEJONG: Thank you, Your Honor.

THE COURT: Only for five minutes.

(WHEREUPON, a break was taken.)

(WHEREUPON, State's Exhibit No. 21 was marked for identification only.)

THE COURT: All right. I've read the Melendez-Diaz case. I've looked at some other cases in South Carolina. And I believe the confrontation clause is met by the cross-examination of the witnesses here.

Those are different -- those were not in -- Melendez-Diaz was just trying to get in a report. So I'm going to allow the testimony.

MR. DEJONG: I didn't hear the latter part.

THE COURT: I said I'm going to allow the testimony in, subject to your objection.

MR. DEJONG: And I'm not arguing with Your Honor.

THE COURT: That's fine.

MR. DEJONG: The second prong of that is -- and I'm quite familiar with State v. Commander upon experts testifying as to cause of death. I'm not -- I don't think -- I could be wrong. But I don't think the State will offer the coroner as an expert witness, number one.

Number two, either with Dr. Fulcher or with the coroner -- and again, like I said, I read Commander. I understand Commander.

But in this case, I think it is vastly different. My client is charged with homicide by child abuse. That

allow me to stipulate, but I'm not stipulating to anything, Your Honor.

THE COURT: Well, I think any concerns you have through cross-examination and a proper charge in light of State v. Commander, I believe that would be appropriate.

MR. DEJONG: Very well, Your Honor.

THE COURT: All right. Anything else before we bring in the jury?

MS. HINTON: Just briefly, Your Honor. I think we've already covered this. But I have decided to admit the written statement that Detective Hendricks takes. I think that was covered in your prior Jackson v. Denno ruling, but I just wanted to be abundantly cautious.

THE COURT: All right.

MR. DEJONG: I have no response to that, Your Honor.

THE COURT: All right. Anything else before we bring the jury in?

MS. HINTON: No, Your Honor.

MR. DEJONG: Not on behalf of Ms. Brewer, Your Honor.

THE COURT: Bring them in.

(WHEREUPON, the jury came into open court at approximately 11:11 a.m.)

THE COURT: All right. Ladies and gentlemen, once again, thank you for your patience.

There were quite a few things we had to go over.

So, now, I'm going to ask that the State call its next witness.

MS. NEWTON: Thank you, Your Honor.

The State calls Gary Duncan to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

GARY DUNCAN,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: Gary Duncan.

DIRECT EXAMINATION

BY MS. NEWTON:

Q Mr. Duncan, where are you employed?

A The Pickens County Coroner's Office.

Q And in what capacity? What is your title?

A I am the deputy coroner in Pickens County.

Q And were you notified of a child's death on October 17, 2014?

A Yes, ma'am.

Q And where did you respond?

A Cannon Memorial Hospital.

Q Who responded with you?

A The lady that works with me, Joyce Duncan. She was

with me.
Q Okay. And is Joyce Duncan related to you?
A She's my wife.
Q Does she work part-time with the coroner's office?
A Yes, she does.
Q Was law enforcement at the hospital when you arrived?
A No, ma'am.
Q Did they arrive as a result of some of your actions?
A I notified Agent Smith [sic] with SLED. She came up there. Then she notified Pickens County.
Q Okay. And did you visually examine the baby at the hospital?
A Yes, I did.
Q What did you observe?
A A lot of medical wires, monitors. I checked the baby for any bruises, cuts, any signs of abuse. And I did not see any.
Q Okay. Are you aware of any medical procedures that they performed on the baby at the hospital?
A No, I'm not.
Q Okay. So based on -- when you said you didn't see any, does that mean that you didn't see any outward signs of abuse?
A Right. I didn't see any visible bruises or marks on the child.

Q Okay. Did you have an opportunity to speak with the family at the hospital?
A Yes, I did.
Q Who all was there?
A When they brought me around to where the family was at, there was Ms. Brewer, Mr. Brewer, and several other people in there that I didn't know.
Q Did you ever tell any of the family that this was SIDS?
A No, ma'am.
Q Okay. What type of information did you gather while at the hospital?
A When I was sitting in there talking to the family, my main concern was them. I was getting names, addresses, who was where, who was who. And in the process of talking to them, about that time, the mother came in.
Q What happened when -- and when you say "mother," do you mean the baby's mother?
A The baby's mother, yes.
Q And what happened when the mother came in?
A She came in the door and she was -- I would almost say in a panic state. Where's my baby? What's wrong with my baby. I want to see my baby.
MR. DEJONG: Your Honor, I'm going to object to what she said.

THE COURT: Yeah. Sustained.

THE WITNESS: Okay.

BY MS. NEWTON:

Q Yeah. Don't tell us what she said, but just what happened.

A When she came in, she was upset, like I said, in a panic mode, I would say. I informed her that her child was dead.

Q What -- what did you do after -- did you stay at the hospital the whole night?

A I stayed there a little while longer. I went back outside where Agent Smith was at. Lieutenant Byers, at the time, with the sheriff's department had arrived. We stood out there and talked a few minutes. I was giving them names and addresses that I had. Then I left and went to the house.

Q Okay. And when -- what did you do when you got to the house?

A When I got to the house, I went into the house. I observed the scene. I took some photographs of the house. And I stayed there until Agent Smith and Lieutenant Byers arrived at the house, along with Ms. Brewer and Mr. Brewer.

Q Okay. And you're saying "Agent Smith," but do you mean the female SLED agent?

A Yes, ma'am.
Q At the house, did you -- were you there and present when the Defendant was talking about what happened that day?
A Yes, I was.
Q Okay. And what information was provided to you?
A She was -- it was -- we done a reenactment. She was telling me about what time the child got up, what time she put it to bed -- put it down for a nap. Approximately 1:15, 1:30, she sat down and watched her soap operas. She went back to the child about 4:00. The child sat up and rolled over -- looked at her, rolled over, and went back to sleep.

She went back to the child somewhere around 5:00. She was talking to her husband on the phone. He told her you need to get the child up. Because if you don't, it won't sleep tonight. And she went over there and tried to get the child awake and couldn't get him awake.
Q And did she mention when 911 was called?
A Not at that time, I don't remember. She did later on in the reenactment.
Q Okay. And when you're saying "reenactment," what was your participation and role in that?
A I -- I took my camera and I videoed it.
Q Okay. And were there -- did you have one video clip,

or were there two video clips?
A There were two of them.
Q Okay. And why was that?
A The first part of the clip was when Agent Smith was explaining to her what she was going to do, what the procedure was, and all that. And then the second clip is, actually, the reenactment.
Q Okay. I'm going to show you what's been pre-marked as State's Exhibit No. 16. Do you recognize that?
A Yes, ma'am.
Q What is it?
A That is a CD of the reenactment.
Q And how do you know that?
A It's got my initials on it.
Q Does that mean -- that's because you watched it?
A I watched it, yes, ma'am.
Q Okay. During the reenactment, what did she say as to when they called 911?
A She said they didn't call 911. That her husband came in, he was performing CPR on the child. And while he was doing that, she called 911.
Q Okay. What was your overall impression of the Defendant during the reenactment?
A When she first got there and first started the reenactment, she was fine. She had been crying a little

bit. But as the reenactment went on and she went through the procedure, she became a little bit more upset or crying.

Q Okay. And what was your -- what did that mean to you while you were observing that?

A Well, you know, if it had been my child, I would have been real upset --

MR. DEJONG: Your Honor, I'm going to object to that.

THE COURT: I'm going to sustain.

And just, please, disregard that, ladies and gentlemen.

BY MS. NEWTON:

Q What did the Defendant use during -- to describe her actions that day?

A In the reenactment?

Q Yes.

A She -- we had a baby doll. She used that baby doll.

Q Okay. What did she use in terms of referencing time? Did anything stand out to you?

A She -- she went through the time, the time the child got up. She said she put it down for a nap at 1:00 1:15, or 1:30 because her soap operas was fixing to come on. And that's how she knew what time it was.

Q Okay. And over the course of your death investigation, was the coroner's office able to determine

a type of death?

MR. DEJONG: Your Honor, I'm going to object to this line of questioning, based on my prior argument.

THE COURT: All right. And overruled as previously noted.

BY MS. NEWTON:

Q You can answer.

A Okay. The coroner's office determined that it was a homicide.

Q Okay. During the -- your interaction with the Defendant, either while during the reenactment or any time you were around her, did she mention checking on him while she was watching her soap operas?

A No, ma'am.

Q Okay.

A The only time she mentioned going to him was when he sat up and rolled over, and she went over there. And then she went back and sat down and watched her TV.

Q And it was very clear to you -- or was it very -- made very clear that she was the only one alone with the child that day?

A Yes, yes.

MS. NEWTON: Please answer any questions Mr. DeJong may have.

THE COURT: All right. Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q Mr. Duncan, can you share with us the difference between medical homicide and legal homicide?

A No, sir.

Q There is a difference?

A I'm not about [phonetic] that.

Q All right. So -- well, my question then is, how did you arrive -- or the coroner's office arrive at calling this a homicide?

A I was called several weeks later by my boss, the coroner of the county. And she informed me that --

Q Stop right there. I'm not asking you what she informed you. Okay.

Other than -- based on that conversation, did you then rule it as a homicide?

A No, sir.

Q Well, when did you rule it as a homicide?

A I didn't rule it as a homicide.

Q Who did?

A The pathologist and my boss, the coroner.

Q All right. And that was -- well, let me ask you this. I realize you are the deputy coroner. And I'm not

trying to be disrespectful, Mr. Duncan. I want you to understand that.

Do you have any medical training?

A No, sir.

Q Do you have any legal training?

A Only my experience in law enforcement.

Q All right, sir. And so your determination or the coroner's determination, however you want to call it, was made on statements that were made by other people; right?

A Yes, sir.

Q So there was no, none, independent investigation by the coroner's office that would have arrived at homicide as being the cause of death?

A No, sir.

Q All right. Everything was based on something someone else told you?

A Yes, sir.

Q Did -- were you the cameraman at the reenactment?

A Yes, sir.

Q Well, let's back up to the hospital just a little bit. So when you, initially, got to the hospital, that being Cannon Memorial, where did you go?

A I went to the ER.

Q Okay. And who all was there at the ER?

A Just the medical staff and -- at the time that I seen

when I got in the ER, just the medical staff.
Q I'm sorry?
A Just the medical staff.
Q Just the medical staff?
A Yes, sir.
Q Well, where did you first see Ms. Brewer?
A She was in a room adjoining the ER, the side of the ER.
Q So she was not in the room?
A No, sir, not with the baby.
Q Now, you mentioned Ms. Brewer and I believe you mentioned Robby Brewer. But I didn't hear you mention any other names that were there?
A I didn't know any other names of the people that was there.
Q Well, I thought you gathered names?
A That's what I was in the process of doing.
Q Okay. Well, did you gather more names than Angie Brewer and Robby Brewer?
A Not at that time, no, sir.
Q Did you later?
A No, sir.
MR. DEJONG: Thank you, Mr. Duncan.
THE COURT: Any redirect?
MS. NEWTON: None from the State, Your Honor.

THE COURT: All right. Thank you.

You may step down.

MS. NEWTON: May this witness be excused?

MR. DEJONG: No objection, Your Honor.

THE COURT: Yes. He's excused.

MS. NEWTON: Your Honor, at this time, the State would move State's Exhibit No. 16 into evidence and play it for the jury.

MR. DEJONG: As to that video, Your Honor, I do not have any objection. But I am not waiving or giving up my prior objections to Mr. Duncan's testimony.

THE COURT: 16 is the --

MS. NEWTON: Reenactment.

THE COURT: Reenactment. All right. And subject to his objection.

(WHEREUPON, State's Exhibit No. 16 was admitted into evidence.)

MS. HINTON: And, Your Honor, while she's getting that set up, as we discussed, we have uploaded all of them onto the computer to play them easier. And I don't believe Mr. DeJong has any objection to us playing them that way.

THE COURT: Is that correct?

(WHEREUPON, there was no response.)

THE COURT: Is that correct, Mr. DeJong? You have no

problem with them playing them through the computer versus the disk?

MR. DEJONG: None, Your Honor.

THE COURT: All right. I was just making sure.

MR. DEJONG: I appreciate your asking.

MS. HINTON: We can enter the disk. It's just more efficient this way.

MR. DEJONG: That's fine.

THE COURT: All right. Let's make sure the...

Can everybody see?

MS. NEWTON: Judge, can you turn it up a little bit? You're in control of the volume.

THE COURT: Which one?

MS. NEWTON: May I approach and show it to you?

THE COURT: Do you know which one it is?

MS. NEWTON: I do.

THE COURT: I feel like I'm going to launch the space shuttle from this thing.

MS. NEWTON: It's that one.

(WHEREUPON, State's Exhibit No. 16 was played in open court.)

THE COURT: Is that the extent of it?

MS. HINTON: Yes, Your Honor.

THE COURT: All right. Anything else for this witness?

MS. HINTON: No, Your Honor.

THE COURT: You may call your next witness.

MS. HINTON: Thank you, Your Honor.

The State would call Detective Michael Hendricks.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

MICHAEL HENDRICKS,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: Michael Hendricks.

DIRECT EXAMINATION

BY MS. HINTON:

Q Detective Hendricks, where are you employed?

A I'm employed with the Pickens County Sheriff's Office.

Q How long?

A I've been there 14 and a half years.

Q What's your current position there?

A I'm a sergeant in the special victims unit.

Q And back on October the 17th of 2014, what was your employment there?

A The same. I was a sergeant in the special victims unit.

Q Did you respond to assist on a case involving the death of [redacted] Minor ?

A I did, yes.

Q And where did you respond?

A I responded to [redacted] Road.

Q Prior to that, did you go by the hospital at all?

A I did, yes.

Q Okay. And when you were at the hospital, did anybody hand you a consent to search form?

A They did, yes.

Q Did you witness that?

A I did.

Q Who gave consent to search?

A It was Angela and Robby Brewer.

Q And what did they give consent for y'all to search?

A Their entire residence.

Q Which was located where?

A [redacted] Road in Pickens.

Q Once you obtained that consent, did you go to that residence?

A I did.

Q And what's the purpose of going to a residence in a case like this?

A The main thing is just to collect evidence or -- or to preserve the scene from an investigative standpoint.

It's helpful.

Q And "to preserve the scene," what do you mean by that?

A Just to -- to see it as it is without it being disturbed.

Q So is your goal to get there before it's disturbed or tampered with?

A Correct. Yes.

Q So, to your knowledge, were y'all successful in doing that?

A I felt like we were, yes.

Q Is there any protocol when you have a child death on how you deal with a crime scene?

A There is. We try to approach them all in the same -- same way.

Q Okay. Can you explain to the jury a little bit about what that protocol is?

A It all boils down to just -- just trying to figure out the reason a child has died. When an adult dies, sometimes, the reason is obvious. With children, it's not always as obvious. So we have to approach it -- try to approach them all the same way. Because we have a -- proven records and results on the way that we approach them.

But the way we approach them is several ways,

interviews, preserving the scene, collecting any kind of evidence from the scene, timelines, reenactments. There's like a checklist that we go down and try to make sure we cover everything.

Q Did you follow that protocol in this case?

A We did, yes.

Q I guess, at some point, did you enter the residence?

A We did.

Q And did you have anybody from forensics with you?

A We did, yes.

Q And what does forensics do?

A Forensics is the one that collects the evidence and keeps track of it. They take pictures. They send things off for analysis, things of that nature.

Q So do you personally take anything into evidence?

A No.

Q And why is that?

A Because there's a chain of command -- or chain of -- a chain of custody that we go by. And it just -- it just works better that way.

Q Were you -- when you were there -- when you first got there, was the Defendant or her husband present?

A They were not, no.

Q Who did they arrive with? Do you recall?

A I -- I think they arrived with SLED Agent --

Ms. Cauthen.

Q When you got there, did you happen to notice pills on the floor, or anything like that?

A I did not see any pills on the floor, no.

Q Did you notice any medication in the residence?

A I did, yes.

Q And where was that medication that you found?

A The medication I saw was in the kitchen on the counter.

Q In your opinion, would that have been within the reach of a one-year-old?

A No.

Q The pills that were on the counter, did you take an inventory of them, or did you look at them?

A Yes. We took an inventory of the pills on the counter.

Q And in any of those pills, were there Oxycodone?

A No.

Q Were you present for the reenactment?

A I was, yes.

Q And it was kind of hard to tell in that video, but was the TV on during that reenactment?

A I do not recall.

Q Where was the baby sleeping, the deceased baby?

A In the Pack 'n Play.

Q How did you observe the Defendant to be during that reenactment, her emotional state?

MR. DEJONG: Your Honor, I'm going to object. That's cumulative. The jury has seen the video. It speaks for itself. I don't think we need somebody to talk about her demeanor at that reenactment any further.

THE COURT: Well, I'll let him go into it a little bit.

THE WITNESS: In my opinion, she just seemed very stressed.

BY MS. HINTON:

Q And I'm going to show you what's been marked as State's Exhibit Nos. 2 through 15. Could you look at those real quick for me?

A (Witness complied.)

Q Do you recognize those?

A I do, yes.

Q Do they fairly and accurately depict the scene that night?

A They do.

MS. HINTON: Your Honor, at this time, the State would move State's Exhibit Nos. 2 through 15 into evidence.

THE COURT: Any objection?

MR. DEJONG: I have an objection to one, Your Honor.

If I could see them, please, Ms. Hinton.

(Pause.)

MR. DEJONG: My objection -- Your Honor, I'll be happy to hand it up or have Ms. Hinton hand it up since it's her proposed exhibit. It's State's Exhibit No. 9 for identification. That picture has no relevance --

THE COURT: All right.

MR. DEJONG: -- to this case.

THE COURT: All right. Let me just see it.

MS. HINTON: And, Judge, it does in the -- that container was taken into evidence and was sent down to SLED.

THE COURT: All right. I'm going to overrule your objection on State's Exhibit No. 9.

And you did not object to State's Exhibit Nos. 2 through 15, other than State's Exhibit No. 9; right?

MR. DEJONG: That is correct, Your Honor.

THE COURT: All right. State's Exhibit Nos. 2 through 8 and State's Exhibit Nos. 10 through 15 are entered without objection.

And State's Exhibit No. 9 is entered subject to your objection.

(WHEREUPON, State's Exhibit Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 were admitted into evidence.)

BY MS. HINTON:

Q Detective Hendricks, State's No. 2, can you explain to the jury what that is?

A That is vomit or throw up.

Q And what kind of surface was that located on?

A Carpet.

Q And State's Exhibit No. 3?

A The same.

Q State's Exhibit No. 4?

A This is -- from what I remember, there was vomit on the couch and on the floor.

Q And State's Exhibit No. 5?

A That's a closer look at the couch.

Q And what are these numbered markers used for?

A Just to keep track of what we're talking about so you could say number two. And it just sort of clarifies what you're talking about.

Q State's Exhibit No. 6?

A Again, that's -- that's some throw up or vomit.

Q State's Exhibit No. 7?

A That's the Pack 'n Play where -- where the baby was placed.

Q Okay. And when we're talking about the baby, are we referring to Minor?

A We are, yes.

Q State's Exhibit No. 8?
A That is -- again, that's the Pack 'n Play. There was a sippy cup in the Pack 'n Play that was there when we arrived.
Q Okay. Do you know whether or not that sippy cup was taken into evidence?
A It was, yes.
Q Okay. State's Exhibit No. 9?
A That is some formula for mixing a bottle, and a sippy cup with the lid off.
Q All right. Do you know whether or not those were taken into evidence?
A Yes.
Q State's Exhibit No. 10?
A This is just some medication that was on the counter, also, a pill -- I don't know what you call those, but it's a thing you put pills in so you can keep track of the days and what you're supposed -- what kind of medication you're supposed to take.
Q And, to be clear, was either this pill counter or this bag of pills within the reach of a one year-old, in your opinion?
A No.
Q State's Exhibit No. 11, what is that?
A That is a sippy cup laying on the floor.

Q Is this the same sippy cup that was in the Pack 'n Play, or a different one?
A That would be a different one.
Q State's Exhibit No. 12?
A That's a closer look at the same sippy cup.
Q State's Exhibit No. 13?
A That's a closer look at the bag of medication that was on the counter.
Q And, again, did you find -- is this the bag that you inventoried?
A Yes.
Q And did you find any Oxycodone in that bag?
A No.
Q State's Exhibit No. 14?
A This is a -- just a picture in the living area at a different angle, some of the furniture. It's in the same room as the Pack 'n Play.
Q And what is this right here? Can you tell?
A That -- it looks like a drink with a straw in it.
Q And then State's Exhibit No. 15?
A This is another view of the room where the Pack 'n Play was with the TV on.
Q And is this how the living room was when y'all entered?
A Yes.

Q So aside from collecting the items that we discussed -- and I believe y'all, also, collected bedding; is that correct?
A Yes.
Q Okay. Did y'all disturb the room in any way?
A No.
Q Did you have occasion to meet with Angela Brewer again on November the 6th of 2014?
A I did, yes.
Q And what was the basis of that?
A The basis of that was we wanted to do a follow-up interview based on the fact that at the hospital, it was an emotionally charged setting. And we felt it would be to everyone's benefit to have another interview where there had been some time to calm down.

On November 6th, my lieutenant -- we had two people that came in for an interview. And she asked me to do one of the interviews.

Q And who was your lieutenant?
A Rita Burgess.
Q Did you interview Ms. Brewer on your own?
A I did, yes.
Q And did you Mirandize her?
A No.
Q And why not?

A Because it was, basically, a -- we had no reason to believe the child had -- we had no reason to believe it was a homicide at that time. We just wanted to sit down with her and try to get some timeline -- get a timeline and try to figure out the cause of death.

Q And, at that time, had you received any autopsy results from the pathologist?

A I had not, no.

Q And, at that time, had y'all received any results from the SLED testing?

A No.

Q So, at that point, did you know much about what had happened?

A No.

Q And is it normal for these things to take time for you to get results back?

A Yes.

Q When you spoke with her, did she provide you with a timeline of events that occurred that day?

A She did, yes.

Q Do you recall what that timeline was?

A I do.

Q Okay. Are you able to tell the jury, or do you need a copy of your report?

A I'd prefer a copy of my report. But I can do it

either way.

Q I'll let you find it.

A (Witness complied.)

Q I'm sorry. Were you able to locate that timeline?

A Yes.

Q Could you, please, read to the Court what the timeline was she provided you?

A The timeline she provided me -- she stated that at 5:30, Robby, her husband, left for work. She stated at 7:30, Callen, her daughter, took the two children to school, Cory, eight, Keegan, five. She said between 8:30 and 9:00, Callen came back. She stated around 10:30, Michael Lusk and Callen left to go to her work and then Georgia for the day.

She said she fed Minor cheese toast and gave him lemonade. She stated that at 11:00, Minor gets changed and has diarrhea. He plays in the living room area and she sits on the couch at times and does work in the house. She stated at 1:00, she changed two dirty diapers with diarrhea. She stated at 1:15, then Minor goes to sleep on her and drank lemonade. She stated that he fell asleep while she was holding him. She laid him down in the Pack 'n Play. And she fed the other child, Kayson, and watched TV, spoke to her sister by phone.

She stated between 2:45 and 3:00, Minor sat straight

up and smiles at her, and then rolls over and continues to sleep. She stated that she then spoke to her daughter, Cally, by phone.

Q And what time was that?

A 3:45.

Q Okay.

A She stated at 4:00, she felt Minor's head for fever. She stated he did not have one. She flipped him over at this time.

She stated at 5:15, Robby called her and told her he was on his way home. She stated that she put Robby on the speaker phone. Angela stated she picked up Minor out of the Pack 'n Play and tried to wake him. She said Robby said he was on Highway 183 headed her way. She then voices concern to Robby that he's not waking up. She says that he tries to calm her down and she waits for him to arrive.

Q She waits for him to arrive before what?

A I didn't hear you. What did you say?

Q She waits for him to arrive before what?

A Before calling 911.

Q Did you have her do a written statement as well as to that timeline?

A I did, yes.

Q I'm going to show you what's been marked as State's

Exhibit No. 21. Can you identify what that is?

A Yes. That is the statement that Angela wrote at my request.

Q Now, she signed it "Angela Harrison." Are Angela Harrison and Angela Brewer the same person?

A They are, yes.

Q And were you present while she wrote that statement?

A I was, yes.

MS. HINTON: Your Honor, at this time, we move State's Exhibit No. 21 into evidence.

THE COURT: Any objection?

MR. DEJONG: Without objection, Your Honor.

THE COURT: All right. State's Exhibit No. 21 is in evidence without objection.

(WHEREUPON, State's Exhibit No. 21 was admitted into evidence.)

BY MS. HINTON:

Q And at some point, does that timeline establish at what point she was the only adult present with these children?

A 10:30.

Q Did she give you any indication that anyone -- any other adult was present that day?

A No.

Q She mentions in that statement on November the 6th of

2014, that Callen -- that she called and talked to Callen sometime during that. Do you recall her saying that during the reenactment?

A I don't.

Q Do you recall her saying during the reenactment anything about a fever?

A No.

Q Was there anything -- any -- I'm sorry. Was your interview audio and video recorded?

A It was, yes.

Q I'm going to show you State's Exhibit No. 17. Is that a copy of that interview?

A That is, yes.

MS. HINTON: Your Honor, at this time, I would move State's Exhibit No. 17 into evidence.

MR. DEJONG: I'm going to object to it, Your Honor. She has introduced the written statement that he took that she gave. This is merely cumulative and bolstering what he has already testified to. And I object to it.

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

(WHEREUPON, State's Exhibit No. 17 was admitted into evidence.)

MS. HINTON: I'm sorry, Your Honor. Is that in evidence, State's Exhibit No. 17?

THE COURT: Yes, subject to his objection.

BY MS. HINTON:

Q Detective Hendricks, have you reviewed that video?

A Yes.

Q And, obviously, you were present when it was done?

A Correct.

Q Was there anything that was said in that video that stood out to you as strange or different?

A Yes.

Q Okay. Can you explain to me what you heard?

A What stood out to me is she talked about -- we talked about if her -- if Minor could have got access to her OxyContin. And she was very argumentative about how it's not possible, he could not have done that.

She stated that she kept those pills with her at all times. She stated that she counts them every day. She stated that they -- she has to be very careful with them because they could kill her dog.

Q I'm sorry. She had to be very careful with them why?

A Because if her dog was to get them, it could kill her dog.

Q Okay.

A She -- again, I gave some scenarios on how the child could have got the OxyContin. And she argued that's not possible. She'd stated they were in a child-proof container. She would count them every day. She kept them

right beside her. She always had an answer for any kind of scenario that I gave to her.

THE COURT: All right. Now, subject to his objection, I mean, this is getting in -- basically, repeating what -- are you going to put the statement in?

MS. HINTON: I am, Your Honor.

THE COURT: All right. I'm not going to allow him to, basically, repeat the entire statement.

MS. HINTON: Okay.

BY MS. HINTON:

Q Detective Hendricks, at some point during that video, does she give her written statement while on camera?

A Yes.

MS. HINTON: And, Your Honor, at -- I believe what we have marked as Court's Exhibit No. 1 is that her statement was given during minute 35:45, and minute 52. And so when we move to admit it, we would not be playing those portions. And I believe the Defense is in agreement with that.

MR. DEJONG: She had her back to me, Your Honor. I didn't hear a word she said.

MS. HINTON: Are you in agreement with Court's Exhibit 1?

THE COURT: All right. He's objected to the statement, but y'all have agreed to a certain stipulation.

What portion is not going to be --

MR. DEJONG: Not as to the content. I just object, at this point in time, to the whole thing being played, Your Honor. I realize you've overruled my objection. But just to be clear --

THE COURT: Okay.

BY MS. HINTON:

Q Detective Hendricks, after this statement on November the 6th of 2014, was she arrested at that time?

A On November 6th, no, she was not.

Q Did you have any more involvement in this case?

A No.

MS. HINTON: Thank you.

Please answer any questions Mr. DeJong may have.

MR. DEJONG: Well, my question is, before I do that, Your Honor, is she going to publish the video to the jury?

MS. HINTON: I am, but not at this time.

MR. DEJONG: If she is, then I prefer to hold my cross-examination until afterwards.

THE COURT: All right.

MS. HINTON: I mean, Judge, it was not my intention to make him awkwardly sit up here while we play the video.

MR. DEJONG: I don't care if he comes down from the stand. As long as when he gets back up there, he realizes

that he's still under oath, and that he's not to discuss the case with anybody while he's off of the stand.

THE COURT: I think he's allowed to cross-examine him after the video, as he's requested.

MS. HINTON: Your Honor, at this time, the State would play State's Exhibit No. 17.

THE COURT: Let me -- can counsel approach? I have another question.

(WHEREUPON, a bench conference was held.)

THE COURT: Ladies and gentlemen, we're going to take just a very short break before we watch the video. We'll bring you right back out in just a minute.

So don't discuss the case.

(WHEREUPON, the jury was excused from open court at approximately 12:03 p.m.)

THE COURT: All right. And you can step down, but don't discuss your testimony with anyone.

(WHEREUPON, a break was taken.)

THE COURT: Are we ready?

MS. HINTON: Yes, Your Honor.

THE COURT: Bring the jury in, if they're ready.

(WHEREUPON, the jury came into open court at approximately 12:11 p.m.)

THE COURT: All right. You may proceed.

MS. HINTON: Thank you, Your Honor.

And, again, for efficiency sake, we put it on the laptop. I don't believe Mr. DeJong has any objection to us playing it straight from the laptop.

MR. DEJONG: No objection to that, Your Honor.

(WHEREUPON, State's Exhibit No. 17 was played in open court.)

THE COURT: I believe this is the part where y'all stipulated to let this portion be forwarded.

(WHEREUPON, State's Exhibit No. 17 continued to be played in open court.)

THE COURT: Mr. Hendricks, if you'll come back around.

All right. Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q So you work for the Pickens County Sheriff's Office?

A I do, yes.

Q I believe you said you work with the special victims unit?

A That's correct.

Q Are not all alleged victims special?

A We -- we specialize in crimes against children, crimes that are sexual in nature.

Q And you then went to -- the first thing you did, I gather, you went to Cannon Hospital; right?
A Correct, yes.
Q Now, other than getting a consent to search, did you really do anything at the hospital?
A No.
Q And how -- did you take the consent to search to the premises, or did some other law enforcement officer?
A I believe it was David McKenzie that, actually, transported the consent.
Q Well, so David McKenzie went to the residence first?
A We left and arrived at the same time.
Q Pardon me?
A We left and arrived at the same time.
Q And what time did you get there?
A That, I couldn't tell you.
Q Okay. Well, you said part of it was to secure the scene. So wouldn't the time you arrived there be rather important as to you securing an undisturbed --
A Yeah. It's well documented. I just don't recall what it is.
Q Now, you got there and you say no one was there at the residence?
A The owner and the occupants of the residence were not there.

Q Pardon me?
A The owner and the occupants of the residence were not there.
Q Was anybody else?
A The Pickens County Sheriff's Office.
Q Okay. Had they gone in before you got there?
A No.
Q So did you search the whole house?
A We canvassed the whole house, yes.
Q I heard you say you canvassed the whole house. Did you search the whole house?
A We walked through the house, yes.
Q Okay. But your search, as such, was limited to the living room and kitchen areas, as I gather?
A That was -- that was the focus.
Q Right.
A But we entered every room in the residence.
Q So did you search Michael and Cally's bedroom?
A We did go in there and we did go through some things, yes.
Q I think you and I are playing word games. I understand you went in there. To me, a search is you're looking at things, specifically and particularly, and looking for various things. So did you go in looking for various things or did you just canvas --

A We went in there looking for anything that might be connected to the death of a small child.
Q Now, how many Pack 'n Plays were around the house?
A My recollection, I saw one.
Q Well, if you went into Michael and Cally's bedroom, did you see one in there?
A You're asking me something that happened over two years ago. I can't say that there was one in there or there was [sic].
Q You filed a report, didn't you?
A I did, yes.
Q Pardon me?
A I made a report -- I didn't make the report. I did a supplement to the report.
Q Well, did you make a supplemental on the search?
A No.
Q You did not?
A No. You have to understand, I was there assisting. We had a detective that was on call. And I was there assisting.
Q Well, so it was you and David McKenzie. Who else was there?
A There was an ID -- or our guy from forensics, J.T. Albrecht, was there, and the coroner and his wife was there.

Q Well, at that point in time, you're the senior person on the scene, aren't you?
A That's correct, yes.
Q Pardon?
A That is correct, yes.
Q And part of what you do is file a report so you can preserve it for if there is a trial; right?
A Well, we -- we weren't -- we really didn't know what we had at that point. We were just trying to figure out how this child passed away.
Q All right. Who determines, Detective Hendricks, if you know, when you collect certain evidence what is sent off for testing?
A That's a determination made by those involved in the case. You would have to -- you would have to analyze what you had and determine what was necessary to send off. Usually, you would send anything off that would have any benefit in figuring out --
Q Well --
A -- what happened to the child.
Q Excuse me. I didn't mean to interrupt you. Let me ask you this. You say there was vomit on the sofa and on the carpet; correct?
A Correct.
Q Was any of that collected for testing?

A It was photographed. As far as were there samples taken of it, I can't recall.

Q Well, I don't remember the exhibit number and that's all right. One of --

MR. DEJONG: Here they are, if I may borrow them for a moment, please, Madam Court Reporter.

BY MR. DEJONG:

Q Let me show you what's been introduced into evidence as State's Exhibit No. 9, and particularly direct your attention to that sippy cup. Was that taken into evidence?

A Yes.

Q Pardon me?

A As far as I know, yes.

Q All right. Do you know if it was tested or not?

A I would imagine it was. It wasn't my call to make. But I would imagine it was.

Q Well, actually, how many sippy cups were taken into evidence?

A From the pictures that I saw, it looks like I saw three in the pictures. So I imagine three were collected.

Q Did you find any others?

A Whatever is in the pictures is what we found.

Q Okay. Let's talk about the pills on the counter. And I think Madam Solicitor asked you, but I'm going to

ask you again. Was there any OxyContin in that bag on the counter with pills in it?

A No.

Q Was there any Lortab in that bag with pills on the -- in the bag that had pills in it?

A I can't say for certain, but I don't think so.

Q Well, I understood you inventoried it.

A You're talking about something that happened in 2014. It's documented on the evidence sheet.

Q I realize that, Detective. But you said you inventoried it. Did you not take notes of what was in that bag?

A We wrote down what was in the bag, me and Detective McKenzie, yes.

Q Well, was there any Lortab in there?

A That, I can't -- I cannot sit and tell you verbatim what was on that list.

Q At one time -- well, let me see, maybe I can find it in here right quick.

I'm going to show you what's been introduced as State's Exhibit No. 14. I think Madam Solicitor asked you about a possible cup that you saw?

A Yes.

Q Was that taken into evidence?

A I can't recall. There's not an item number on it, so

I would imagine not.
Q Let's move up to the statement. So you were asked on November the 6th to interview Angela Brewer?
A Correct.
Q Well, let me ask you this. Are you aware, Detective -- well, I may not go right there just yet. When Madam Solicitor asked you if the SLED results -- or, excuse me, if the test results were back, what were -- what test results were you referring to as of November the 6th?
A Ask that question again.
Q Yeah. It wasn't a very good question, I'll be the first to admit. All right. Do you know which -- was there more than one lab where material was sent for testing? Do you know?
A Again, you're asking me questions that I wasn't a part of. I wasn't a part of that -- that part of the investigation. I was not involved in that.
Q Okay. Were you aware that the lab results from Pennsylvania came in on November the 2nd?
A Again, you're asking me something I wasn't involved in.
Q All right. Well, between the time this allegedly occurred -- what Ms. Brewer has been charged with allegedly occurred on October the 17th of 2014; right?

A Yes.
Q Okay. And you did your interview on November the 6th of 2014?
A Correct.
Q Some almost, what, three weeks later? Two and a half?
A Sounds right.
Q All right. But in the interim, between October the 17th and November the 6th, you have no idea who she -- Ms. Brewer may have talked to, do you?
A No.
Q Okay. And, indeed, I think she said in her statement that she had talked to Kandy Kelley; is that correct?
A She did -- during our interview, she did say that.
Q All right. And who is Kandy Kelley, just so we're clear?
A She's the coroner of Pickens County.
Q Okay. Thank you, sir.
So, now, we get to the interview and you were asked to interview Ms. Brewer. And you were asked to interview her by your lieutenant; is that correct?
A That's correct, yes.
Q And is your lieutenant the lead detective, at this point in time, on that case?
A That's correct, yes.

Q Now, how, if you know, did Ms. Brewer get to -- well, let's back up. Was the interview done at the Pickens County Law Enforcement Center?
A It was.
Q At 214 C. David Stone Road?
A I believe it's 216 C. David Stone.
Q Pardon me, 216. I stand corrected. 214 is here, but not C. David Stone Road.
Do you know how she got there?
A No.
Q Well, when she got there, did you happen to greet her? Initially, when she first got there --
A At some point, I had to greet her.
Q Well, I know that. But do you know how long she had been there before you greeted her?
A No.
Q All right. And your office in the detention -- Pickens County Law Enforcement Center, where is that? First floor? Second floor? Where is it?
A You're asking where is my office in relation to the detention center?
Q Where you did the interview, I gather.
A They -- the building -- there's two separate parts of the building. There's the detention center that is separated by the office part of the building by a locked

door where you have to have a code to get in the other side of the building. We were in the public side of the building. We were not on the side of the detention facility.

Q Well, I realize that. But even to get to your office, somebody had to bring her in there because that's a secured area, isn't it?

A Yes.

Q Well, my question is, do you know who escorted her to your office?

A No. Because you're talking about something that happened in 2014. That's just something I can't recall.

Q All right. So this room where you were interviewing Ms. Brewer, is that your office?

A Yeah. At the time, I shared that office. And, at the time, I was sharing it with a -- well, I share it today, but I was sharing it then, too.

Q How many doors are in that room?

A One.

Q And is that the one door we see in the video?

A Yes.

Q And I gather when you greeted Ms. Brewer, you identified yourself as a police officer; is that correct?

A I'm sure, yes.

Q And how were you dressed that day?

A I had on my badge and gun -- well, you saw the video. I had a striped shirt on --
Q I'm sorry?
A I said, you saw the video. I think it's obvious how I was dressed.
Q I'm asking you, did you have your side piece on, your weapon?
A Yes.
Q And you had on your badge?
A I did, yes.
Q Now, there was certain talk about a phone call. To your knowledge, did anyone ever attempt to obtain Ms. Brewer's telephone, to your knowledge?
A I did not.
Q To your knowledge, was -- did anyone ever attempt to get a search warrant to search Ms. Brewer's phone, to your knowledge?
A To my knowledge, I don't know.
Q Well, in your testimony before we played the video, you said that she became argumentative at one point in time. Do you recall that?
A Well, if you watch the video, you see she interrupts me a lot of times when I'm trying to explain certain things, or trying to ask certain questions.
Q Surely.

A She cuts me off and sort of answers the question before I get it out.
Q. And would you agree with me that she was upset that day?
A Oh, without a doubt, yes.
Q Pardon?
A Yes. I would agree with you, yes.
Q So that would not necessarily be unusual, would it?
A Would it be unusual? No.
Q Okay. I didn't notice. Did you notice how long the total video was?
A I don't know.
Q Okay. Well, do you know how long it was from the time you started until you gave her the paper to write the statement?
A I don't know.
Q Okay. And for people you interview, dates are difficult to remember, aren't they?
A That -- I would say that some people remember dates quite fine, and some people can't.
Q That's right. And times are even more difficult, aren't they?
A Again, some people can recall times very easily, some people can't.
Q Well, as you're getting to -- you're getting to the

point -- let me back up. At the very beginning, you told her you were videoing and recording this; right?

A Yes.

Q All right. Then you asked her to reduce it to a written statement. And she -- as I recall, she said why, you recorded it? Right?

A She did say that, yes.

Q Okay. So she, obviously, knew it was being recorded. You knew it was being recorded. So however long that video was -- I want to say roughly 25, 26 minutes, but I don't remember. And her statement of why the written statement because you videoed me, did you really anticipate that she was going to write down verbatim every answer she gave you during that interview?

A I was wanting to give her the opportunity to write something in writing. And that was the reason.

Q Yes, sir. I understand that. But we both agree that a recording would be much better than a written statement?

A You have to understand, recordings sometimes aren't always reliable. And, sometimes, when you get to the trial two years later, the recording may not be -- work, so there, you have a fail safe. You have a statement.

MR. DEJONG: One moment, please, Your Honor.

(Pause.)

MR. DEJONG: Thank you, sir.

THE COURT: Any redirect?

MS. HINTON: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. HINTON:

Q Detective Hendricks, are there formal interrogation rooms in the law enforcement center?

A There are, yes.

Q Were you in a formal interrogation room when you met with her on that day?

A No.

Q You mentioned that you shared your office back at that time. Was anyone else in your office, at that time, other than you and Ms. Brewer?

A No.

MS. HINTON: That's all I have.

THE COURT: All right. Thank you.

And, ladies and gentlemen, thank you --

You may step down.

Thank you for your patience.

As I told you from the beginning, sometimes, we have to be flexible, depending on where we are. And I apologize for going so late for your lunch since it's now 1:20. I didn't realize that, but we needed to get through with this witness.

So, anyway, thank you for your patience.

MS. HINTON: Yes, Your Honor.

MR. DEJONG: Ready for the Defendant.

THE COURT: Go ahead and bring the jury in.

MS. HINTON: I'm sorry, Judge.

THE COURT: I knew that would be too good --

MS. HINTON: I didn't know if we were going to go ahead and discuss --

THE COURT: Oh, yeah, you're right. We did have something.

MS. HINTON: -- the interview, your ruling on that. I did go back and watch it over during lunch. And I've jotted down some times to try to redact, if possible. But I didn't know if you --

THE COURT: I guess the only thing -- I mean, I got to thinking. I think there's no probative value over the way she comments about her program ID or DI, whatever it was called. And I'm going to rule that that is more prejudicial than probative in light of this case.

Like I said, I've got -- I don't have where the time is on that one.

MS. HINTON: So what I have, Your Honor, is that per your order, we would start it exactly at 11:49, which is when Miranda is read.

THE COURT: That would be right.

MS. HINTON: And then the ID conversation starts at

11:53:42 and goes until 11:55.

THE COURT: Okay.

MS. HINTON: And then there's two separate comments about other incidents, which you've ruled were, also, inadmissible. The first about the bashing the child's head is from 12:10:16 to 12:10:45. And then the second one regarding the Benadryl is from 12:10:56 to 12:11:36.

THE COURT: Okay.

MS. HINTON: And then I believe your ruling was that we could play it up until she exits to take her break.

THE COURT: Right.

And I don't know, did we want to make a comment to the jury that any matters that were not related to this case...

MR. DEJONG: Any what, Your Honor?

THE COURT: I'm trying to figure out what we need to say to the jury for the matters that have been deleted.

MS. HINTON: Judge --

THE COURT: How about the matters that will be deleted are things that will not be for your consideration?

MS. HINTON: That's fine.

I guess we would just let the jury know before we played it that there is a portion of the video that will not be for their consideration.

THE COURT: All right.

MR. DEJONG: Well, I think we have to be a little careful there. But, again, I think there's -- you know, the distinction between the jury's job and your job, and your job is to rule on the admissibility of evidence. You've made a ruling on certain evidence that is not admissible and they're not to read into that, or speculate, or whatever.

THE COURT: I'll -- that's probably appropriate.

MS. HINTON: Last comment, Judge.

THE COURT: Yes.

MS. HINTON: So we're calling Dr. Rogers so he can get back to his patients, obviously. So we're calling him a little bit out of order.

And then for scheduling purposes, our next witnesses would be Christine and then Rita. I don't know how -- I know Mr. DeJong objected last time for me not playing the video and not allowing him to cross-examine them on that. I don't know timing-wise how we'll end up. But I would like to, just so we can move this along, get that video in today.

THE COURT: Okay. I mean, I think it's appropriate that he --

MS. HINTON: Sure.

THE COURT: -- has a right to cross-examine the

witness after the video.

MS. HINTON: I just didn't know how long he thought he would take with Agent Cauthen.

THE COURT: We'll just -- we'll play it by ear.

MS. HINTON: Okay.

THE COURT: We'll maybe go a little bit longer if we need to.

MS. HINTON: Sure.

THE COURT: Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 2:43 p.m.)

THE COURT: All right. Ladies and gentlemen, I hope everybody had a good lunch.

And we will now receive the next witness from the State.

MS. HINTON: Thank you, Your Honor.

The State would call Dr. David Rogers.

THE CLERK: Please place your left hand on the Bible and raise your right hand.

WHEREUPON,

DAVID STEVEN ROGERS, M.D.,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: David Steven Rogers.

DIRECT EXAMINATION

BY MS. HINTON:

Q Dr. Rogers, where are you employed?

A I'm employed at Oaktree Medical Center in Easley.

Q How long have you been there?

A Since 2001.

Q What is your position over there -- or what type of doctor are you?

A I'm a neurologist.

Q And were you the treating neurologist, at least, for some time for Angela Brewer?

A Yes.

Q Dr. Rogers, can you give us a little bit about your background, starting with your education?

A Yes. My college was at Marshall University Medical School at the University Autonomous of Tamaulipas in Mexico. Postgraduate training internal medicine through West Virginia University. Neurology residency and fellowship at the Medical University of South Carolina in Charleston. Fellowship in pain management at the Medical University of South Carolina, Charleston.

Q And prior to working at Oaktree Medical Center, did you have any other employment prior to that?

A Yes.

Q Where'd you work?

A I was the medical director at NCGS Laboratories in Charleston for two years. And before that, I was the medical director of the headache program at the Medical University in Charleston.

Q Have you been published at all?

A Yes.

Q Okay. And how many times?

A Twice.

Q And I guess -- I assume those are in your field?

A Neurology, yeah.

Q Are you a member of any groups regarding the medical field?

A Yes.

Q Okay. What groups are those?

A American Academy of Neurology, American Headache Society, Southeastern Headache Society, America Academy of Pain Management.

Q And are you board certified?

A Yes.

MS. HINTON: Your Honor, at this time, the State would move Dr. David Rogers as an expert in neurology and pain management.

THE COURT: Any objection or voir dire?

MR. DEJONG: I have no voir dire, Your Honor.

But before he goes any further testimony --

testifying, I'd ask the good doctor to get a little closer to that microphone.

THE COURT: Okay. Ladies and gentlemen --

You said neurology and?

MS. HINTON: Pain management, Your Honor.

THE COURT: Pain management. All right.

Dr. Rogers has been qualified in the field of neurology and pain management. I will tell you just, generally, a person cannot testify outside of what they observe or what they know by their senses. A person who is qualified as an expert can testify about their opinion or conclusions in their particular field. And you're to give that weight the -- you're to give that testimony the weight which you feel is appropriate.

Thank you.

You may proceed.

MS. HINTON: Thank you, Your Honor.

BY MS. HINTON:

Q Dr. Rogers, can you tell me when you began prescribing Oxycodone to Angela Brewer?

A Oxycodone, February 27th of 2013.

Q And were you prescribing it to her in October of 2014?

A That was -- yes, in a different form. It was in a long-acting form called OxyContin.

Q And we'll get to that. What were you treating her for?
A I was treating her for neck pain, shoulder pain, arthritis, carpal tunnel syndrome, lumbar radiculopathy, which is a pinched nerve, and then herniated lumbar disk.
Q And in October of 2014, what type of Oxycodone were you prescribing her?
A That was OxyContin, long-acting Oxycodone.
Q Okay. And what milligram?
A 80 milligrams.
Q And you say "long-acting," is that the same thing as extended release?
A Yes.
Q So was it OxyContin 80 milligrams extended release at that time?
A Yes.
Q And how many times a day was she allowed to take that?
A Twice.
Q And so was that every 12 hours?
A Yes.
Q Okay. So how many pills would she be able to get each time she went and had it prescribed?
A 60 per month.
Q And is 80 milligrams the highest dosage of extended

release that they make?
A Yes.
Q And can you explain the difference between extended release and immediate release?
A Extended is in a pill form that will release the medication slowly because it's bound with other chemicals. So it lasts 12 hours. Immediate release, generally, will last three to four hours.
Q So if you were to take an extended release in the form of immediate release -- if that makes any sense -- would it be much more powerful than if you took it in the extended-release form?
A I don't understand the question. Do you mean if -- are you asking me if you changed the pill so that it releases the medicine more quickly?
Q Correct.
A It's going to release more medicine faster than the proposed 12 hours.
Q Thank you.
Did you give her any instructions regarding how to take the pills when you prescribed them to her?
A Well, yes.
Q Okay. And what were those instructions?
A Well, we talk about proper use, proper disposal of the medications. The medicines are not to be cut,

crushed, or chewed.
Q And why is that?
A Because then you get more medicine too quickly.
Q Okay. Did you, also, instruct her not to accept any other medication from any other doctors?
A Yes.
Q And why is that?
A Because if we're going to be in charge of pain management, we don't want other doctors prescribing controlled substance medicines.
Q Okay. Had you had that issue with her?
A Once. She went to the emergency department with a urinary tract infection and she got a prescription for Hydrocodone, low dose, not many, though.
Q Are you aware of whether or not OxyContin extended released can be manipulated?
A Yes, it can.
Q One of the ways it can be manipulated, is that by dissolving it?
A Well, there's been two formulations of OxyContin. The first formulation was easily manipulated. And then the company that makes OxyContin reformulated it to make it more difficult.
Q And when was it reformulated?
A I don't know, really.

Q Okay. When it was reformulated, does that mean that you cannot manipulate it at this point?
A No. When it's reformulated, it was more difficult to manipulate it. And I do remember seeing one study that says it was -- it reduced abuse of the medication by 50 percent.
Q Okay. If you wanted to dissolve a medication similar to the way that it would dissolve in your stomach, would adding acid to that medication help in that process of dissolving it?
A I -- I would assume so. But I'm -- I -- that's a pharmaceutical question. I don't know if I'm authorized to answer.
Q Okay. How would someone off the street determine -- or figure out how to manipulate medication? I mean, is that information readily available?
A Well, yeah. There are web sites people can go to to learn how to abuse medications.
Q Okay. You do -- so would it be safe to say that dissolving, cutting, crushing, or chewing this medication would not be an appropriate way to take it?
A No. It's not an appropriate way.
Q And you do pill counts with your patients; is that correct?
A Yes.

Q And what is a pill count?
A A pill count is where we calculate how many tablets should be remaining. And then we see if medicines are missing.
Q Okay. And just because you do those pill counts, that does not ensure that someone is not abusing their medication; correct?
A That's correct.
Q Because, say, for example, I could take 10 pills in one day and then not take them for nine more days and be correct on my pill count; is that correct?
A Yes.
Q Is OxyContin in any form appropriate to give a 14-month-old child?
A No.
Q Did you at some point offer -- well, let me say this. Did the Defendant come to you, at some point, and have concerns about what had happened with her grandchild?
A Yes.
Q Okay. And do you recall what date that was?
A I think it was November 12th, 2014.
Q And when she came to you with that concern, what did you offer her as a remedy?
A Can you -- can you describe what you're saying?
Q Or I can show it to you.

A With remedy --
Q Well, did y'all discuss how she could get off of this medication?
A Yes. We discussed that.
Q And what did you offer her?
A We did discuss inpatient -- I'm reading from my note. We did discuss inpatient detoxification. An inpatient detoxification sheet was provided to the patient for various facilities in the upstate that could detox the patient if she feels that that's what she needs to do. The patient declined reduction in the Oxycodone dosage or elimination of Hydrocodone today.
Q Okay. What -- in October of 2014, on what day could she get 60 80-milligram extended release OxyContin --
A The medicines were prescribed on October 16th. I don't -- I don't know exactly what day she filled the prescription.
Q Sure. But that was the day that she could have gone and gotten it filled, is that safe to say?
A Let me check my note.
Q Sure.
A Yes.
Q So that was yes, she could get those 60 80-milligram extended release on October the 16th, 2014?
A Well, I gave her a prescription on that day. And it

doesn't seem like we predated or had a fill date on the medication. So she could have filled it that day.

Q Okay. In August of 2016, did she come to you for another Oxycodone prescription?

MR. DEJONG: Excuse me. When?

MS. HINTON: August of 2016.

MR. DEJONG: Your Honor, I don't see the relevance of that. We're talking about 2014.

THE COURT: What's the --

MS. HINTON: It's probably something better to discuss off the record, Your Honor. I don't know if you want a sidebar.

THE COURT: All right.

(WHEREUPON, a bench conference was held.)

THE COURT: All right. Based on the sidebar, the objection overruled.

MS. HINTON: Thank you, Your Honor.

BY MS. HINTON:

Q Okay. Dr. Rogers, just to reiterate, on August of 2016, did she come to you for another prescription -- or, I guess, another script of OxyContin?

A On August 29th, 2016, she returned to my care. She had been off medications for 18 months. She told me that she couldn't take the pain anymore.

Q Okay.

A She did not -- my notes do not make any mention of her, specifically, asking for any type of medication.

Q Okay. Did you prescribe any medication to her at that time?

A Yes.

Q And did you prescribe her Oxycodone?

A No.

Q Okay. And did she return to you after -- did you make a follow-up appointment for her after that?

A I prescribed Gabapentin for her, 300 milligrams. And she was supposed to follow-up with me in four weeks.

Q Okay. And did she follow-up with you in four weeks?

A No. That was the last visit with Angela.

MS. HINTON: Thank you, Dr. Rogers.

Please answer any questions Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q Dr. Rogers, you went through, in my opinion, a rather lengthy list of what you were treating her for; correct? Neck pain, shoulder pain, I think, pinched nerve, whatever?

A Yes, sir.

Q And were you treating for -- her for all of those things at one time?
A Yes. I was treating her neurologically, but, also, for her chronic pain.
Q And were those painful conditions?
A Yes, sir.
Q And the OxyContin -- I get confused between the two. But the OxyContin was for pain management, was it not?
A Yes, sir.
Q Okay. And if you -- okay. So you described her -- prescribed her 80 milligrams two times a day; is that correct?
A Yes, sir.
Q All right. Is that a relatively high dosage?
A It's the highest strength they make. And two times a day is common. It's a common prescription.
Q Right. I understand. But if you didn't take that medication, would your pain become worse?
A Yes.
Q All right. So the point is, you take the medication to keep your pain away; right?
A Yes. It's pain medication.
Q If you alter an OxyContin -- I forget exactly what you called it. Extended release, or something like that?
A OxyContin is extended release.

Q Is that the difference between OxyContin and Oxycodone?
A Yes. Oxycodone is immediate release and doesn't last but about three or four hours.
Q Okay. When we talk about -- well, Hydrocodone, that is a generic name; is that correct?
A It is a generic name.
Q Okay. The -- more of a brand name, is it commonly referred to as Lortab?
A It was. It's been changed now. I think the brand name now most commonly is Norco.
Q Okay. If you alter an OxyContin, does that not change just about everything about that pill? It changes the effects, we really don't know how it affects the body?
A Well, the only change is that it will release more medicine more quickly than the pill was designed to do.
Q Right. But, again, I understand what you're saying, but the overall pattern, if you will, is very unpredictable, is it not?
A I don't understand the question.
Q Okay. Well, I understand you say it releases more medicine more quickly; correct?
A Faster than it was designed to do.
Q Right. But when you start altering an OxyContin, how the body reacts to it or -- well, I'll just leave it at

that. How the body reacts to it is not really clear?
A No. I think that's well understood.
Q I'm sorry?
A I think how the body reacts to the Oxycodone molecule is well understood.
Q In terms of?
A In terms of its action. It works on certain receptor sites in the nervous system.
Q Okay. Well, let's go -- let's go to these pill counts. Do your notes or records reflect you ever had a problem with pill counts with Ms. Brewer?
A No.
Q Okay. So her pill counts were proper?
A From my -- yes. From my office notes, her pill counts were always appropriate --
Q Okay. And other than -- I'm sorry. I didn't mean to interrupt you, Doctor.
A I want to be certain. One moment, please.
I believe her pill counts were accurate.
Q I'm sorry?
A I think her pill counts were accurate.
Q Now, other than -- I believe you testified that she went -- she, being Ms. Brewer, went to the emergency room one time?
A She went to the emergency department with a urinary

tract infection. And they gave her a prescription for Hydrocodone, not a high dose and not very many.

Q And not for what, sir?

A Not very many tablets.

Q Okay. But that was not prescribed by you?

A It was not.

Q But other than that incident, you're not aware of any other -- what we commonly refer to as doc shopping, are you?

A No. She was not doctor shopping. We did four urine drug screens and they were all consistent. The only exception being when she got Hydrocodone from the emergency department.

Q Right. And when was that, did you say?

A That was July of 2017 -- no, June 27, 2014.

Q Well, then she came to you at some point in time, I forget the day you indicated, about, perhaps, stopping the use of OxyContin. Did I understand that correctly?

A Well, I think you're referring to the visit of November 12th, 2014. I don't think Angela, specifically, asked to come off these medications. I think that was a discussion we had on that visit.

Q Okay. So that was just kind of a general discussion, would you say?

A No. Under the circumstance, this was something that

we discussed as an option.
Q And I understand that. But you said earlier that her blood tests or whatever were consistent?
A I think there was one blood test, four urine tests, and the records indicate a hair strand test.
Q Okay. But they were all consistent?
A They were all consistent. They never showed any illegal substances. They didn't show any medications that were not prescribed for her.
Q Okay. So, as I understand it, at that point in time, she -- well, let me back up. Looking at your records, we understand that OxyContin is a powerful drug; right?
A Yes, sir.
Q Okay. And it can be addictive?
A Yes, sir.
Q Okay. But looking at your records, was there any indication at that point in time -- I may have asked this in a different form. But was there any indication to you that she was abusing them?
A No.
Q Okay. So even without abuse, there could become an addiction, if I understand you correctly; right?
A Addiction -- to understand the term for everybody. Addiction is when people overtake something. And it can be like cigarettes or caffeine or, in the case of

medicines, people are going to take way more medicine than they're prescribed.

Q Okay.

A That's addiction.

Q And I appreciate that. That clears it up for me.

But, again, in your records, when you met with her on that particular date when you discussed particular options, there was no indication of an addiction on the part of Ms. Brewer?

A Ms. Brewer came to me. She was very distraught. She was very tearful about what had happened. And I was concerned about her maybe utilizing these medications to harm herself. So that led to the discussion about her coming off these medications.

Q Okay. So, at that point in time, because she was very distraught and upset, you had a feeling that there might be a higher probability for misuse?

A Yes.

Q Okay. That's fine. Now, when she came back to you in August of 2016, if I understood your testimony correctly, she did not, specifically, ask for any particular type of medication?

A My records do not indicate she was asking for any specific medication. She had been without medicine for 18 months. I do have a direct quote from Angela saying,

"I can't take the pain anymore."

Q And not having been on that medication for 18 months, based on what you had been treating her for previously, the pain could have been exacerbating?

A Yes.

MR. DEJONG: Thank you so much, Dr. Rogers.

THE COURT: Any redirect?

MS. HINTON: Briefly.

REDIRECT EXAMINATION

BY MS. HINTON:

Q Dr. Rogers, you can't say for certain whether or not Angela Brewer was addicted to her medication or abusing her medication; is that correct?

A I think I can say with certainty she was not addicted to her medication.

Q Okay. But you can't say for certain she wasn't abusing it?

A That's correct.

Q And Mr. DeJong asked you about when you don't take your medication is the pain worse. And I believe, obviously, the answer is yes. But on the flip side of that, if you take your medication for an extended period of time, isn't it true that you can, also, build somewhat of a tolerance to that medication?

A Yes. That is tolerance.

Q And that is common, is it not?
A It really depends on the medication and the person. But it happens in medicine.
MS. HINTON: That's all I have.
Thank you.
THE COURT: All right. Doctor, you may step down.
MR. DEJONG: No objection to him being excused, Your Honor.
THE COURT: You're excused.
THE WITNESS: Thank you, sir.
THE COURT: All right. Next witness.
MS. HINTON: Thank you, Your Honor.
The State would call Agent Cauthen to the stand, Christine Cauthen.
THE CLERK: Place your left hand on the Bible and raise your right hand.
WHEREUPON,
CHRISTINE CAUTHEN,
after first having been duly sworn, testified as follows:
THE CLERK: Have a seat.
And state your name for the record, please.
THE WITNESS: Christine Cauthen.
DIRECT EXAMINATION
BY MS. HINTON:
Q Agent Cauthen, where are you employed?

A The State Law Enforcement Division.
Q Okay. And how long have you been there?
A I've been there for five years.
Q And what do you do there?
A I work for the special victims unit child fatalities.
Q Were you in law enforcement prior to that.
A Yes, ma'am, 24 -- 23 years.
Q How many areas do you work in South Carolina?
A I've got approximately nine counties that I assist with.
Q And you say you work child fatalities. Under whose direction or how did that become a thing?
A The State back in 1992, actually, enacted the law that we would assist local agencies. Pretty much, we come in and get with the local agencies and assist them in any way that's needed, whether it's bringing doughnuts and coffee, or getting interrogations, getting medical records. We work as a team with the local law enforcement agency, DSS, coroner's office, forensic pathologists.
Q And did you do that in Pickens County in this case with Minor?
A We did.
Q How were you notified of the need to come out? Do you recall?
A On this particular case, I believe Mr. Gary Duncan

called me to Cannon Hospital.

Q Okay. And when you arrived at Cannon, who was there?

A I believe it was just him and me at that point.

Q Was the deceased, Minor, there?

A Yes.

Q And where was he?

A He was in a bed in one of the rooms, one of the ED rooms.

Q Is that emergency department?

A Yes, ma'am. I'm sorry.

Q That's okay. Did you have an opportunity to observe him?

A I did.

Q And when you observed him, did you observe any outward signs of abuse?

A None.

Q Is that part of what you do?

A Yes. Initially, to every call we go to where the child is first, we do a full physical on the child to make sure there's no outward signs of trauma.

Q Okay. And did you observe him being administered any medication at the hospital?

A No.

Q I know you're not a doctor. But did he appear to be breathing when you were there?

A No. He had been pronounced when I was called.
Q And "pronounced," meaning that he was deceased at that point?
A Yes.
Q When there are no outward signs of abuse, where do you shift your focus to and what does that mean?
A When there's no outward signs of abuse, nothing apparent to cause this child to die, then a full investigation is started at that point. With every case, the same exact investigation is done.

You talk with the people closest to the child, the caregiver of the child. You go back to the residence, check out the residence, do an inventory of the residence, do what we call a reenactment. Then you do the autopsy, and just start knocking things down that don't pertain.
Q Is it more or less difficult of an investigation when you don't have those outward signs of abuse?
A Very much more difficult, yes.
Q In this case, in particular, when you arrived at the hospital on October the 17th of 2014, and observed the child, at that point, did you have any idea what you were dealing with?
A I knew that we had a deceased child. That concerned me greatly because of his age and no outward trauma. There was -- we had some issues.

Q And when you observed this child, I mean, did he appear malnourished, or anything like that?
A No, absolutely not.
Q Did you at any point while you were at the hospital tell anybody that you thought that this was SIDS?
A No, ma'am. I wouldn't use that term.
Q And why not?
A SIDS is the -- the acronym for SIDS is sudden infant death syndrome. And I -- my -- do you want my personal opinion as to why?
Q Sure.
A My personal opinion is there's no such thing as sudden infant death syndrome. Children don't just die. There's a cause for every death. No one just dies.
Q So you would not have used that term that night?
A No, ma'am.
Q When you are at the hospital, do you speak to the family at all?
A Very briefly.
Q And in your brief discussions, what information are you trying to get from them?
A Just basic, who the caregiver was that day, what's typical for Minor and his family, what's his typical eating schedule. We usually go back a day or so just so you can see what's typical, because every family is

different.

Q Do you ask for any medical background?

A Yes.

Q And what's the importance of that?

A To find out if there's any underlying issues that could have caused this child to die.

Q Were you able to obtain a medical history from this particular family?

A To a degree. There was no medical history from what I was told.

Q And did you gather that information from the Defendant, or from someone else?

A That's a really good question. I can't remember. I know it was gathered on that night from someone. But I don't know if it was, actually, the coroner who got that information from the Defendant or from Callen, the mother.

Q Okay. Well -- and let me ask you this. Do you recall how the family showed up, like, in what order? Do you know?

A I know when I arrived that Robby and Ms. Brewer were already there.

Q Okay.

A And then later, more family arrived. And I was later told it was the mother and father, and several other family members. But I didn't have a whole lot of contact

with them, except to tell them why we were there.
Q So, at some point, did you have the opportunity to observe all of those people?
A Yes.
Q And tell me how the mother and father of Minor appeared to you.
A Distraught, overwhelmed.
Q What about Robby Brewer?
A Distraught. I mean, there wasn't anyone that wasn't upset.
Q Was Angela Brewer, also, distraught?
A Yes.
Q At some point, do you head to [redacted] in Pickens?
A I'm sorry. Repeat that. I didn't hear.
Q At some point, do you head to [redacted] in Pickens?
A Yes.
Q Why did you head to that location?
A There, we gather facts from the family. We gather any evidence that may pertain to what we're dealing with. And we do what's called a reenactment with the family.
Q And when you arrived there, were other people already at the house?
A There were deputies on the scene, I believe.

Q And when you arrived -- who arrived with you -- or at the same time as you?
A I believe the assistant coroner and his wife arrived about the same time I did.
Q Okay. When did the Defendant and Robby arrive? Do you know?
A No, ma'am.
Q Do you know if it was before or after you got there?
A I couldn't tell you. They may have arrived just shortly before I did, close together, but I'm not sure.
Q And when -- before -- you observed the reenactment in court; correct?
A Yes.
Q Prior to that reenactment, did you guys have any conversation or anything that we -- I mean, obviously, you discussed something, but anything that we didn't see on the video that was relevant?
A I don't believe so at that time. But I can't be for sure.
Q Okay. And in the reenactment, how did you observe the Defendant to be?
A She was upset. She wanted -- she was tired. She wanted us to pretty much be done.
Q And after the reenactment, did you gather any more information from her about her medication, or anything

like that?

A I think we had already gathered most of that information prior to and while they were -- other officers or deputies were gathering that information forensically while I was doing the reenactment. So I didn't get a whole lot of information on that until after the fact.

Like I said, we work as a team, so one person may be gathering one thing and another gathering another.

Q Okay. Do you recall whether or not DSS was present with you?

A I know they -- I believe they were present on the scene.

Q At any point during your interaction with the Defendant, did she indicate that anyone other than herself was in charge of the child that day?

A No.

Q When did you receive -- well, let me ask you this. Were you aware that anything was sent for testing at SLED?

A Typically, we ask that things get sent for testing, blood from the --

Q Well, in this case, was the sippy cups --

A The sippy cups, yes. Typically, we ask for sippy cups, and bottles, and anything associated with the child and his intake for the day.

Q And did you receive those results?

A Yes, ma'am.
Q Do you recall when those results were received?
A Not the exact day.
Q Do you recall if it was prior to your interview with the Defendant?
A Yes, it was prior to.
Q Okay. So when you interviewed the Defendant on December the 18th of 2014, did you already know in your head everything that had transpired?
A Yes, ma'am.
Q Were you missing any information at that point?
A No, ma'am.
Q Okay. In your interview, you are very friendly with the Defendant and talk about some sicknesses that were found in the victim. Is that an interrogation tactic, for lack of better term?
A Yes, ma'am. I mean, there's no reason to be mean.
Q Sure. What is the goal of your interview when you interview somebody that you know that you're going to arrest?
A The goal is to get a confession. Yeah, to get a confession.
Q And prior to this interview, was the Defendant Mirandized?
A Yes.

Q Did you observe that Miranda?
A Yes.
Q Who, actually, read her that Miranda?
A That would be Lieutenant Burgess.
Q Okay. But were you present in the room at the time?
A I was.
Q And I'm going to show you State's Exhibit No. 1. Do you know what that is?
A That is the Miranda form that we filled out that day and I witnessed.
Q Did you observe the Defendant signing that?
A Yes, ma'am.
Q Now, it says "Angela Harrison" on there, is that the same person as Angela Brewer?
A Yes, ma'am.
MS. HINTON: Your Honor, at this time, the State would move State's Exhibit No. 1 into evidence.
THE COURT: Any objection?
MR. DEJONG: Same objection I had earlier, Your Honor.
THE COURT: All right. Overruled.
So that's exhibit what?
MS. HINTON: I'm sorry. Your Honor, State's Exhibit No. 1.
THE COURT: State's Exhibit No. 1 is admitted subject

to objection.

(WHEREUPON, State's Exhibit No. 1 was admitted into evidence.)

BY MS. HINTON:

Q The interview that you conducted on December the 18th of 2014, was that video and audio recorded?

A Yes, ma'am.

Q I'm going to show you State's Exhibit No. 18. Is that a copy of that interview?

A Yes, ma'am.

Q And were y'all in -- where were y'all when this interview took place?

A We were at the Pickens County Sheriff's Office in one of their interrogation rooms -- interview rooms that they have downstairs.

Q How did the Defendant get there?

A Lieutenant Burgess and I called her to see about her coming to meet with us. She said she didn't have any transportation. So we arranged to pick her up and bring her to the Pickens County Sheriff's Office. She said she would ride with us there.

Q In that ride, did you guys discuss the case at all?

A No, ma'am.

MS. HINTON: Your Honor, may we have one more sidebar?

THE COURT: Yes.

(WHEREUPON, a bench conference was held.)

MS. HINTON: Your Honor, I'm not sure if I did this or not, but the State moves State's Exhibit No. 18 into evidence at this time.

MR. DEJONG: Over all my previous objections.

THE COURT: Subject to your objection.

(WHEREUPON, State's Exhibit No. 18 was admitted into evidence.)

MS. HINTON: Your Honor, do you want to --

THE COURT: You want to --

Ladies and gentlemen, we're --

Are you going to publish it now?

MS. HINTON: Yes, sir.

THE COURT: We're going to publish one of the statements kind of like what we did before. But I just wanted to remind you that it is my job, as the Judge, to rule on the admissibility of certain things.

So if things -- based on my ruling, there will be certain portions of this video that will be deleted, but -- based on the admissibility -- of relevance, or whatever reason. You're not to consider that in any way. But just consider the portions that you do hear, so.

(WHEREUPON, State's Exhibit No. 18 was played in open court.)

MS. HINTON: Judge, I'm going to unplug the sound each time just to be safe. I've got it up here.

THE COURT: Okay.

(WHEREUPON, State's Exhibit No. 18 continued to be played in open court.)

MS. HINTON: Judge, you'd think there would be a better way. I apologize.

(WHEREUPON, State's Exhibit No. 18 continued to be played in open court.)

MS. HINTON: And, Judge, for the record, we stopped it at 12:28:15.

THE COURT: All right.

BY MS. HINTON:

Q Agent Cauthen, when you guys walked outside, did y'all have any more conversations about the interview, or anything like that while y'all were outside?

A No, ma'am.

Q In the video, you talked about his illnesses. At that point, did you believe he had died from his illnesses?

A No, ma'am.

Q Did you believe that he had died from pneumonia that was hereditary?

A No, ma'am.

MS. HINTON: That's all I have. Please answer any

questions Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Your Honor, before I do cross-examination, may we have a short break?

THE COURT: Ladies and gentlemen, we're going to take a short break. And we'll bring you right back out in a few minutes. Don't discuss the case.

(WHEREUPON, the jury was excused from open court at approximately 4:12 p.m.)

THE COURT: I would note that we did spare everybody the diaper -- all the stuff about the diapers.

All right. We'll be at ease for 10 minutes.

(WHEREUPON, a break was taken.)

THE COURT: Are we ready?

MS. HINTON: Yes, Your Honor.

THE COURT: All right.

MR. DEJONG: I'm ready, Your Honor.

THE COURT: All right. Bring them in if they're ready.

(WHEREUPON, the jury came into open court at approximately 4:25 p.m.)

THE COURT: All right. Ladies and gentlemen, we will now proceed. I believe we have cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q So, Agent Cauthen, on October the 17th, 2014, how long had you been with SLED?

A I've been with them five years now. So back two more, so three -- 2012, I came in November of 2012.

Q So about two years, a year and a half?

A Yes, sir.

Q Okay. Now, I wasn't clear. When you got to the hospital, if I understood you correctly, it was you -- was there any law enforcement there at that point in time?

A Gary Duncan, the deputy coroner, was there.

Q Okay. So did Mr. Duncan call you personally?

A I believe he did that time, yes.

Q Okay. Had you and he ever worked together before?

A Yes, sir.

Q And where did you work together?

A I've worked with the coroner's office in every county that I work in. So he's in one of the counties that I work in. I work with local law enforcement and the coroner's office.

Q Okay. You said you work with coroners in every county. You had been with SLED for about a year and a half. Had you worked with Mr. Duncan in his capacity as assistant -- or deputy coroner in that period of time?

A Yes, sir.
Q Okay. And, again, you say there were no outward signs of abuse?
A No outward signs of trauma, no, sir.
Q And I think Ms. Hinton cleared up that it's more difficult when there's no outward signs of abuse?
A Yes, sir.
Q Okay. Now, you stated that, in your personal opinion, there's no such thing as SIDS?
A In my personal opinion, yes, there is none.
Q And we're not going into the medical. That's just your personal opinion?
A Uh-huh.
Q So any time that a child would die and there's no outward signs of trauma --
A Uh-huh.
Q -- you would take the position that somebody did something to that child?
A No, sir. The definition would be SUDI, which is sudden unexplained death in infancy.
Q So you're just changing the acronym a little bit?
A No, sir. SIDS is a syndrome that they say is some type of medical syndrome. SUDI is unexplained.
Q I'm sorry?
A SUDI is unexplained death. So anything that doesn't

have outward trauma would be unexplained until we get the facts.

Q Well, I think I understand what you're saying. But then you, also, said that you were there to aid the counties, to assist in whatever they need, I think you said, even getting doughnuts and coffee, if I recall correctly?

A Yes, sir, I have.

Q But then you said -- and interrogations, that's part of what you said you do; right?

A Yes, sir, if asked.

Q And your goal in that is to get a confession?

A In this particular case, yes, it was.

Q All right. And -- well, when you were in the interview, you tell Ms. Brewer that the SLED reports were not back; is that correct?

A I believe I did, yes.

Q All right. When, in fact, they were back, weren't they?

A Yes. I believe they were.

Q Yes, ma'am. They were. And this was done in -- in a -- let me start over on that one. The interrogation was done in an interrogation room at the Pickens County Law Enforcement Center; correct?

A Yes, sir.

Q All right. And present in that room were you and Detective Burgess?
A Yes, sir.
Q And, obviously, Ms. Brewer?
A Yes.
Q Okay. Now, was there a particular reason that you had Detective Burgess go over the Miranda rights?
A No, just in her county, so.
Q Okay. Let me back up just a little bit. So on the evening of October the 17th of 2014 -- let's back up another hop. First, you went to the hospital?
A Yes.
Q And then you went to the residence -- I can't remember that number. But Swiss Entrance Drive, whatever, that's where you went; right?
A Yes, sir.
Q Now, when you got to Swiss Entrance Drive, if that's the name of it, I know it's Swiss Entrance something, I believe you said law enforcement was there?
A Deputies were on the scene.
Q Just the deputy coroner, no other law enforcement?
A There were deputies from Pickens County.
Q Oh, deputies. I'm sorry. I'm sorry. All right. Did you go in the house before the deputies did?
A I don't know. I don't think so. I think they were

there first.
Q All right. Back to the hospital for a moment. You did, ultimately, see Ms. Brewer along with some other folks?
A Yes, sir.
Q And everybody there was distraught?
A Yes, sir.
Q I think we could say extremely distraught, could we not?
A Yes, sir.
Q And that would include Ms. Brewer, would it not?
A Yes, sir.
Q And as far as the medical history on Minor, you don't know who gave you that medical history, or lack of medical history; is that correct?
A Yes, somebody did.
Q Now, back to the house. Did you take part in the search?
A No, sir.
Q Well, did you direct law enforcement to take certain things into evidence?
A I asked them to take certain things, yes, sir.
Q Such as sippy cups?
A Yes.
Q Did you ever ask them to take any samples of the

vomitus that was on either the sofa or the carpet?
A I don't believe I did.
Q All right.
A I don't know. I can't tell you for sure about that.
Q Okay. And there were other items that were taken without your suggestion, or direction, or whatever. But that was just taken on their own; right? That's what law enforcement did?
A I assume so. Anything related to the child or could be related to the child's case.
Q Well, other than -- I think you mentioned the sippy cup, specifically, that's why I asked about it. Is there anything else you asked them to take into evidence?
A Document any medications that were in the house.
Q Okay. Was that done?
A I believe so, yes.
Q Were you a part of that?
A I pretty much handled the reenactment with the deputy coroner. We each had our own duties to handle.
Q Let me just ask you, Agent Cauthen. To your knowledge, was there any OxyContin found in the house?
A I don't know.
Q And that's fine. I'm just asking to your knowledge.
A I don't know about that particular night, no, sir.
Q Pardon me?

A I don't know about that particular night if OxyContin was found in the residence.
Q Well --
A Or any night. I'm sorry.
Q Pardon me?
A I didn't mean to word it that way. I don't know that any was found in that residence.
Q Okay. That was going to be my follow-up question. You don't know of OxyContin ever being found in that house?
A Right.
Q Okay. So DSS was, also, present at the reenactment?
A I believe they were.
Q Okay. Once the reenactment was done, you left, I gather?
A Yes.
Q And, I guess, Mr. Duncan left?
A Yes.
Q When you left, was Mr. and Mrs. Brewer still in the residence?
A To the best of my knowledge, yes, sir.
Q Okay. When it comes to -- did you attend the autopsy?
A Yes, sir.
Q Did you ask Dr. Fulcher to send certain items for

testing?

A No. Usually, the coroner and Dr. Fulcher handle those. I don't.

Q Okay. To your knowledge, was anything taken for testing at the autopsy?

A Typically, there is blood taken.

Q And in this instance, do you know where those items are sent to be tested? If you know.

A Difference counties go to different places.

Q Yes, ma'am. So the answer to that, you don't know; right?

A Yeah.

Q Okay. Fair enough. Obviously, you were present when Detective Burgess was going over the Miranda warnings; correct?

A Yes, sir.

Q Okay. And not necessarily to the initialing on the left side of the Miranda form, which I believe has been introduced as State's Exhibit No. 1, but, more particularly -- and if you need to see this, Agent, I'll be happy to hand it to you. Okay. And let me just do that so we know what we're talking about.

When it came to the initials, there wasn't much thought or hesitation on Ms. Brewer's part, she just initialed; right?

A Uh-huh.
Q The top part?
A On the top part?
Q Yes, ma'am.
A As far as I know, you're, typically, told to read those --
Q Right.
A -- to them. And then they ask you to read those and initial.
Q So I'm clear. You are a law enforcement officer, aren't you?
A Yes, sir.
Q I'm sure you've given Miranda before?
A I have. And that's, typically, how I do it.
Q Right. But the point I'm getting at, when it came down to the waiver of rights, would you agree with me that Detective Burgess directed Ms. Brewer where to sign that?
A To sign the form?
Q Yes, ma'am.
A She directed her where to sign the form at the bottom, yes, sir.
Q So I'm clear, direct -- Detective Burgess pointed out, directed Ms. Brewer where to sign that form. Do you agree with that?
A Yes. Where her signature was to be, yes, sir.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	2016-GS-39-02265
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	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ANGELA DENISE BREWER,	)	**VOLUME II**
DEFENDANT.	)	
	)	

December 13, and 14, 2017
Pickens, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE; and a jury.

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

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CAROLINE H. NEWTON, ESQ.
Assistant Solicitors

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Attorneys for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes DW Witness
(IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Pickens County.

(WHEREUPON, State's Exhibit Nos. 19, 20, and 22 were marked for identification only.)

THE COURT: Anything from the State before we bring the jury in?

MS. HINTON: No, Your Honor.

MR. DEJONG: Nothing from Ms. Brewer.

THE COURT: All right. Bring them in.

(WHEREUPON, the jury came into open court at approximately 9:06 a.m.)

THE COURT: Good morning, ladies and gentlemen, I hope everybody had a pleasant evening. We're now -- the State is still in their case.

I wanted to let y'all know, as I'm sure that you saw when y'all were trying to park, there's a lot more people here today than there have been. Remember, I told you we were going to have to be flexible. There's a lot of stuff going on. And there's a couple of things I'm going to have to do during the day. So we may take a couple of breaks unrelated to this. So it's yearend stuff, trying to get a lot of stuff taken care of.

But, anyway, with that being said, I'll ask the State to call their next witness.

MS. HINTON: Thank you, Your Honor.

The State would call Detective Rita Burgess.

THE CLERK: Place your left hand on the Bible and

raise your right hand.

WHEREUPON,

RITA BURGESS,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Have a seat.

And state your name for the record, please.

THE WITNESS: Lieutenant Rita Burgess.

DIRECT EXAMINATION

BY MS. HINTON:

Q And Lieutenant, I apologize. I know I referred to you as detective earlier. But you are a lieutenant where?

A With the Pickens County Sheriff's Office.

Q And how long have you been employed there?

A 27 years.

Q How long have you been a lieutenant?

A I have been a lieutenant the last four years -- three years, four years.

Q And what are you a lieutenant of?

A I'm a lieutenant over the special victims unit at our office, which is domestic violence, sex crimes, anything related to a child, victims services, sex offender registry, things of that nature.

Q Do you at all focus on adults, or juveniles, or do you do both?

A Basically, both. But anything related to a child would come to our unit.
Q And did you respond to Cannon Memorial Hospital on October the 17th of 2014?
A Yes, I did.
Q And what were you responding to?
A I received a call to respond to the death of a child.
Q And when you arrived, who all was there?
A When I arrived, Coroner Duncan was there and his wife, Lieutenant Byers was there, and Agent Cauthen with SLED.
Q Okay. Was that all the law enforcement that was present at the time?
A Yes.
Q Do you know if other law enforcement had been at the hospital prior to your arrival?
A Yes, they had.
Q Okay. And who was that?
A Sergeant Hendricks had been there.
Q But he was not there when you got there?
A No, ma'am. He had already received a consent to search the home and had left the hospital to go to the home at [redacted].
Q Outside of law enforcement, was -- was the decedent there?

A Yes, he was.
Q Okay. And where was he located?
A He was located in one of the rooms in the emergency department.
Q And was the family there?
A Yes, ma'am.
Q And who from the family was there?
A My first contact was with Ms. Brewer and Mr. Brewer.
Q At the time that you made contact with them, were Callen Harrison and Michael Lusk present yet?
A No, ma'am.
Q What was the emotional state of Ms. Brewer at that time?
A She was very emotional. She was crying. She was very upset. She was making statements, you know, this shouldn't be happening, and just very upset and concerned about what was going on.
Q Okay. And Mr. Brewer, how was he acting?
A He was, also, upset.
Q Did you have an opportunity to speak to Callen Harrison?
A At the hospital?
Q Yes.
A Yes, ma'am.
Q And how was she reacting?

A She was completely distraught. It was very difficult to talk with her because she was having a difficult time even speaking to me.

Q Okay. And what about Michael Lusk?

A He was the same as Ms. -- Callen.

Q Okay. Was there anything you were not able to do that night because of the emotional environment?

A I did not -- I chose not to take a written statement from anyone that night. It was a very emotional time, a very sensitive time for the family. And it was my choice to wait until they could cope with the loss of this child before I asked them to provide me with a written statement.

Q Okay. That being said, do you have to have some sort of conversation with them to a certain extent?

A Yes, ma'am.

Q And I know you said that she mentioned that this shouldn't be happening. But did she tell you anything about how the victim was acting that day?

A I did have a conversation with her about that. Any time we respond, of course, we need to obtain initial information and try to get as much information about what happened that day as we possibly can. So I asked her to discuss his daily activities with me from that day.

Q Okay. And what did she tell you?

A She said he had been fussy. He had a history of some ear infections. And she was concerned that maybe he had started developing an earache. That he had been a little bit whiney that day. But other than that, he had a normal routine.

Q Did she mention to you at the hospital on October the 17th anything about him having a fever, or her checking for a fever?

A She did not mention a fever to me that day. She never mentioned she had checked him for a fever, just that he had been a little bit fussy throughout the day.

Q Okay. Did she mention to you that she had called Callen and discussed the fact that he was not feeling well?

A Not at that particular time, she did not.

Q Did you ever tell her that this could be the result of SIDS?

A No, ma'am. I would not tell anyone that.

Q Okay. And why is that?

A Well, first, I'm not a medical physician. And I don't determine what the death of a child would be. So that would be left up to medical staff or the coroner's office for them to provide that information, not me.

Q What -- you mentioned that Agent Cauthen was there. What is SLED's role in these cases?

A They have a child fatality unit. And we notify them of every child death -- a child death, any person under the age of 18. If we respond to a child death, we notify them whether it's immediately or after we've processed the scene. We may or may not request that they respond to assist. But they're an assisting agency to us.

And in this particular case, I did not have to notify them because they had been notified by the coroner's office.

Q And does that happen from time to time that the coroner will notify them, rather than y'all?

A Yes, ma'am. They are a notifying agency to SLED just the same as we are.

Q Did you notify anybody else, any other agencies about what had happened?

A Not that I recall.

Q October the 17th of 2014, what day of the week was that?

A That was a Friday.

Q Did you interview or speak to Robby Brewer on November the 6th of 2014?

A Yes, ma'am.

Q Did you instruct someone else to speak to Angela Brewer?

A I did. I requested Sergeant Hendricks to speak with

her.
Q Did you end up speaking with Ms. Brewer on December the 18th of 2014?
A Yes, ma'am.
Q And were you present when that was played in court?
A Yes, I was.
Q Who read her her Miranda rights in that video?
A I did.
Q And I'm going to show you what's previously been admitted as State's Exhibit No. 1. What is that?
A That's the Miranda form that I used for her.
Q Okay. Whose form is this?
A It's a standard form that we use at our agency.
Q And she signed it "Angela Harrison." Is that the same person as Angela Brewer?
A Yes, ma'am.
Q In your conversations with Ms. Brewer, did she ever establish for you a timeline of the last time that this child had anything to eat or drink?
A Yes, she did. I established that at the hospital on October 17th.
Q Okay. And what was that?
A She said around -- between 11:00 and 11:30, she had given him an apple. Around noon, she had provided him with a cheese sandwich. And that around 1:15, she gave

him a cup of pink lemonade.

Q Did she state that she had given him anything else to eat or drink after 1:15?

A No, ma'am.

Q Did she mention to you, at that point, whether he had drank out of her cup or his own cup?

A She did not mention that.

Q And you did not go to the house; correct?

A No, ma'am. I stayed with Minor at the hospital while someone else went to the home.

Q Okay. When you're dealing with these types of cases, are there a lot of duties to undertake at the same time?

A Yes, ma'am.

Q Are you responsible for everything, or do you delegate? How does that work?

A I delegate. I can't be at the hospital with the deceased and, also, process the home and collect anything that may need to be collected at the home. So that was why Sergeant Hendricks was notified.

And he responded to the home simply because he lived closer to the scene than I do. And he was able to get there before I could get there. And we already had someone at the hospital who could stand by with the deceased until I could arrive.

Q So was the scene being processed while you and the

family were still at the hospital?
A Yes, ma'am.
Q Okay. And why is it important to go and process a scene as soon as possible?
A Well, let me make a correction. I won't say that it was being processed while we were at the hospital. They were, at least, on scene and waiting for the family to arrive while we were at the hospital.
Q Okay.
A And what was your next question?
Q What's the importance of getting to a scene quickly, and photographing, and processing it?
A Well, depending on the situation, if someone has intentionally done something to a child, then there's the possibility that they could destroy evidence, or we could lose something that's important to the case.
Q And did you have any idea on October the 17th of 2014 what type of death you were dealing with?
A No, ma'am.
Q Do you recall -- well, let me ask it this way. Do you know whether or not evidence was sent to SLED for testing?
A Yes, ma'am.
Q Is that it was?
A It was, yes.

Q And do you recall when those results were received?
A I believe we received the results from SLED in December of 2014.
MS. HINTON: Lieutenant, that's all I have. Please answer any questions Mr. DeJong may have.
THE WITNESS: Yes, ma'am.

CROSS-EXAMINATION

BY MR. DEJONG:
Q So, you went to the hospital on October the 17th of 2014?
A Yes, sir.
Q And did you, as part of your duties, prepare a report as to that, Lieutenant Burgess?
A Yes, sir, I did.
Q Pardon me?
A Yes, sir, I did.
Q And accuracy, obviously, is a big thing in reports; correct?
A Yes, sir.
Q And you work a lot of cases; right?
A Yes, sir.
Q Okay. And this happened some three years ago; right?
A Yes, sir.
Q Okay. Well, I'm a little puzzled. And we can let you look at that part of your report, if you want to. You

were talking about, I believe, Ms. Brewer saying he had been fussy during the day, and all of those things?
A That's correct.
Q Did you put that in your report?
A No, sir. I didn't document it in that report.
Q All right. So your memory is better than your report, is that what you're saying?
A I'm not saying that my memory is better than my report. That's just something I didn't put in the incident report.
Q Well, that was fairly important, wasn't it?
A It's information she provided on his condition that day, yes.
Q Yes, ma'am. And that's what you were there for was to gather information; right?
A Yes, sir.
Q Now, obviously, this was a traumatic experience in this family's life?
A Absolutely.
Q Everybody's?
A Yes.
Q My client, her husband, the mother, the father of this child?
A That's right. First Responders, everyone involved.
Q And, certainly, everybody was reacting to that event

as a traumatic experience when you got to the hospital?
A Yes, sir, which was my reason for not taking those statements.
Q Pardon me?
A That's the reason I didn't take those statements.
Q Yes, ma'am. I understand that. For that part, you are to be commended. I will share that with you.
Okay. Now, then you come back -- well, let me ask you this. You never went to the house?
A No, I did not. Sergeant Hendricks did that.
Q Okay. And did you attend the autopsy?
A No, sir.
Q Okay. So the next contact, I gather, that you had with Ms. Brewer was when you and Agent Cauthen spoke to her -- my dates now are all starting to run together. Was that in November or December?
A That was December. But I did speak with her by phone in November when she came and met with Sergeant Hendricks. I did speak with her to ask if she would come in and provide that statement.
Q Okay. So do you know how Ms. Brewer got to Sergeant Hendricks's office?
A As far as driving, I don't know how they got there. I do know that I am the one who went down and brought them up for her to meet with Sergeant Hendricks.

Q So you escorted --
A Yes.
Q -- Ms. Brewer and Robby Brewer?
A Yes.
Q To Lieutenant -- or Detective Hendricks? I'm sorry.
A Yes, I did.
Q And how were you dressed that day?
A In normal clothing like I've been dressing this week.
Q Did you have your sidearm on?
A Yes, sir.
Q Did you have your badge on?
A Yes, sir.
Q Okay. Now, you weren't a part of that particular interview?
A No, sir.
Q Okay. So, now, was it November the 18th or December the 18th? That's where I'm getting fuzzy.
A December.
Q December the 18th?
A Yes, sir.
Q That's when you and Agent Cauthen spoke --
A Yes, sir.
Q -- to Ms. Brewer?
And how did she get to the -- well, I gather, that was -- that interview/interrogation was done at the

Pickens County Law Enforcement Center?
A Yes, sir. That's right.
Q Okay. And how did she get there?
A Agent Cauthen and I provided her with a ride. She didn't have transportation.
Q Do you recall what time you picked her up?
A It would have been around -- probably around 11:30.
Q All right. How long did the interview -- strike that.
So when you got there -- and this confuses me a little bit. So SLED is called in to assist?
A Yes.
Q All right. But then you did the Miranda warnings; right?
A Yes, sir.
Q And Agent Cauthen did the interrogation?
A Yes, sir.
Q Okay. So in that vein, it was a little more than assisting, wasn't it?
A Well, in assisting, we work together. I mean, that's what we do. We work together as a team.
Q And when you Mirandized her, you, obviously, according to the video, got her to read back the waiver part; right?
A Yes, sir.

Q Did you get her to read back the top part of that form?
A Not out loud. I asked her to read over -- reread what I had read to her at the top, and then to read the waiver at the bottom, out loud.
Q Do you have any independent recollection of how long it took her to read over that?
A Other than what's on that video, no, sir.
Q Okay.
A It wasn't very long.
Q Okay. Well, on the waiver -- well, let's back up. She initialed on the left side. And let me show you what's been identified as -- excuse me, I believe that's --

Has that been introduced?

THE COURT: State's Exhibit No. 1.

MR. DEJONG: State's Exhibit No. 1.

Thank you, Your Honor.

BY MR. DEJONG:
Q What's been introduced as State's Exhibit No. 1.
A Yes, sir.
Q There is a top part of that; correct?
A Yes, sir.
Q And initials on the left?
A Yes, sir.

Q Now, you get down to the waiver. And when you got down to the waiver, you directed her where to sign, didn't you?
A Yes, sir. If you recall from the video, after she read this out loud, she pointed to the left side here and asked me if that's where she needed to sign. And I stated, No, you need to initial here and sign here --
Q Okay.
A -- in response to her question.
Q Right. But she was, certainly, showing some confusion at that point in time, wasn't she?
A She wanted to know where to sign the paper.
Q Well, that's not a difficult thing, is it?
A There's two lines that she -- one she needed to initial, and one she needed to sign. She asked which one she needed to sign. And I pointed that out to her.
Q Now, you said that getting there before anybody -- back to the house. I'm sorry. Getting there is important so no evidence is destroyed; right?
A Yes, sir.
Q Now, there's no indication, in this case, that any evidence was ever destroyed, is there?
A Oh, no, absolutely not.
MR. DEJONG: Okay. One moment, please, Your Honor.
(Pause.)

BY MR. DEJONG:

Q As you worked through this case, Lieutenant -- well, let me back up. Do you know how many people lived in the household with Ms. Brewer and Robby Brewer?

A I know what they provided me, the information they provide me as to who lived there.

Q Okay.

A Which was Mr. and Mrs. Brewer, Callen Harrison, Michael Lusk, and the four children.

Q Well, as your investigation progressed, was there any indication that any adult in that household had ever abused any of those children?

A No, sir.

MR. DEJONG: Thank you, Lieutenant.

THE COURT: Any redirect?

MS. HINTON: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. HINTON:

Q Mr. DeJong asked you how many people were living there. Were you able to determine on the night of the 17th how many people had been there that day with those children?

A Yes, I did.

Q And what was that?

A The parents had left early that morning to take the

older children to school. They came back to make a trip to Georgia. They were there very briefly. They left out before lunchtime to go to Callen's work and, also, go to Georgia.

Then I was told that -- it was determined that Ms. Brewer was home alone with Kayson and Minor for the remainder of the day until Mr. Brewer came home from work around 5:30.

Q And can you tell me why you and Agent Cauthen didn't tag team that interview on December the 18th of 2014?

A Well, we were not there to browbeat her. Before we go into an interview, we determine who's going to be the primary person to question the person that we're talking to. And we go from there.

The secondary person will sit back and make notes. And if there's something that's missed, then we may chime in or make a note to the other interviewer. And we just -- you know, we're not there -- it's a very sensitive situation. We're not there to beat her down. We were just trying to get the information that we needed to determine what happened to Minor that day.

MS. HINTON: That's all I have.

THE COURT: All right. You may step down.

Call your next witness.

MS. HINTON: The State would call Kevin Nichols, Your

Honor.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

KEVIN NICHOLS,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: Kevin Nichols.

DIRECT EXAMINATION

BY MS. HINTON:

Q Mr. Nichols, where are you employed?

A Pickens County Department of Social Services.

Q How long have you been there?

A Five plus years.

Q Prior to your employment with Pickens DSS, did you work anywhere else?

A I worked for a year at Greenville County DSS.

Q Did you respond to Cannon Memorial Hospital on October the 17th of 2014?

A I did.

Q Okay. And what were you responding to?

A A child fatality.

Q And did you have an opportunity to go to [redacted] Lane on that same evening?

A Yes, ma'am, I did.
Q Or Swiss Entrance. I don't think it's lane. Were you present for the reenactment?
A I was.
Q And were you able to observe the Defendant's behavior?
A Yes, ma'am, I did.
Q Is that part of your job, to collect information?
A It is.
Q Is it fair to say that you have a separate duty from law enforcement?
A Yes.
Q And what was the Defendant's behavior that evening at the house?
A Obviously, it was emotional because of the death, but she was just very erratic. I felt like she may be acting a little bit when it came to the child's death.
MR. DEJONG: Your Honor, I'm going to object to that. He said it seemed to me like she was "acting."
THE COURT: Right.
MR. DEJONG: That's speculation, not an observation.
THE COURT: Right. And I'll sustain. I think he needs to stick with what he observed.
BY MS. HINTON:
Q Aside from her being erratic, did you observe any

other behaviors?
A No. She was just very emotional.
Q Did her emotions seem in line with what had happened?
A Yes, I think so.
Q During the reenactment, what did you observe -- did anything strike you as odd during the reenactment that she said?
A Just when giving the timeline, the time between when the child was found to not be breathing and calling 911.
Q Okay. Anything else?
A No, ma'am.
Q Did you have occasion to talk to Robby Brewer on that evening?
A I talked to him very briefly.
Q And was that on October the 17th of 2014?
A Yes, ma'am.
Q And was that at [redacted]?
A Yes, ma'am.
Q And did he tell you anything about Angela?
MR. DEJONG: Objection, Your Honor. She's calling for hearsay.
MS. HINTON: No, Your Honor.
This is impeachment. We had him up on the stand earlier. He previously denied this statement, so this is for the purpose of --

THE COURT: All right. I'll allow it.

MR. DEJONG: Okay. Withdrawn.

BY MS. HINTON:

Q Did he tell you anything about Angela giving him any of her medication?

A Yes. He did tell me that he worked under houses a lot, and he would take a quarter of a -- one of her pain pills for his back.

Q Did he say he did that one time, or sometimes, or more than one time? Do you recall?

A He didn't specify how often.

Q Did you enter that into a report?

A I did go back and do a -- we call it a dictation. That is in the dictation.

Q But that was memorialized in writing back in 2014?

A Yes, ma'am.

MS. HINTON: That's all I have. Please answer any questions Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. DEJONG:

Q First, you went to the hospital; is that correct?

A Yes, sir.

Q How long did you stay at the hospital?

A Two, two and a half hours.
Q Okay. And Ms. Brewer was distraught at the hospital, wasn't she?
A She sure was.
Q Maybe using the word distraught is a bit of an understatement. Would you agree with that?
A Yes.
Q Okay. And so you were at the hospital for two and a half hours. Did you talk to Ms. Brewer while you were at the hospital?
A I was not allowed to.
Q Pardon me?
A I wasn't allowed to.
Q Okay. Now, so then you go to the home at Swiss Entrance. What time did you get there?
A 11:00, 11:30.
Q In the nighttime?
A Yes, sir.
Q So we've been through a relatively long day as far as Ms. Brewer and Robby Brewer are concerned?
A Absolutely.
Q Not only a long day in terms of hours, but a long day in terms of traumatic experience; right?
A Yes, sir.
Q So you say that what you found odd was the difference

between when the child quit breathing and the 911 call. Do you know what time the 911 call went out?

A I'm not sure what time the call went out. But I did note that EMS responded at 5:30.

Q Well, when you were there for the reenactment, did Ms. Brewer ever tell you what time the child quit breathing?

A She told me at 4:30 that she noticed that he had been asleep pretty much all day. So she called Mr. Brewer and they talked through it.

Q All right.

A So I -- around 4:30 is when she noted that he was no longer breathing.

Q But just so I'm clear. At 4:30, she said the child had been asleep a long time; right?

A Yes.

Q She didn't say the child wasn't breathing, did she?

A Around the same time, she told Mr. Brewer that she picked him up and touched his face and he was cold, around that same time.

Q Well, you said Ms. Brewer's behavior was a little erratic that night. What do you mean by that?

A Just very up and down.

Q Okay. And, pretty much, any time the child's death was mentioned, she was very emotional, wasn't she?

A Yes.
Q All right. And, of course, she was -- well, let me ask you this. When you were there, I guess, Agent Cauthen was there. Was there -- I guess, the deputy coroner was there; is that correct?
A Yes, sir.
Q Was there any other law enforcement there?
A There were many law enforcement there.
Q Okay. All in the house?
A As far as I know.
Q Well, was -- from your observation, was Ms. Brewer cooperative with everyone?
A Oh, very cooperative.
Q Okay. And you shared with me -- well, you didn't share with me. You shared with the Solicitor that Robby said he -- I'm not exactly sure what your words were, so let me back up. Did he say on October the 17th of 2014, he had taken a fourth of a Lortab?
A I was made aware at the hospital by an agency -- I'm not sure who -- that Ms. Brewer took pain medication. So as part of my investigation, I just asked about drug use.

And he said, at that point, that he took a quarter of a pill because he -- because of his job, essentially. Now, he didn't say how often, when, how, where. But he

did say that.
Q Did he say Lortab?
A He said -- I think pain pill was how he phrased it.
Q Well, did he tell you he took any OxyContin?
A No, sir. But she showed me a prescription of Oxycodone. And that would be a pain pill.
Q Well, of course. So is Lortab, isn't it?
A Yes. But that wasn't presented to me at the house.
Q Pardon me?
A That wasn't presented to me at the house.
Q I'm sorry. I still didn't hear you.
A That wasn't presented to me as a medication at the house.
Q Well, when you were there, did you have a conversation -- "there" being Swiss Entrance, did you have a conversation with Ms. Brewer about her pills?
A Yes, sir.
Q Did you do a pill count?
A No, I did not.
Q Did anybody do a pill count that night, as you recall?
A Not that I'm aware of, but I don't know for sure.
Q Well, in light of Mr. Brewer's statement to you, whatever he said he had done a quarter of, don't you think a pill count would have been important at that point in

time?
A Sure.
Q And you didn't do it?
A No. But, at that point, I wasn't -- at that point, I had no reason to suspect it -- that drug use might have contributed to the child being deceased.
Q Well, I understand. Well, you, certainly, thought something when Robby Brewer told you he had done a quarter of something, or another; right?
A And I sent him for a drug test to show that --
Q You didn't do the drug test, though, did you?
A Yes, I did.
Q You did?
A Uh-huh.
Q What did it show?
A I think it was --
Q Pardon me?
A I didn't in the house -- actually, Ms. --
MS. HINTON: Judge, I'm going to object to this, based on one of our prior conversations.
MR. DEJONG: I'm sorry.
MS. HINTON: No, that's fine. We need to have a sidebar.
THE COURT: Let's -- do we need to send the jury out?
MS. HINTON: Sure.

THE COURT: Okay. I'm going to send y'all out. Don't discuss the case. And we'll bring you right back out in a few minutes.

(WHEREUPON, the jury was excused from open court at approximately 9:39 a.m.)

THE COURT: All right.

MS. HINTON: Your Honor, I believe that Mr. DeJong was about to elicit testimony regarding urine drug screens that were sent to Quest Diagnostics for analysis. Those drug screens were negative. However, as you've heard in testimony, blood was drawn from Mr. and Mrs. Brewer on the night of the incident. Those were sent to NMS for testing and they were positive, both of them.

So I think it is misleading to the jury -- well, first of all, it's hearsay.

But if you are going to allow him to get into the fact that they had negative urine drug screens, then I think the State is entitled to get into with the pathologist that they had positive blood draws. It's the same confrontation clause argument. It's the same hearsay argument. It's no different.

In fact -- and no disrespect to Mr. Nichols, but he is much less qualified to interpret drug results than Dr. Fulcher is.

THE COURT: So this is a urine test? Is that what he

had?

MS. HINTON: Yes, Your Honor.

MR. DEJONG: Well, Your Honor, I understand her argument on hearsay. But that has a very familiar ring to it. And I don't know that I'm going to go any further with that other than, perhaps, the urine test. But aside from that, what's good for the goose is good for the gander.

If Dr. Fulcher is going to be able to get into these lab reports -- I'm not saying I want to. But if I did, then I think I'm entitled to do it.

MS. HINTON: And that's fine, Your Honor. I just wanted to be clear --

THE COURT: I think you -- basically, what I'm hearing, you know, if you go along those lines, then you open the door for a response from Dr. Fulcher as to his test. So that's fine.

MR. DEJONG: But it's still hearsay, Your Honor.

Okay. I'm not going any further with that. But I don't think any testing he did would open the door to anything. And I don't know that he personally did it or not. I can ask that question, and I'll be bound by his answer. If he did it, then I can move forward. If he didn't do it, then I'm done with it. Let me just ask him in camera, Your Honor, if you don't mind.

CROSS-EXAMINATION

BY MR. DEJONG:

Q Did you personally do the drug test?

A No, sir.

Q It was sent off?

A Yes, sir.

MR. DEJONG: Okay. I'm done with it.

THE COURT: All right. If the jury is ready, bring them back.

(WHEREUPON, the jury came into open court at approximately 9:45 a.m.)

THE COURT: All right. You may proceed.

MR. DEJONG: Thank you, Your Honor.

CONTINUED CROSS-EXAMINATION

BY MR. DEJONG:

Q Your job and DSS's job, if you will, is to protect children; correct?

A Yes, sir.

Q It is not criminal -- you're not involved as such in the criminal investigation, are you?

A No, sir.

Q But you were there and a case was opened; correct?

A That's correct.

Q Was that case later unfounded?

A It was because she was determined to be -- not to be

in loco parentis.

MR. DEJONG: Very good.

Thank you, Mr. Nichols.

THE COURT: Any redirect?

MS. HINTON: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. HINTON:

Q What does "in loco parentis" mean?

A Basically, she was not the caretaker of the children. She was just, essentially, being grandma, babysitting for the day.

Q So does being unfounded have anything to do with the actual factual allegations or merits of the case in this particular case?

A No, it does not.

Q And, in fact, did you return the children to Callen Harrison and Michael Lusk?

A Yes. Once they obtained suitable housing, we returned the kids to Mr. Lusk and Ms. Harrison.

Q And do you recall how long that was?

A Can I check my notes?

Q Sure.

A It was about a month later.

Q Okay. And did you found [phonetic] the case against them either?

A No, we did not.
Q And they are the parents?
A They were in Georgia for the day, so.
MS. HINTON: That's all I have.
Thank you.
THE COURT: All right. Thank you.
You may step down.
MS. HINTON: May he be excused, Your Honor?
MR. DEJONG: No objection, Your Honor.
THE COURT: Yes.
All right. Next witness.
MS. HINTON: Thank you, Your Honor.
The State would call J.T. Albrecht.
THE CLERK: Place your left hand on the Bible and raise your right hand.
WHEREUPON,
J.T. ALBRECHT,
after first having been duly sworn, testified as follows:
THE CLERK: Have a seat.
And state your name for the record, please.
THE WITNESS: Good morning, ladies and gentlemen.
Deputy J.T. Albrecht, Pickens County Sheriff's Office.

DIRECT EXAMINATION

BY MS. HINTON:
Q Deputy Albrecht, how long have you been with the

sheriff's office?
A Since 2001.
Q And prior to that, were you in law enforcement?
A Yes, ma'am.
Q How long have you been -- well, what division are you currently in?
A I'm in the forensics.
Q And how long have you been in forensics?
A Since 2006.
Q Were you working a scene at [redacted] in Pickens County on October the 17th of 2014?
A Yes, ma'am.
Q Did you, actually, go out to that location?
A I did.
Q And do you recall at whose request you went out there?
A I was contacted through our communications system about an infant death and responded.
Q Okay --
MR. DEJONG: I'm sorry to interrupt, Your Honor. Could we get him a little closer to the microphone, please?
THE COURT: Get -- get a little closer to the mic, please.
MS. HINTON: Thank you

BY MS. HINTON:

Q When you responded to the house, other than the fact that a child is deceased, did you know any other specifics regarding the case?

A No, ma'am.

Q Did you take any photographs?

A Yes, ma'am, I did.

Q I'm going to show you State's Exhibit Nos. 2 through 15. Will you just look at those?

A (Witness complied.)

Q Do those look familiar?

A Yes, ma'am. I took them.

Q And did you take them on the night of October the 17th, 2014?

A I did.

Q Other than the photographs that you took, what else did you take into evidence from that residence?

A I took an empty bottle from the kitchen, some formula from the kitchen. I took the bedding from the crib that the child had been in --

Q Speak up just a little bit more for me.

A I'm sorry.

Q That's okay.

A I took the bedding from the crib that the child had been in. I took a can of formula and an empty bottle from

the kitchen.

Q And when you say "bottle," are we talking about --

A Like a baby bottle.

Q Okay.

A I took two drink cups that were located either in the Pack 'n Play that the child had been in or directly beside the Pack 'n Play. That's what I took from the house.

Q Okay --

THE COURT: Any objection to these?

MR. DEJONG: I think they've already been introduced.

MS. HINTON: They're in evidence.

THE COURT: Oh, okay. They are in evidence.

MR. DEJONG: Which I believe one of them was over my objection, Your Honor.

THE COURT: That's correct.

BY MS. HINTON:

Q So just to be clear, State's Exhibit No. 9 -- and let me zoom in. What is that a photograph of?

A That's the kitchen bottle, the empty bottle that I was talking about.

Q Okay. And what's beside it?

A Formula.

Q Are those the two things you're referring to that you took into evidence?

A Yes.

Q And then State's Exhibit No. 12, did you take that into evidence?
A I did. That's the drink cup that was beside the Pack 'n Play that the child had been in.
Q Okay. Did that have a liquid in it?
A It did.
Q I'm sorry?
A It did.
Q Okay. And then State's Exhibit No. 8, did you take that sippy cup?
A I did. That's the cup that was inside the Pack 'n Play with the child.
Q And did that have a liquid in it?
A It did.
Q And what color was the liquid in that container?
A (There was no response.)
Q You can refer to your notes, if you need to.
A Yeah. I think it was --
Q If you have it documented.
A I don't have the colors documented.
Q Okay. Well, let me ask you this. How did you document what liquid was in each cup?
A In my notes on the evidence sheet, I -- is delineated whether it was from the sink or beside -- I'm sorry, the sink, the crib, or beside the bed.

Q Okay. So, I guess, is it fair to say that you did delineate which liquid was what, but just didn't document what color?
A Yes.
Q When you get that liquid from those sippy cups, do you keep it?
A Yes, ma'am. When I was done collecting what I collected from the residence, then I went to the hospital. When I was done at the hospital, I went back to the Sheriff's Office and put everything that I had collected from both the house and the hospital straight into evidence.
Q Okay. And did that include the liquids from the cups?
A Yes, ma'am.
Q In its entirety?
A Yes, ma'am.
Q Tell me, when you go to transfer liquid from a cup to something that you can submit into evidence, where do you do that?
A At the sheriff's office lab.
Q Is that a confined area?
A Yes, ma'am. It's a confined restricted area.
Q Okay. And do y'all handle any Oxycodone in that area?

A No, ma'am.
Q Do y'all handle any methamphetamine in that area?
A No, ma'am.
Q And I'm going to show you what's been marked as State's Exhibit No. 19. What is that?
A It's the cup from beside the crib.
Q Okay. And State's Exhibit No. 22, what is that?
A It's the cup from inside the crib.
Q From inside. And then what does State's Exhibit No. 20 have?
A State's Exhibit No. 20 has the formula and the contents of the two previously mentioned cups.
Q Now, whose packaging is State's Exhibit No. 20 in?
A It's in SLED's.
Q Okay. So have you opened it since it's return from SLED?
A No, ma'am.
Q Is it in the same condition as they sent it back?
A Yes.
Q State's Exhibit Nos. 19 and 22, was that in SLED packaging previously?
A Was this ever in SLED packaging?
Q Well, was it sent down to SLED?
A No, ma'am, it was not.
Q Has that been in your custody and control?

A It has.
Q And did you package it for court today?
A I did.
Q Other than changing the packaging for the ease of court, have you changed the packaging at all?
A No, ma'am.
Q Is it sealed?
A It is.
Q And how can you tell that you've sealed it?
A My initials are on top of the evidence tape on that bag, as well as this bag. And the evidence tape is not broken.

MS. HINTON: Your Honor, at this time, the State would move State's Exhibit Nos. 19 and 22 into evidence.

MR. DEJONG: Without objection, Your Honor.

THE COURT: All right. That was what exhibits?

MS. HINTON: State's Exhibit Nos. 19 and 22.

THE COURT: All right.

(WHEREUPON, State's Exhibit Nos. 19 and 22 were admitted into evidence.)

BY MS. HINTON:
Q Once State's Exhibit 20 is sent down for testing, do you go and pick it up?
A Yes, ma'am.
Q Other than picking it up, have you altered it at all?

A No, ma'am.
Q And, to be clear, have you opened the packaging at all?
A I have not.
Q You said you went to the hospital. What did you go to the hospital for?
A To photograph the infant, and to collect anything of evidentiary value there.
Q And did you gather anything at the hospital -- well, let me ask -- when you got to the house -- and I think you photographed this, but these sippy cups were -- aside from the one on the kitchen counter that was empty, were the ones with liquid in it closed?
A Yes.
Q Did you move them at all before you photographed them?
A No, ma'am.
Q There was what appeared to be vomit on the floor and the couch. Do you recall that?
A Yes, ma'am.
Q Did you take that into evidence?
A No, ma'am. I did photograph it, but I did not collect it.
Q Okay. And why is that?
A It didn't appear to be pertinent. I was not aware of

the exact nature of the infant death. I did not collect it.

Q Were you even aware, at that time, of the source of the vomit?

A I was not.

MS. HINTON: Deputy Albrecht, that's all I have. Please answer any questions Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q I guess the term is still Deputy Albrecht; is that correct?

A Yes, sir.

Q And you work now in where?

A Forensics.

Q Forensics. Okay. And, basically -- well, I don't want to say that right now. But you did go to Swiss Entrance on October the 17th of 2014?

A Yes, sir.

Q Do you recall what time of the day you got there?

A Immediately, no, I don't.

Q Well, when you got there, was anybody else there?

A No. When I first arrived, no, there was nobody else

there.
Q Did you go in the house at that point in time?
A I did not.
Q Okay. Well, who, ultimately, showed up?
A Detective Hendricks and, I believe, Detective McKenzie.
Q Once Detective Hendricks went in, did you go in with him?
A I did.
Q Now, from what you could tell, had anything been disturbed in that house -- that's not a good question.
Had any -- other than, perhaps, the vomit on the floor, did you see or find anything out of the ordinary?
A No, sir.
Q Okay. Now, were you, actually, involved in the search?
A The search?
Q Yes. They searched the house, according to, I think, Mr. Hendricks.
A No. I don't believe so, no.
Q Okay. So you were, basically, there to take photographs and you, also, participated in the collection of evidence, as I understand it; correct?
A That's correct.
Q And did you notice, Deputy Albrecht, a QT cup with a

straw in it that was -- I don't know if we call it a sofa, but it was like a sofa, a chair and a sofa? Do you recall?

A Sectional.

Q Pardon me?

A A sectional sofa.

Q All right. Did you notice a sectional?

A Yes. I believe it's in the photographs.

Q Okay. Well, did you notice that QT cup?

A I believe it's in the photographs as well.

Q Did you take it into evidence?

A No, I did not.

Q You never tested it?

A No, I did not.

Q Okay. So you take into evidence -- well, I gather, you take it into evidence. I don't know if I'm right on that or not. You took the Pack 'n Play bedding?

A That's correct.

Q Did you see -- or were you aware that there was more than one Pack 'n Play in that residence?

A I took the one that I believed the child had been in.

Q Okay. But were you aware that there was another Pack 'n Play?

A No.

Q Pardon me?

A No.
Q All right. Now, the -- State's Exhibit No. 29 and State's Exhibit No. 19 -- State's Exhibit Nos. 22 and 19, now, these are the two sippy cups. One was in the Pack 'n Play, and one was beside the Pack 'n Play?
A That's correct.
Q Do you recall which was which?
A It's marked on the bags.
This one was inside the crib, and this one was beside the crib.
Q So State's Exhibit No. 22, the yellow-looking cup --
A Was in the Pack 'n Play.
Q What?
A I wrote "crib," but it's Pack 'n Play.
Q Okay. And this one was beside it?
A Yes.
Q Now, as far as how the contents got in there, you don't know, do you?
A No, sir.
Q And you don't know how long they had been there, do you?
A No, sir.
Q So you take these two sippy cups. I don't see -- maybe I'm missing something here. You took another cup off of the kitchen counter -- or did you?

A I did.
Q You, actually, took that into evidence; correct?
A I did.
Q And was there any liquid in that?
A None.
Q And you took the formula, I guess, for want of a better term?
A Yes.
Q Now, when you take this into evidence, does it stay with you at that point in time?
A I physically have custody of it either on my person, or it's locked in my secured vehicle until I deliver it to the sheriff's office and place it into the secured evidence room, yes.
Q Well, here's where I'm not quite clear. State's Exhibit Nos. 22 and 19, the two sippy cups, one outside the Pack 'n Play, one inside the Pack 'n Play. Were they ever sent for testing?
A The cups were not.
Q Okay. So when you get back to the law enforcement center after you take this into evidence, you, actually, poured liquid into, for want of a better term, two vials; is that correct?
A Yes, sir.
Q And they've been marked -- they're in a bag, which

has been marked as State's Exhibit No. 20. So how did you get the liquid from what you say was in the sippy cup into those vials?

A I opened up the sippy cups and poured it in the vial.

Q Did you use a funnel, or do you just have a steady hand?

A No, sir. I did not use a funnel.

Q So you have a steady hand; right?

A Steady enough.

Q Did you happen to spill any?

A Not that I recall.

Q Okay. Now, after you did that, did you wash these cups?

A No, sir.

Q Did you do anything else to them?

A No, sir.

Q Now, it's kind of hard to see through the plastic, but I'm going to ask you to look at State's Exhibit No. 22. I believe that was the one that was found in the Pack 'n Play; right?

A It is.

Q Would you agree with me there's no residue in that cup?

A There's none that I can see.

Q No particles, no particulates, nothing. Would you

agree?
A None that I can see. I would.
Q All right. And then let me show you what's been marked as State's Exhibit No. 19. And, again, you did not wash these cups; right?
A I didn't.
Q Do you see any residue of any kind in that cup?
A In the lid.
Q Pardon me?
A In the lid. Not in the cup, in the lid.
Q Right. Now, this one was beside the Pack 'n Play?
A That's right.
Q Well, let's go back to this one since you say there was some in the lid. Do you see any residue in the lid on that one? And I know it's difficult to see. We'll do the best we can.
A No, sir.
Q And I believe Madam Solicitor asked you about -- my train derailed there. Well, let's go -- let me ask you this. You took several things into evidence?
A Yes, sir.
Q And, at one point in time, you did an updated property report. Did you do that updated property report?
A Yes, sir. This is all my handwriting.
Q And you have a copy of it?

A Yes, sir.
Q Okay. Good. So, now, when it comes time for stuff to go to SLED -- and let's just talk about when it comes time for stuff to go to SLED. Who makes a determination of what goes to SLED and what doesn't go to SLED?
A I believe that pretty much what was sent to SLED was sent at the request of the detectives and/or --
Q I'm sorry. I'm having a hard time hearing you.
A I said what was sent to SLED was sent at the request of the detectives working the case, or it's protocol just because we have an infant death.
Q So you're not involved in that determination?
A No, sir.
Q Did you, actually, take the items to SLED?
A I did in November of 2014.
Q And does that indicate what you took to SLED?
A It does. I took the formula, the sink cup -- empty sink cup, the contents from the bottle from the crib, and the contents from the bottle beside the crib.
Q Let me ask you this. Let's go back to State's Exhibit No. 20. And, again, it's hard to see. I'm not going to ask you to open the packages. And the vial that has a yellowish-brownish liquid in there, do you see any kind of particulates in there the best you can see through that plastic bag?

A Not that I can see.
Q All right. Well, how about in the vial that has the reddish fluid in it? Do you see any particulates in there?
A Not that I can see.
Q All right. Very well. So what you took to SLED was State's Exhibit No. 19, that sippy cup?
A No, sir. That didn't go to SLED. The contents of that cup went to SLED.
Q Okay. So the sippy cup did not go. We're in agreement on that.
State's Exhibit No. 22?
A Did not go to SLED.
Q Did not go to SLED for testing. Just the vial that you -- the liquid you poured into the vial?
A Correct.
Q And then -- well, these are the two vials?
A That's correct.
Q And this Gerber formula can?
A That's correct.
Q And all that went to SLED, to your knowledge?
A Correct.
Q That's what you delivered?
A Correct.
Q Did you pick it back up?

A No, sir. It was picked back up September of 2015 by Lieutenant Robinson.
Q When?
A September 22nd, 2015.
Q Okay. Almost a year later?
A Yes, sir.
Q Okay. But, to your knowledge, the -- the bedding that you collected from the Pack 'n Play, that never went to SLED?
A No, sir, it didn't.
Q And the soiled diapers never went to SLED?
A No, sir.
Q When you say "soiled" -- well, I guess it was one soiled diaper; right?
A Excuse me. Yes, sir.
Q The infant's clothes didn't go to SLED?
A No, sir.
Q And those were gathered, I gather -- were they gathered at the home or the hospital?
A No, sir. The diaper and clothes came from the hospital.
Q Okay. The sample from number three -- are you with me? I'll give you a moment to take a look at it. I believe that's item number seven on your property and evidence report.

A Yeah. Those are the -- 7A and 7B are the contents of the bottles.
Q I'm sorry?
A On the property and evidence sheet, 7A and 7B at the very bottom.
Do you have this?
Q Nope. You're going to have to point that out for me.
A Here you go. 7A and 7B on the evidence sheet.
Q Okay.
A That's the contents of the two drink bottles.
Q Okay. So on item number seven, we then have to go to 7A and 7B; correct?
A No, sir. You asked about item number three.
Q No, no --
A Three relates to 7A and 7B.
Q Okay. That's what I'm trying to clarify in my mind.
A Yes, sir.
Q You can't just say item three, then you have to go down and look at 7A and 7B; correct?
A Correct.
Q That was sent. Okay. I think we've got that. You did observe the vomitus on the sofa and on the carpet, I gather; right?
A Yes, sir.
Q So you took a soiled diaper into evidence, but you

did not attempt to collect any of the vomitus?
A That's correct.
MR. DEJONG: One moment, please, Your Honor.
(Pause.)
BY MR. DEJONG:
Q Aside from the liquid that was in either State's Exhibit Nos. 19s or 22, one in the Pack 'n Play and one outside the Pack 'n Play, when you took the lids off of those, did you find anything else other than liquid?
A No, sir.
Q Did you find any lemon rinds, or anything like that?
A No, sir.
Q Did you check the cups for their functionality at all?
A I did not.
Q So I realize they're sippy cups. I don't know -- do you know how they work? Because if you don't, I'm not going any further.
A No.
MR. DEJONG: Okay. I don't either.
Thank you, Deputy Albrecht.
THE COURT: Any redirect?
MS. HINTON: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. HINTON:
Q Deputy Albrecht, the photographs that you took of the

Pack 'n Play, where was that Pack 'n Play located?
A It was in the residence at Swiss Entrance.
Q Do you know what room?
A That's the living room.
Q Okay. And you collected the bedding. If there had been any pills or narcotics in that bedding, would you have noticed that when you collected it?
A Yes, ma'am.
Q And would you have noted that and taken that?
A That's correct, yes.
Q You said that these items were sent to SLED in November. When were they sent? What exact date in November?
A I delivered them to SLED on November 12th, 2014.
Q And where is SLED located?
A In Columbia.
Q And then the vomit that we discussed, did you clean that up at all?
A I did not.
Q And then Mr. DeJong asked you about residue left in State's Exhibit Nos. 22 and 19. And I think you said there was residue in the lid of State's Exhibit No. 19. Is that what you said?
A Yes.
Q Okay. And then you said you couldn't tell whether

there was residue or -- I'm not sure, actually, what your answer was. But the residue wasn't easy to see, if at all, in State's Exhibit No. 22; is that fair?

A That's fair.

Q Okay. What color are these two liquids?

A Orange and red.

Q Okay. The red liquid, did you note on your report where the red liquid came from?

A Yeah. I, also, marked it on the bottles so that it would state that -- remain consistent. This, the red liquid came from inside the bottle inside the Pack 'n Play.

Q Okay. So is that State's Exhibit No. 22?

A Yes.

Q What color is this lid?

A It's red.

Q And so is that the same color as the liquid?

A It is.

Q And then the other -- I think you described it as brown?

A Brownish-orange.

Q Orange. Okay. Where was that liquid from?

A That is from the cup that was beside the Pack 'n Play.

MS. HINTON: That's all I have, Deputy.

Thank you.

THE COURT: All right. Thank you.

You may step down.

MS. HINTON: May he be excused?

MR. DEJONG: No objection to him being excused, Your Honor.

THE COURT: Okay. Next witness.

MS. HINTON: The State would call Agent Tim Grambow.

THE CLERK: Place your left hand on the Bible and raise your right hand, please.

WHEREUPON,

TIMOTHY GRAMBOW,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: My name is Timothy Grambow, G-R-A-M-B-O-W.

DIRECT EXAMINATION

BY MS. HINTON:

Q Agent Grambow, where are you employed?

A I work in the toxicology department at the State Law Enforcement Division.

Q Is that, also, known as SLED?

A Yes, ma'am.

Q Are you a separate unit from the agents who go out

and investigate cases?

A The forensics departments are located separately than, say, the -- excuse me, the investigation field offices. And, of course, we're located at our headquarters building in Columbia. But forensics does operate separately than some of the other investigations.

I mean, but, you know, the State police we, also, have swat teams, and tracking teams, and so on. There's just different groups of people doing different types of police work.

Q And what's your educational background?

A I have a Bachelor of Science Degree in Chemistry from Wake Forest University in North Carolina. And from there, I began pretty much working at SLED and underwent their intensive toxicology training, and DNA analysis, and interpretation of drugs and poisons.

After being certified by them, I've, also, undergone numerous courses and classes through different groups, such as [inaudible], Indiana University, and, you know, other professional organizations, such as the Society of Forensic Toxicologists. I'm a full member of the Society of Forensic Toxicologists, which is the premier forensic toxicology organization in the U.S.

I'm, also, a member of the Palmetto Association of Toxicologists, which is a more regional-based

organization. In fact, I'm the secretary of that organization. I am nationally board certified as a forensic toxicologist in the analysis and interpretation of drugs and poisons.

Q Are you published?

A I have presented at different professional meetings and published some smaller publications through the Society of Forensic Toxicologists.

Q And you may have said this and I missed it. But how long have you been a board certified toxicologist?

A I've worked in the field for almost 17 years. It will be 17 years in February. And I have been board certified -- I want to say -- many years. I'm not exactly sure. I was, originally, certified through the Forensic Toxicology Certification Board, and then that was merged with the American Board of Forensic Toxicologists. So I am a fellow, which is the highest certification through the American Board of Forensic Toxicologist.

MS. HINTON: Okay. Your Honor, at this time, we would move Agent Grambow as an expert in forensic toxicology.

THE COURT: Any objection?

MR. DEJONG: No voir dire, Your Honor.

THE COURT: Any objection?

MR. DEJONG: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, as I previously told you, when someone is qualified as an expert, then they can testify to more than just what a layperson can. They can testify about opinions and conclusions based on their field of expertise. And in this field -- this -- Agent Grambow had been qualified in the field of forensic toxicology.

Now, you are to give that testimony and his opinion the weight which you deem is appropriate.

Thank you.

All right. You may proceed.

MS. HINTON: Thank you, Your Honor.

BY MS. HINTON:

Q Agent Grambow, have we paid you to be here today?

A No, ma'am.

Q Are you here subject to my subpoena?

A Yes.

Q What is forensic toxicology?

A Forensic toxicology is the analysis of drugs and poisons that you find in biological samples and the interpretation of such. So we analyze biological samples, whether they may be blood, urine, ocular fluid, tissue samples, and anything related to such. And we analyze them for the presence or absence of drugs or poisons. And we do these for law enforcement cases, whether they be DUI

cases, criminal sexual conduct cases, death investigation cases.

And we, typically, are doing analysis for different law enforcement agencies, and the coroners, and pathologists in the state. We analyze these samples and then we provide the interpretation of our findings for the different agencies who submitted the samples and then for courts of law.

Q And, just to be clear, you don't just test for SLED; correct?

A (There was no response.)

Q I mean, it doesn't just have to be a SLED case where you're allowed to test it?

A Correct. Well, because SLED is an assisting agency by definition, we are there to assist other smaller agencies that don't have the resources to do the types of analysis and investigations.

So we are the sole forensic toxicology, full service forensic toxicology lab in the State of South Carolina. So we service every county. And by statute, we are a free service. So almost every county sends some sort of samples to us for analysis. Because, quite frankly, the analysis is quite time consuming and expensive. And it's just not feasible for every law enforcement agency or county to have their own facility to do such analysis.

Q And, to be clear, to run your lab isn't free, but you don't charge law enforcement for the testing. Is that a fair statement?
A Correct.
Q Did you receive items for testing in the case that you've been subpoenaed for?
A Yes.
Q And do you recall how many items you received?
A I believe it was three.
Q Okay. And do you recall what those items were?
A It was a small can of baby formula -- or residue of baby formula, and two small vials of liquid.
Q And I'm going to show you what's been previously marked as State's Exhibit No. 20. Is that what you received in this case?
A Yes, ma'am.
Q Is it still in the SLED packaging?
A Yes. This is the tamper-evidence packaging that we provide for the evidence to be put in so we can help trace who has access to the actual evidence.
Q So can you tell whether or not that package has been tampered with at all?
A Everything seems to be in the exact condition that was -- as it was processed through our lab. And I can see where I, in fact, cut into the plastic bag in order to do

my analysis, and then resealed the bag, and initialed and dated at those times. So that's part of the process, you can help see if anything was tampered with.

Q So does it appear that it has been tampered with since it left your lab?

A It looks to be in good condition to me.

MS. HINTON: Your Honor, at this time, the State would move State's Exhibit No. 20 into evidence.

THE COURT: Any objection?

MR. DEJONG: Without objection, Your Honor.

THE COURT: All right.

(WHEREUPON, State's Exhibit No. 20 was admitted into evidence.)

BY MS. HINTON:

Q Did you test the formula can in this case?

A I did not do any physical analysis on it. I did a visual inspection to see if -- what could be analyzed, and if it was in our prerogative worth doing the analysis on. And there was nothing that showed any sort of -- in our opinion, any sort of indication of tampering or non-formula-related materials in there that would require a chemical analysis.

Q Okay. So is it safe to say that it looked like formula residue?

A In my opinion, yes.

Q Did you test two liquids in this case?
A I did do a chemical analysis on two different liquids.
Q And are these the two liquids that are located in this packing?
A Yes.
Q And what was the -- let's just -- the first item, item 7A, that you tested, what color was that liquid?
A Well, I mean, I can --
Q And do you need a copy of your report?
A Yes, please.
Thank you.
Q Sure. So, again, my question, just in case you didn't hear me. 7A, what color was that liquid?
A We have it labeled as red liquid.
Q Okay. And item 7B, what color is that liquid?
A We described it as a yellow-brown liquid.
Q Now, let's talk about the testing that you do on these liquids. Is that a nationally recognized test?
A Yes. In this case, we did a very standard type of analysis on these samples. We first have to -- we don't really know what's in any sample that we get, whether it be blood, urine, juice, what have you, other than the description we were given when it comes into the lab. So we really don't know what we're looking for.

In this case, I performed a solid phase extraction, which is, basically, a chemical process that we use to get any drugs or poisons out of the actual liquid material. Because there's other background stuff that can interfere with the analysis. So we have to try and extract the drugs and poisons out.

Once that was performed, I ran the samples on something called a GC Mass Spec, which is the Gas Chromatography Mass Spectometry, which is the industry standard for analysis of this type.

Q Okay. So is this a reliable testing method?

A Absolutely.

Q Okay. What is the chance of contamination in your lab in testing these samples?

A Very, very minimal. We have many, many countless steps in our policies and procedures to prevent any sort of contamination or swabbing of evidence. Because we realize the potential consequences of the results that we publish. So we go -- bend over backwards to limit the possibility of these occurrences.

So typical things, when we get a bag of evidence -- you know, we get thousands of cases a year. But when we open a bag of evidence in one of these tamper evidence packages, we only open one bag at a time, sample what we need out into the appropriate labeled test tube, reseal it

before we open the next one. So that way, you know, containers and things don't get swapped between bags. Everything we do is labeled with a case number.

So every case that gets submitted to SLED is given a unique SLED lab identification number. And every piece of evidence gets labeled that as soon as it comes into the lab and is inventoried. The bulk containers are labeled with that lab number, and then each sample taken out is put into a container with those lab numbers. So we can follow that throughout the process whether, you know -- just things like that that we do. And we check and double-check positions on the instruments and such just to make sure that there's no possibility of things getting swapped.

Also, each report is reviewed in administrative and technical review as well. So there are multiple sets of eyes looking over all the data before a report gets published. So when I look at all my data and everything looks good to me and I publish my results, then somebody -- another senior analyst goes and looks at it and says, yes, everything seems to be in order, everything makes sense from a technical standpoint and administrative standpoint.

And then once it's approved, then the report is issued as the final document.

Q So when you run these tests through your machine, is it run once or more than once? How is that done?

A Well, the way this particular instrument works, there's actually -- it's, essentially, two different types of testing that are coupled together. So in this case, gas chromatography mass spectrometry, the way it works -- if you will indulge me here --

Q Sure.

A This might take a minute. But just so you guys can get an understanding of what I'm talking about -- then I saw all this testing was done and this is what we found.

So this testing, what we're going to do -- so when we get the drugs and poisons out of a sample, we concentrate them down and they're put in a very small amount of liquid. Well, the instrument shakes up the vial that has a little bit of liquid and samples of the syringe, a very small amount of liquid. That liquid gets injected into the instrument and is vaporized into a gas. And that is why we call it gas chromatography.

Now, once that is in a gas form, it is sucked into a very long glass tube. When I say long, we're talking about a 30-meter column, so, roughly, a hundred feet long. And that glass column has a coating on the inside. And what happens is as that -- everything enters in at the same time. And as it passes along that column, the

chemical properties of the different compounds will interact with that coating. And as it passes, things will start to separate out into different times.

So the analogy I like to use is if you think about a race car track and different cars, you know. Each race car has slightly different properties, you know, what type of tires they use, whether they're fresh tires, old tires, so on and so forth. And they're going to interact with the actual racetrack.

So even though everything starts at the same time as it -- the tires and -- you know, the vehicles go along that racetrack, over the many times it goes around, everything starts to separate out. And so they don't necessarily finish at the same time. So they all finish at a different time. So you can associate, oh, this car finished third at this time. That's how we know what car it is.

Same thing with these different compounds and chemicals. As they enter in, as they go along that long pathway, they're going to separate out based on their physical properties. And they're going to exit that column at different times. So we can identify which compound comes out at a specific time.

And we run -- we have access -- we have our DEA license. And we have access to hundreds and hundreds of

different drugs. We run samples that we know what they are. We run them. So we know exactly what time they come out. So then when we get the different compounds, the unknowns that come out, we can then compare what time they come out, make a comparison, and be able to partially identify what they are based on when they come out.

Now, we're not done just on that.

So the second half of this test is called mass spectrometry. And this is really kind of neat. Because what it does is as each different compound comes off, it gets a -- what we call a chemical fingerprint of that compound.

So it will, actually, as it enters this part of the instrument, it uses high energy and breaks the actual molecules apart. And they break apart based on their chemical properties into the same way every single time.

So if we want to continue this car analogy -- so if the cars -- if you can imagine going -- exit the racetrack and they go to the garage. And then if you broke apart the car into tires, fenders, doors, spoilers, what have you, you can look. And if you broke apart that car every time, you would see that, oh, this spoiler goes with the Ferrari, it doesn't go with the Toyota. Or these wheels go with one particular car and not another car, you know. An 18-wheeler has 18 wheels, not four wheels. So if you

find all these 18 wheels together, you know they are probably not going to a bicycle; right? You see how that works?

So it, basically, does the same thing with these chemicals. As they break apart, they break apart the same every time. And we can look at the different fragments and say, oh, we see this fragment and this fragment in relation to this other fragment. We can tell what compound it is. And, again, we run standards of the known drugs and poisons. And so we know they break apart certain ways. And there are, basically, libraries of these different compounds that you can look and see how they break apart and identify that compound.

So now we, actually, have that fingerprint, if you will, to identify it. And then we know, also, that it comes out at the time we expect it to come out. So that's how we can now have a two-part test to identify that compound.

Q And is that the testing that you did on both the red liquid and the yellow-brown liquid you received from --

A Yes, ma'am.

Q And to be clear you had to extract some liquid from that vial in order to test it; right?

A Yes.

Q But are those vials what you received it in?

A Yes.
Q So you did not receive any extra liquid. You had to extract from the vial that was already sent to you; correct?
A Correct. I opened up these vials, allocated out a sample, recapped the vials, put them back in the evidence bag, resealed the evidence bag, and then tested that small allocated sample.
Q And how much do you have to extract to be able to do this testing?
A We, typically, do one milliliter a sample.
Q Okay. Is that a large amount? Small amount?
A It's a relatively small amount. If you think, on a typical person, maybe the bottom joint of your pinkie finger, just that little bit right there. That's roughly one milliliter size.
Q Now, I, actually, want to start with the yellow-brown liquid that you tested. What were the results from the testing of that liquid?
A So that was SLED item three, the yellow-brown liquid from the juice cup labeled number 7B. We, actually, found -- I found two compounds. One was caffeine and the other was methamphetamine.
Q Now, you said you, also, test blood at this lab?
A Yes, ma'am.

Q Okay. Are you familiar with how a liquid would test positive for methamphetamine, but that methamphetamine would not later be found in blood? Is that within your expertise?

A It is. That question -- it's kind of a confusing question.

Q Okay.

A So, yes, I feel completely comfortable talking about methamphetamine in drugs and blood, and in the liquid, and the urine, and how it goes through your body and all that --

Q Well, let me ask you this.

A -- associated stuff.

Q Let me narrow the question a little bit, because I know I asked you a pretty broad question. Just because methamphetamine -- how is methamphetamine used?

A Okay. Methamphetamine is a drug that is abused. Typically -- there's, actually, two forms of methamphetamine. And one can be used -- although it's rarely used, but it can be used as -- it helps as an inhaler. It helps open up your breathing ways, like a Vicks inhaler, which is, typically, not very commonly used.

The predominant use of methamphetamine is as an illicit drug. And it is, typically, snorted or more

commonly smoked, or can be injected. And it is a stimulant. And it will give you a high and a euphoria. But the vast majority of cases that come through our lab that involve methamphetamine is from illicit use.

Q Okay. Now, the methamphetamine that y'all found in this yellow-brown liquid -- let me see if I can narrow the question enough to make sense. Does that have to be from methamphetamine being dropped in that liquid? I mean, how else could you explain that methamphetamine could be present in that liquid?

A Well, there's a couple different ways methamphetamine could end up in a liquid in this case. There -- one, it could be directly put into the liquid. It, also, being -- methamphetamine, when smoked or even if it's being made illicitly in a clandestine laboratory, as you smoke it, it can be in the vapors in an area.

So if the vapors were collected and got residual on the inside of the container, once you put the liquid in there, it could be transferred from the residual on the container into -- dissolved into the liquid itself.

Q Okay. So --

A But there's no way from my testing to know --

Q Sure.

A -- exactly how that got there, other than it was there.

Q So it could either be put in the liquid, or if it's smoked in that general area, the vapors could infiltrate that cup. Is that fair to say?

A Sure. At -- you know, just -- because, again, they're clear vapors that are going around it and they can stick to things. And if it -- if they're in close proximity to the cup, then the cup can become contaminated with it. And then the liquid can then pick it up from the cup itself.

Q Okay. Now, you, also, tested the red liquid from the child's juice cup labeled 4A; is that correct?

A Yes.

Q Did you find any indication of methamphetamine in that cup?

A Upon analysis, there was an indication of methamphetamine. But it was not reported on the official report because it did not meet the criteria in order to report it. We're very conservative in our laboratory. And we only report stuff that we are a hundred percent sure of reporting.

Because, again, the consequences can be very dire upon our reports. And I am not willing to risk my personal reputation or that of my agency on results that may or may not be accurate. So it has to be very strong criteria met in order for me to report something on an

actual report.
Q Okay. Well, regarding the yellow juice cup -- I'm sorry, the red liquid from 7A, what did you find suitable for reporting?
A Oxycodone.
Q What are the synonyms for Oxycodone?
A Oxycodone is the actual name of the drug. But it is sold under the trade names of OxyContin and Percodan.
Q All right. So the yellow-brown liquid from 7B tested positive for what that you reported?
A The yellow-brown, did you say?
Q Yes.
A Methamphetamine and caffeine.
Q And then the red liquid, what did you report that it tested positive for?
A Oxycodone.
Q And when did you submit -- I guess, when was this report submitted to the agencies? Do you have a date?
A When we published the report?
Q Yes.
A December 12th, 2014.
MS. HINTON: Agent Grambow, that's all I have. Please answer any questions Mr. DeJong may have.
THE COURT: Cross-examination.
MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q Well, you're talking about that methamphetamine, and you went through the various ways that it could have gotten in the liquid; right?

A Yes.

Q Okay. And, of course, it could have gotten there by contamination, couldn't it?

A At what point of contamination?

Q Sheriff's office, laboratory.

A I -- I really have no idea how it got there. I just know that it was there.

Q Right. And, initially, you did not report the methamphetamine in the red liquid; right?

A Yes. It is not on the official report, correct.

Q By the way, talking about that red liquid, at one point in time during all this, didn't you opine that red liquid did not appear to be pink lemonade to you?

A I do not know -- it very well could be pink lemonade. We don't test for the actual flavorings of different liquids. I don't know. It very well could be. I'm not an expert in all the different brands of pink lemonade.

Q That doesn't exactly answer my question. At one point in time, you stated in your opinion it did not

appear to be pink lemonade. Yes or no?
A I don't recall. But if -- it could be that I said that. I don't know. But, again, that is not my expert opinion. I'm not an expert in the various types of drinks. So that could have been an off-the-cuff statement that I made. It very well could be. But, again, I don't know. I didn't test it. So I don't know.
Q Okay. Well, getting back to the -- what you have, I gather, in the lab you called the red liquid and, initially, you don't report the methamphetamine, then you come back later -- well, did you ever amend your report?
A No. This is the official report.
Q Okay.
A And it is not -- again, it is not identified as was stated, it was indicated. But I don't feel confident in reporting it. So, therefore, it's not reported.
Q Okay. But you testified to it today, didn't you?
A I was asked if it was -- if there was an indication. And I responded that, yes, there was. But, again, it did not meet the criteria for me personally to report it. So, therefore, it was not reported.
Q So, basically, you have this marvelous machine that does all this stuff, but when it comes to reporting, it becomes subjective, doesn't it?
A Well, you have to have certain criteria, yes, sir.

There does need to be an analysis that needs to make a final decision on what's reported and what's not reported.

Q And that's a human factor, isn't it?

A Yes, sir.

Q All right. That has nothing to do with the computer. So all of these lab controls, and this machine that you have, and all of that, bottom line, there's still a human factor?

A A well-trained, certified human factor, yes, sir.

Q Well, you say when these samples come to you, you don't know what you're looking for; right?

A I -- I do not know what will be contained in a particular sample, correct.

Q But you know why you're looking, don't you?

A I have an indication, yes.

Q Right. Because on your report -- and if you need to see it, I will show it to you. On your report, you have toxicology department, December 12th, 2014, SLED number, your case number, which I presume is the sheriff's office incident date. And then it says, victim deceased, Minor Lane Lusk.

A Was that a question?

Q Yes, sir. That's what it says, doesn't it?

A Yes, sir.

Q And that would, certainly, give you an indication why

you were looking, wouldn't it?
A That this was a case associated with a death, yes, sir.
Q Right.
A Because there's different testing parameters that are set up for different types of cases. We handle a criminal sexual conduct case different than we handle a DUI case versus a death investigation case. There's certain statutory limits on the testing that we can perform on a DUI case.

So we, actually, have to have separate things in place. So we have to have an idea of what type of case we're performing within the laboratory so we can adhere to the correct policies.
Q Let me ask you to, the best you can, look at the vials in a plastic bag that has been marked State's Exhibit No. 20. Now, obviously, you had to extract some of that liquid. But is that -- looking at that liquid and those vials, is that the way it came to SLED?
A As far as I can tell, yes.
Q And it's not a clear liquid, as such, because they both have coloring; correct?
A Yes, sir.
Q But did you find any particulates in that liquid at all?

A Not that I noticed, no, sir.
Q Okay. Well, how much -- let's go to -- well, let me get on the same sheet. Item 7B, which I believe you or your lab designated as yellow-brown liquid from child's juice cup?
A Yes, sir.
Q How much methamphetamine was in there?
A I have no way of knowing. We did not perform a quantitation on there. That analysis was qualitative only.
Q Right. And that would be the same thing on item 7A, the red liquid. All you can say is there is a presence of it; right?
A Yes, sir.
Q You can't tell us how much?
A Again, we did not perform a quantitative analysis on there. We did an qualitative analysis only. So we only reported the presence of it.
Q And by the same token, how or when it got there, you, certainly, can't say, can you?
A No, sir.
Q You can't say -- or even how it got into the cup, can you --
A No, sir.
Q -- on either 7A or 7B; correct?

A Correct.
Q When you took the samples, when you opened the packet, did you take liquid from both vials at the same time?
A Well, I opened one vial, allocated out a sample into a test tube, closed that vial, put it back into the bag, got the other vial, opened it up, allocated a sample into the additional test tube that was labeled, resealed the small vial and put it back into the evidence bag, resealed the evidence bag, initialed and dated it.
Q Did you test them both at the same time?
A Yes, sir.
MR. DEJONG: One moment, please, Your Honor.
(Pause.)
MR. DEJONG: Thank you, Mr. -- Grambow?
THE WITNESS: Grambow, yes, sir.
MR. DEJONG: Sorry. I stumbled on that one. Thank you so much.
THE COURT: Any redirect?
MS. HINTON: One follow-up, Your Honor.

REDIRECT EXAMINATION

BY MS. HINTON:
Q You said you tested them at the same time. You don't shoot them into the same vial and run them at the same time, do you?

A No. Our laboratory -- like I said before, we receive thousands of samples a year. And we run analysis of many samples simultaneously. That does not mean we put them in one large vat and then put them together and try and make heads or tails of what is -- everything is done -- allocated separately and run at separate times. But they can be put on one instrument at the same time.

So we actually -- that extraction that I did was, actually, put on a robot that everything is put in its own individual spot and it analyzes. It extracts each sample one at a time. And then those samples when they're injected on the instrument, the small vials, they're all put on what we call an auto sampler.

So they all have certain positions on there. And they're run -- the instrument has a little gripper. It picks up one sample, injects that sample, puts it back. That sample runs approximately 23 minutes. Then the instrument resets and then runs the next sample.

But the nice advantage of being able to do that is that I can put it on during the day. It can run overnight. And I can come back in the morning and then start the actual analysis. Otherwise, you know, with as many cases as we work, I may, actually, still, potentially, be working on this case at this time. There's certain processes you have to do in order to be

efficient in order to get your work done.

MS. HINTON: I don't have anything further, Your Honor.

THE COURT: Thank you.

You may step down.

MR. DEJONG: No objection to him being excused, Your Honor.

THE COURT: All right. Are y'all ready for a short break?

(WHEREUPON, the jurors indicated in the affirmative.)

THE COURT: All right. Ladies and gentlemen, if you will, please, step back in your jury room. Do not discuss the case. And we'll bring you right back out in a few minutes.

(WHEREUPON, the jury was excused from open court at approximately 10:55 a.m.)

THE COURT: You've got --

MS. HINTON: I just have one more witness, Dr. Fulcher.

THE COURT: And how long do you think he'll last?

I'm going to go ahead and do this. And then we'll break for lunch with them and we'll do the other.

MS. HINTON: I can, certainly -- I think he will be done in probably 45 minutes or so.

MR. DEJONG: I don't know.

THE COURT: We're going to break for 10 minutes.

(WHEREUPON, a break was taken.)

THE COURT: Are we ready?

MS. HINTON: Yes, Your Honor.

MR. DEJONG: Your Honor, before you bring the jury out, it's my understanding that Dr. Fulcher is our next witness. I have previously made my motion, which you overruled.

But, for the record, since he didn't testify right after that motion, I am renewing that motion as to any discussion or reliance in his report or his testimony on the lab results. And I am objecting to the use of the word "homicide" as a cause of death.

THE COURT: Okay.

MR. DEJONG: And I think that should cover me.

THE COURT: Right. And same objection [sic].

And I have -- in working on my charge, I've tried to come up with some language. Because it's, actually, discussed in one of those cases. I think it's discussed in the Commodore case --

MR. DEJONG: I'm sorry, Your Honor.

THE COURT: I'll go over some language that I'm going to charge the jury on that. I think it's discussed in the Commodore case, one of those cases that I've been looking at.

So -- but your objection is noted. And we'll go over the charge when we get to that point.

All right. Are you ready for the jury?

MS. HINTON: Yes, Your Honor.

MR. DEJONG: We are ready for the jury, Your Honor.

THE COURT: Bring them in.

(WHEREUPON, the jury came into open court at approximately 11:11 a.m.)

THE COURT: All right. Ladies and gentlemen, we will now continue with the State's case.

Call your next witness.

MS. HINTON: Thank you, Your Honor.

The State would call Dr. James Fulcher.

THE CLERK: Place your left hand on the Bible and raise your right hand, please.

WHEREUPON,

JAMES WILLIAM FULCHER, M.D.,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: Dr. James William Fulcher.

DIRECT EXAMINATION

BY MS. HINTON:

Q Dr. Fulcher, where are you employed?

A I'm a pathologist with Pathology Associates of

Greenville, South Carolina.

Q Do y'all, also, work with Pickens County?

A We do. By contract, we do autopsies for the Pickens County Coroner.

Q Can you tell me about your educational background?

A Sure. I'm from Virginia. I went to the University of Virginia for my undergraduate education. And I went to medical school at the Medical College of Virginia.

And I then went to residency in anatomic and clinical pathology at the Commonwealth of Virginia. And then I did a one-year fellowship in forensic pathology at the chief medical examiner's office in Richmond, Virginia, which is affiliated with that same school.

Q Are you board certified?

A Yes. I'm board certified in anatomic pathology, clinical pathology, and, most importantly in this case, forensic pathology.

Q Okay. And how long have you been with Pathology Associates of Greenville?

A Approximately nine years.

Q Okay. And do you hold any other employment currently?

A Yes. I'm an assistant professor of pathology at the medical school. I teach approximately 70 hours of content to second-year med students.

Q Are you appointed as -- on any boards, or anything like that?

A My official appointment with Greenville County, which is the only county that has an official medical examiner system, is the deputy medical examiner. There's two of us. My partner is the chief medical examiner. Otherwise, that's the only legal appointment I have.

Q Okay. And are you a member of any professional societies related to medicine?

A Sure. I'm a member of the American Board of Pathology, which comes with the certification, the AMA, and various other -- the standard medical organizations.

Q Have you participated in any research or publications?

A Sure. I have approximately 10 publications, various case studies and reports of fatalities in this area, and then my time in Virginia as well. All peer reviewed literature.

MS. HINTON: Your Honor, at this time, the State would move Dr. Fulcher as an expert in forensic pathology.

THE COURT: Any objection or voir dire?

MR. DEJONG: What the Solicitor just said, there is no objection to that as an expert in forensic pathology, Your Honor.

THE COURT: All right.

MS. HINTON: Well, I see where he's getting with that, Your Honor. And in addition to that, toxicology as part of that pathology.

MR. DEJONG: I don't know if she qualified him in toxicology, Your Honor.

MS. HINTON: Well, I can --

THE COURT: Yes.

BY MS. HINTON:

Q Dr. Fulcher, can you tell us what, if any, training and experience you have in toxicology?

A Part of the practice of being a medical examiner is the interpretation of toxic substances in the body. When someone takes a compound, it's like a baseball game. On one side trying to kill you is the drug, and on the other side is your body's ability to fight against the drug.

Forensic pathologists are really the best at interpreting these levels because we know the drug and, additionally, what's going on inside that person. You may think on these cases why don't we just -- not this case, it's a bad example, but why not just run the toxicology and not bother do an autopsy? Why spend the money taking all the organs out and looking at all of them microscopically? It allows me to see things that greatly influence that individual person's tolerance to that drug. So that's the training.

We do spend some time in the lab. We do not run the tests. But we would be considered -- across all medical examiner systems and all states that I know of, we would testify to our own toxicology results. If you've been watching the news, you see the opoid epidemic. We do 700 cases a year, and 300 of them are overdoses.

So I'd be a pretty bad pathologist if I could not interpret those toxicologic results, because I couldn't interpret half my case load.

MS. HINTON: Thank you.

So, Your Honor, at this time, we move for a qualification in forensic pathology and toxicology.

THE COURT: All right. Any voir dire?

MR. DEJONG: No voir dire, Your Honor.

THE COURT: Any objection?

MR. DEJONG: No objection.

THE COURT: All right. Ladies and gentlemen, as I previously told you, when someone is qualified as an expert, they can testify more than just as a lay witness. They can testify about their conclusions and opinions in their field of expertise.

In this case, Dr. Fulcher has been qualified as an expert in forensic pathology and toxicology. And you can give his testimony the weight which you deem is appropriate.

All right. You may proceed.

MS. HINTON: Thank you, Your Honor

BY MS. HINTON:

Q Dr. Fulcher, did you perform an autopsy on Minor [redacted]?

A I did. I performed an autopsy on Minor on October 18th, 2014.

Q Okay. And how old was he at that time?

A Approximately one year of age.

Q Was he weight-wise a healthy child?

A He was. He weighed 29 pounds and was 76 inches in length. His biometric averages were appropriate for approximately a 14-month-old infant at the time.

Q Okay. In doing his autopsy, did you determine that he had any viral infections or any viruses in his system?

A We did. I noted when taking out Mr. Lusk's lungs that they were congested and heavy to touch, almost wet feeling. That prompted me to do a nasal pharyngeal swab for specialized molecular testing for viruses. And, in fact, I found rhinovirus and enterovirus. Those would be commonly referred to as the common cold. So the child did have a cold.

A microscopic examination of his lungs showed some pretty significant inflammation in there as well, which I would associate with that virus.

Q Okay. Just to be clear. Were those what,

ultimately, resulted in his death?

A No. But it would have predisposed him to dying given that it would have reduced his respiratory capacity.

Q And we'll get to that. But those, in and of itself, did they kill Minor?

A The streets would be littered with one-year-olds dead if this would kill them.

Q All right. As part of your examination, do you extract blood from the deceased?

A We do.

Q And did you do that in this case?

A Yes, I did, ma'am.

Q And I just want to talk real quick before we get to the results of that. Where does that testing happen?

A I'm a member of a private group. And we charge money for all these services to cover our costs. My partner and I have decided as a protocol to use who we believe is the best laboratory in the country to run all our specimens. And that laboratory is National Medical Services, which is located in a suburb of Philadelphia.

We use them for several reasons. Timeliness is number one. With all due respect to SLED, we could send it to SLED. They do a good job, but they're slow. I get results back in weeks here. So I don't have to wait and let the family wait.

It might sound silly in a case like this. It becomes very problematic when it's an adult and there's an insurance policy, and I've got a pending autopsy and that family is about to lose their house because the toxicology lab wants to take six months to do the report. We always use them.

I believe in them. They have been the preeminent lab in uncovering novel opiates. And one of the best things I like about them is they take specimens from the entire country. So they see the really weird stuff first, because they do more volume all across the country.

They've got a handful, like five or six people that have died from this really weird opiate in two rural counties in Pennsylvania. It happened in a week period and went away. They got a test for that compound. If you sent that anywhere else, they wouldn't find it.

So when I get their report back -- I can never say a report is absolute, you know. Only -- only God knows what is absolute truth. And we are trying to get as best we can to that. However, as far as our ability to test, this represents the finest lab in this country that we can send specimens to.

Q Thank you, Doctor.

Did you receive results back on Minor 's blood from this lab?

A I did, yes.

Q And what were the results of his -- of the testing of his blood?

A Oxycodone was present at 2,700, and the units are all the same, nanograms per milliliter. Oxymorphone was present at 120 nanograms per milliliter. Part of me doing an autopsy and part of the reason I do his autopsy is I send unusual specimens.

So I, also, took fluid out of his eye. I, quite literally, stuck it -- it's kind of gory. But I stuck a needle in his eye and took fluid out and sent that as well. And the same compounds were present at lower levels, 190 nanograms per milliliter Oxycodone, 15 nanograms per milliliter oxymorphone.

I then sampled gastric contents, sucked the fluid out of his stomach -- actually, cut open his stomach because I had it out of his body. And in that case, the concentration of Oxycodone was 360,000 nanograms per milliliter with its -- like the metabolite, oxymorphone was present at 920 nanograms per gram -- I'm sorry. It's per grams.

Q And just before you move on from that, what is oxymorphone?

A Oxymorphone is an opiate. It is the active metabolite of Oxycodone. So in this case, I can't tell

you whether it's all Oxycodone metabolized to oxymorphone or both drugs were taken separately.

The percentages, if you look at them, make me believe more likely the oxymorphone just is the metabolite of the Oxycodone. That is when your body breaks down Oxycodone. One of the steps in breaking it down is turning it into another drug, which is what your body does naturally.

Q Now, given all those numbers, what does that mean?

A Oxycodone is a powerful opiate. And I'm going to read NMS's summary of --

MR. DEJONG: Your Honor, I'm going to object to that. That is purely hearsay. We visited part of that. But, now, when he wants to start reading from a report, I, certainly, take issue with that. And I would submit it is hearsay and not admissible for him to read it.

MS. HINTON: And, Your Honor, I would ask -- under 703, he can rely on it, obviously. So I would ask that he be allowed to read it to himself and then interpret the results based on what he's read.

THE COURT: All right. If this is something he relied on in his expert opinion, then it's okay for him to review it.

THE WITNESS: What I would say about these reference comments -- and one of the reasons we like NMS is they,

actually, pay their Ph.D toxicologist to come up with this. This represents, as I've said, one of the best labs in the world, the best in the country --

MR. DEJONG: Your Honor, I'm going to object to all the editorializing on this lab.

THE COURT: I'm going to sustain.

Stick to your --

THE WITNESS: Yes.

THE COURT: -- report results.

THE WITNESS: This is an interpretation of all the current literature. This represents what the medical establishment thinks about this drug, period.

Following oral administration of Oxycodone, sustained release in regular formulations peak concentrations in adults at therapeutic levels are, generally, less than 100 nanograms per milliliter. However, the sustained release preparation usually results in Oxycodone less than 10 milligrams per -- nanograms per milliliter.

In overdoses, deaths have occurred at an average concentration of 1,600. However, the range, because every person's ability to fight the drug -- to metabolize the drug is different has ranged from 240 to 8,400. At concentrations well below 1,000, especially in combination with other substances, people have had adverse reactions, including death.

BY MS. HINTON:

Q Okay. So relating that back to Minor's numbers, what does that mean?

A Minor had a level of 2,700. And the average for fatalities in adults is 1,600.

Q So, I guess, can you tell how many times over this dosage would have killed an average adult?

A In my practice, and based on my opinion and experience, I, generally, sign -- will sign people out as an overdose on this, depending on their health, at anything over 300 to 400 nanograms per milliliter. And we're at 2,700.

Q So is it safe to say the amount in his system would have killed -- could have killed an adult?

A It would have killed anybody.

Q The fact that he was a year old at the time, how does that affect his ability to process Oxycodone?

A The enzymes that break down drugs in your body mature with age. So his ability to degrade this drug would have been less than all of ours. And it would have affected him, yes. He would have been more susceptible to dying.

Q And you mentioned something about his susceptibility to dying with the common cold as well. How did that factor in, if at all, in this overdose?

A Opiates kill you by suppressing respiration, reducing

your drive in your brain to breath. You can imagine if you're dying from a loss of ability to breath, having a cold that's making you stuffy is only going to make that worse.

Q So based on his system at 14 months -- or excuse me, a year old, is that going to be different from someone who has been on 80 milligrams of OxyContin extended release for a year and a half?

A Yes. His ability to process this drug would be significantly less than any adult, particularly an adult that was substantially using these drugs over a long period of time. I should point out that Oxycodone is not labeled for use in infants, obviously.

Q So is it safe to say it's not appropriate to give to an infant?

A Absolutely not.

Q And just for semantic purposes, is Oxycodone the same as OxyContin?

A It is, yes. It's a brand name.

Q Did you find any other drugs in Minor 's system?

A Only the oxymorphone, which I believe to be the metabolite of the Oxycodone.

Q Okay. And there was no methamphetamine in his blood; correct?

A There was not.

Q Okay. In your expert opinion, would that -- is that possible -- when methamphetamine has been smoked in the house and that's how it gets into a liquid, is it possible that it would not test positive in someone's blood?

A Sure. Either the concentration is extremely small, he was in another room. The half life of methamphetamine in the human body is approximately five to 10 hours.

So if it was smoked days and days ago and got in the cup, then his body would process it out of his system. So, yeah, that's not unreasonable.

Q Okay. Would the -- would EMS administering epinephrine at all affect your test results?

A It would not, no.

Q And would that have shown positive on the toxicology?

A NMS does not test for that as it is not a drug of abuse.

Q Would the administration of epinephrine have contributed to his death at all?

A No. It probably would have helped. Although at that concentration, nothing would have really helped.

Q Can you tell, in your expert opinion, how long after ingesting this Oxycodone it would have taken Minor to die?

A Depending on how he took it, either in pill form, or solubilized, or dissolved, it would have taken minutes to

maybe 30 minutes tops, fairly quick.

Q You said whether he took it in pill form or in a soluble form, meaning a liquid, I assume?

A Yeah. If you take these extended release -- if you take an extended release pill, you allow more drug to get in your system more quickly. That is to say if the pill is dissolved in a liquid, it will hit your system faster than if you just took the pill.

Q In your calculations, were you able to determine whether it was more or less likely that he ingested them through a liquid?

A Given the concentration in the stomach, which is very impressive, 360,000, I doubt that that amount of drug would be in that 10 CC's of fluid I sent, unless it had been previously dissolved in a liquid. We do gastric toxicology on lots of overdoses, generally, to see how many pills are in their stomach. And that's a significant amount.

Q In addition to that, if someone were to eat a pill, if they were to chew it, would you expect to find something in their stomach contents related to that chewing?

A We, generally, find the capsule of the pill if it's chewed. In this case, it was just liquid in the stomach.

Q So the lack of fragments, does that make it more or

less likely that it was in a liquid?
A More likely in a liquid.
Q What is -- I guess, are you familiar with extended release versus immediate release?
A Not on a personal level, but on a professional level, generally speaking.
Q Are you aware of the ability to manipulate an extended release?
A The drug manufacturers have made compounds. They're, actually, gels that as you try to crush the pill, they gelatinize and make it harder to crush these pills. And I believe that was the case in 2014.
Q But that -- does that affect its ability, in your expert opinion, to dissolve them at all?
A It depends on the liquid. They would be more likely to be able to be dissolved in an acidic environment. But in, like, water or something like that, I would doubt that.
Q Say that you have a lemonade that you squeeze real lemons into that liquid, would that assist in breaking down that extended release?
A It sounds like a very acidic liquid to me, yes.
Q In your examination, were you able to determine whether Minor likely ingested one pill, or more than one pill?

A When you do the math on his body weight and the concentration, it ends up being slightly over one pill on average. It's a range. I won't lie to you, I can't give you an exact number. Technically, it could have been one pill. But it is more likely than not that it was maybe one and a half or two, that range. It's, certainly, not five pills.

Keep in mind this is a baby that weighs 20 some odd pounds. So the concentration is going to be higher with an adult dose just by nature of the adult dose.

Q Could it have been that -- if a pill was put into a liquid around 3:00 or 4:00 that morning, not fully consumed, and then another pill was added with additional liquid, would that explain over one pill, but not quite two?

A Yeah, absolutely. Or the fact that he just drank a portion of the substance. Obviously, there was some left that was tested.

Q Just because someone vomits while someone is attempting to perform CPR, does that mean that they are alive?

A No. Oftentimes, CPR, particularly with a layperson, can compress the stomach and have some drugs come up -- or substance come up, gastric contents.

Q So in your analysis, is it consistent that Minor

Lusk would have ingested this Oxycodone at 1:15 and died shortly thereafter?

A If that's -- it is possible, yes. I can't be exact on that time period. I, obviously, wasn't there. But, generally speaking, what I can tell you is that when Minor ingested -- however he ingested this medication, he would have very rapidly become sleepy, tired, and then just kind of died shortly thereafter. There was a fairly short thing -- the interval between ingestion and dying.

Q So ingestion of this, I guess -- is drowsiness a side effect of ingesting this?

A Absolutely. This is an opiate. This is a depressant. So this slows the body down. It's like being drunk, but only magnified many, many times.

Q If that liquid was ingested around 1:15, would you find it consistent that anywhere from 2:15 to 3:00, Minor sat up, smiled, and rolled over?

A I think Minor was dead long before that time period.

Q How long does it take a body to turn cold after death?

A It depends on the weight of the body. He would have turned -- given his size, he would have turned cold relatively quickly, probably within an hour to an hour and a half. And it depends on what your definition of cold is, obviously.

Q Sure.
A An adult will lose about one degree per hour. So, you know, 98.7, the next hour, it just keeps going down. Kids lose that more rapidly because there's more surface area of the body weight.
Q So in your analysis, was the findings of the contents in his blood and stomach consistent with consuming an extended release that had been dissolved in a liquid?
A Yes.
Q Was it consistent with being more than one pill?
A Slightly more than one --
Q Okay.
A -- on average.
Q Was it consistent that it is less likely that it was picked up and eaten?
A It's, certainly, a possibility. I would have expected to have found pill fragments. And if you've ever taken a pill and bitten it, they're rather bitter. Most of these are bitter substances. I would -- it's possible that a child could chew a pill, I suppose. But I would expect to find pill fragments. And I would, also, not expect the child to gleefully eat the bitter substance.
Q How high were these concentrations that you found?
A The Oxycodone, to be honest, is -- probably sets a record for this county for the concentration of Oxycodone

in any person, including adults. The concentration of Oxycodone in the gastric contents is the highest I've ever seen in approximately 3,000 autopsies.

We don't do toxicology on those. I've probably done toxicology on 2,500 of those, though. And we do see it in the stomach, but not at this concentration.

Q And does the concentration give you any indication about ingestion more likely than not one thing over another or --

A The fact that the concentration is so high and I don't have lots of pill fragments sitting in there makes me think it was in liquid form.

Q What was the cause of death as you determined it, Dr. Fulcher?

A Acute Oxycodone toxicity.

Q Is that in layman's term an Oxycodone overdose?

A It is, yes. The young man died from respiratory suppression secondary to a very high concentration of Oxycodone present in his femoral blood.

Q And those common colds that you found were not the cause of his death; is that correct?

A No. Once again, it would have weakened his body. But, certainly, that in and of itself does not explain him dying.

Q And what was the manner of death?

A The manner of death in this case is -- and this is just a medical legal opinion, is coded as homicide.

MS. HINTON: Dr. Fulcher, that's all I have. Please answer any questions Mr. DeJong may have.

THE COURT: Cross-examination.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q So in large part, Dr. Fulcher, you're talking about the test results on the gastric fluids; is that correct?

A The test results in the gastric fluids are part of my analysis. It's important to note that the drug in the stomach doesn't kill you. The drug in your blood kills you.

Q Okay. So what was the total volume of his gastric fluids?

A Only about 10 CC's, actually. I think that's what I said. Hold on. I have a description.

10 CC's.

Q So the volume of the stomach contents and the testing would have some correlation, would they not?

A Yes, absolutely. In fact, you can do the math and see based on the volume of the gastric contents and the concentration about how many milligrams of drug are

present there.

Q And I understand that -- well, let me ask you this. As far as literature goes on the effects of OxyContin or Oxycodone on children, there's not much literature on that?

A There is not. That's true.

Q And, indeed, I realize what you testified to that Oxycodone, OxyContin is not used in the United States; is that correct?

A Not in a pediatric setting, no, sir.

Q It is still used in England, is it not?

A Oh, yeah. It is used. If administered appropriately, it can, technically, be safe, absolutely.

Q So when you start talking about -- you gave us some numbers on -- I've got a lot of notes here that made sense when I wrote them. You gave us numbers on toxicity in adults; right?

A Yes, yes.

Q And therapeutic levels?

A Yes.

Q And what you're doing is you're equating from adults to a child; right?

A That is correct, yes, sir.

Q But, again, there's not any real literature on that?

A We don't have enough people giving their babies this.

Q Yes, sir. And, well, you say it could have been taken in a liquid?
A It could have been.
Q Well, let's assume for the moment that someone put OxyContin in a liquid 15 hours before?
A Yes.
Q But the child doesn't drink it until sometime in the morning, afternoon of October the 17th?
A I can agree with that, yes, sir.
Q All right. So if that OxyContin, let's say, was crushed and put in a drink 15 hours ago, whenever the child drank it, if, indeed, that's what it was, it would still have the same effect?
A That is exactly right, sir.
Q Now, I always get confused when we talk about metabolites.
A Sure.
Q Some day I'm going to figure it out, but I haven't yet. So my question is OxyContin is a medication all in and of itself?
A It is, yes, sir.
Q And then is oxymorphone, if I'm saying that correctly --
A Yes. That's correct.
Q -- is that, also, a medication in and of itself?

A It is. They both, actually, have separate brand names. If you'll indulge me. Oxymorphone is Numorphone, Opian. And then the trade names for Oxycodone is OxyContin and RoxyContin. But they are used, yes.

Q All right. So we talk about dosing and dosages?

A Yes.

Q And I understand what you've testified to, the amount in this case. But you can't say that this child had never been dosed with Oxycodone, OxyContin before, can you?

A That is correct, yes, sir.

Q All right. And, well, you say you found these infections. I believe your report said something about pneumonia?

A Yes. I diagnosed him with a viral pneumonia. That is a viral inflammation of the lung.

Q So he had pneumonia at the time as well?

A He did, yes.

Q And maybe you said that, but I didn't understand the words you used. Okay.

A Correct. It's a respiratory infection. But the infection does get down into his lungs, yes.

Q When -- my understanding on OxyContin is that is, basically, a time release capsule; is that correct?

A That's correct, yes, sir.

Q Okay. And while we're talking about that, OxyContin

has a fairly bitter taste, doesn't it?
A Yes, sir. That's correct.
Q And you said you didn't, I believe, find any -- my word would be pill remnants?
A That's correct. That's a good word.
Q You didn't find any of that in his stomach?
A No, sir, I did not.
Q But is it not equally as possible that you could bite into an OxyContin and, due to the bitterness, still ingest the drug but not the pill?
A That is possible, yes.
Q Okay. And, now, as far as the lab -- I know you've given this glowing report. Let's talk about the lab for just a minute. You take certain specimens and you send them off to Pennsylvania. How do they go?
A FedEx.
Q Okay. So what happens to those specimens between the time you, I presume, turn them over to FedEx and they get all the way over here to Pennsylvania?
A I package them in a box. I seal the box. I initial the box. I put it in a sealed envelope for FedEx marked as biohazardous substances. It's next day aired to the lab. They open the package, document that the box hasn't been tampered with, it's still sealed, and start their analysis documenting their processing of the specimens

along the way.

Q You weren't there when they opened the package, were you?

A Oh, no.

Q And you, certainly, weren't -- were not in the lab when these tests were performed, were you?

A I was not.

Q So you can't say anything on this particular case as to the controls that were used; correct?

A That's correct.

Q You can't say anything on this particular case as to the protocols that were used in that lab?

A That is correct.

Q You have no knowledge of any of that, do you?

A I dot not.

Q And, certainly, without that knowledge, it is a possibility there could have been contamination in the lab?

A There's always a possibility.

Q Yes, sir. So what you're doing -- and when you rely on these amounts of Hydrocodone, oxymorphone, and all that, you're relying on a lab report that you don't even know, in this case, what was done, how it was done, or if it was done properly?

A That's correct, sure.

Q When you alter an OxyContin, the whole nature of the drug changes, does it not?
A The amount of drug available for absorption in the stomach and first part of the gastrointestinal tract is increased. But the actual compound itself stays the same. The drug does not chemically change.
Q But once it is altered -- still speaking of OxyContin.
A Okay.
Q We don't know that it has the same affect on the body in the altered state as in the unaltered state, do we?
A We know that a higher level is given. But the drug does not chemically change, therefore, it acts in the same manner.
Q All right.
A But the concentration will definitely be different and in a fairly unpredictable way when you're altering it, yes.
Q But it is a little bit --
A Yeah. It's difficult to tell. It depends on how well the drug is solubilized or crushed, how it's used. It can be injected, snorted, any number of things.
Q Hypothetically, if an OxyContin were crushed -- well, let me back up and ask you this. OxyContin, obviously, is pills. It's a bit of a capsulized-type pill; correct?

A That's correct, yes, sir.
Q And then it has little holes in it for the time release?
A Yeah. As it goes through the gastric tissue and the acidic environment of the stomach and the gastrointestinal tract, it slowly dissolves and the substance is released. That's correct, yes.
Q Well, if you crush that pill, would there not be parts of the husk of the pill that would be involved?
A Normally, you'd think so, yes.
Q Okay. But you found no husks in this child?
A No husks.
Q Not whole, part, or anything?
A No husks, just fluid.
MR. DEJONG: As always, Dr. Fulcher, thank you so much.
THE WITNESS: Thank you, sir.
MR. DEJONG: I'm sorry. I may have spoken too quickly.
Bear with me one moment.
(Pause.)
BY MR. DEJONG:
Q The -- I'm sorry. I spoke too quickly.
A Not a problem, John.
MR. DEJONG: And I apologize to you, Your Honor.

BY MR. DEJONG:

Q Pneumonia. How quickly does pneumonia develop?

A The virus in a child this age, a day or so, maybe two days.

Q Okay. So what you found didn't happen on October -- back up. As to the pneumonia, what you found on October the 17th of 2014 did not happen or get to the point it was?

A No. I would have expected the child to start feeling sick days before that.

Q Yes. All right. But having that, could a child still act in a normal manner?

A Yes. This is a fairly low-grade viral infection. This is just a common cold. So it's going to somewhat slow the child down. But I think most things would be capable with these viruses.

Q Like they could play normal?

A Yeah. They could play normal. They wouldn't be a hundred percent, but they would be, you know, 80, 90 percent.

Q And it would not necessarily include a fever, would it?

A No, not with a virus, not necessarily.

MR. DEJONG: Now, Dr. Fulcher, as always, thank you so much.

THE WITNESS: You're welcome, sir.

THE COURT: Redirect.

MS. HINTON: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. HINTON:

Q Dr. Fulcher, how often do you use this lab in Pennsylvania?

A 100 percent of the time, which would approximately be 700 case -- well, 650 cases a year.

Q Okay. And on those 650 cases, do you always give a cause of death and a manner of death?

A I do, yes.

Q And do you sign that report?

A I do.

Q Would you add your signature to the report if there was any concern of you that this lab does not appropriately test substances?

A At some point, you have to trust people to do the right thing, so, yes.

Q Do you have any concern that this lab does not appropriately test substances?

A I do not. I've had conversations with their director, PhD toxicologists about more unusual substances showing up. And I feel like they're offering me the best product I can purchase.

Q Mr. DeJong mentioned that Oxycodone and Oxymorphone can be different drugs; correct?
A That is correct.
Q Can Oxymorphone, also, be a metabolite of Oxycodone?
A Yes, it can.
Q So that means it doesn't have to be two separate drugs?
A It does not have to be two separate drugs.
Q And based on the numbers that you found in the toxicology, is it more or less likely that these are separate drugs, or is it more or less likely that they are a metabolite?
A More likely a metabolite. But I could not be absolute on that statement.
Q Sure.
A It's always possible.
Q And then he, also, asked you about if you bit a pill -- a 80 milligram Oxycodone extended release, if you bit it and didn't swallow it if you could ingest some of that drug. And I believe your answer was yes; is that correct?
A It was asked as a yes, no question, so I answered yes.
Q Okay. Is that what you think happened in this case?
A No.

Q And why is that?

A Because the concentration would be very small, certainly, not -- you would not get this massive concentration in the stomach with that phenomenon.

MS. HINTON: Dr. Fulcher, that's all I have. Thank you.

THE COURT: Thank you.

You may step down.

MR. DEJONG: No objection to him being excused, Your Honor.

MS. HINTON: Thank you.

THE COURT: All right.

MS. HINTON: Your Honor, at this time, the State rests.

THE COURT: All right. Ladies and gentlemen, the State has rested, which means that they have put forth the evidence they plan to in their case in chief.

Now, it's five until 12:00. As I told you, we have some other matters that we have to go over in some other cases. And we, also, have a couple of things that we have to go over in this case as well. So I'm going to give you until 2:15. If you'll be back in your jury room at 2:15.

Again, my four rules. Do not discuss the case with anybody, even among yourselves. Do not do any type of research. Do not pay any attention to any media coverage.

And, also, if you're contacted by anyone, please, let the bailiff know.

Other than that, y'all have a good lunch. And we'll see you at 2:15.

(WHEREUPON, the jury was excused from open court at approximately 11:54 a.m.)

MR. DEJONG: Your Honor, I do have a motion for directed verdict, but I would like to make that after lunch because--

THE COURT: Right. That will be fine. I'd like to go to some of these other matters.

So let's -- let me go through this. At some point, you need to let me know whether you're going to put forth any evidence. And we'll need to discuss the jury charge. So let's meet in my office at 1:30.

MR. DEJONG: What time?

THE COURT: 1:30.

(WHEREUPON, a lunch break was taken.)

THE COURT: All right. I believe the State has rested. So I'll be glad to hear any motions from the Defendant.

MOTIONS

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

At this point in time, I would move for a directed

verdict on behalf of Ms. Brewer. This -- Your Honor, I perceive this case as purely a circumstantial evidence case. And what the State has brought before the Court and before the jury is circumstantial evidence, the basic circumstantial evidence that she was there when the child died. There's, certainly, other testimony. I'm not going to rehash all of that.

I would hand up to the Court the case of State v. Bostick, a 2011 case from the Supreme Court of South Carolina. It deals to some degree with directed verdict and circumstantial evidence.

I understand, Your Honor, and as that case says, a case should be submitted to the jury when the evidence is circumstantial if there is any substantial evidence -- and I always stress that word "substantial evidence" -- which reasonably tends to prove the guilt of the accused or from which his or her guilt may be fairly and logically deduced. The evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.

And, again, in this case, Your Honor, I would submit that the circumstantial evidence as I see it is what the State has presented is simply that Ms. Brewer was present when the child allegedly died. I don't think that is sufficient to go to the jury for this reason.

Now, all this other evidence has been produced, but -- and that's all well and good. But when it comes to what the State is really trying to show is because she was there and the child died, that is the circumstantial evidence part of it. And I think it takes more than that. And to let it go to the jury just based on that, Your Honor, certainly, opens the door for conjecture and speculation on the part of the jury.

So I would, therefore, respectfully request a directed verdict at this point in time.

THE COURT: All right. And I think that more controlling than this case is the case -- and I'm sure you're familiar with it, State v. Phillips, which discusses this -- a very similar factual situation and very similar evidence, even though I think the circumstances of that case were drastically different.

And I think, based on that, I find there is sufficient evidence for this case to go to the jury.

MR. DEJONG: Your Honor, we had a chambers conference, but I wanted to get this on the record. Your Honor took my client into custody on Monday. I'm not arguing with that decision, Your Honor.

THE COURT: No. I understand.

MR. DEJONG: But the problem that I perceive it has caused, at this moment in time, is she has not had her

medication. She takes Cymbalta. She takes 60 milligrams two times a day on that. She, also, takes Trazodone. She takes a very heavy dose of Trazodone, 150 milligrams. She takes two tablets of 150 milligrams at nighttime for a total of 300 milligrams.

She shares with me, last night, she got absolutely no sleep. She has, also, been on, basically, a generic Depakote, I believe. She had been taking 250 milligrams of that a day. And what is really concerning her is she hasn't been on her blood pressure medication.

Now, that may not necessarily go to -- and, also, she's on a heart pill, Your Honor. And she's very concerned about that. I don't know that either of the latter two would go to her mental state. But the fearfulness that she has expressed to me not taking her blood pressure medication and her heart medication has, certainly, I think overridden to some degree her ability to function and make decisions. And, certainly, I think not having the Cymbalta and Trazodone would, likewise, affect her ability to make decisions.

I did ask the family yesterday evening if they could get the medication up here. I'm not sure the jail would have even let her have it. But, nonetheless, they could not get it up here yesterday evening because a one-way trip to where the medication was is 30 to 45 minutes, I

believe. So I did ask them to bring it this morning. I do have the medications. They are in my office secured.

But my -- well, just to take that one step further. Over the course of this case, Your Honor, I have explained to Ms. Brewer her right to testify, her right not to testify. Again, right at the beginning of the break this afternoon, I have, again, talked to her about her right to testify and not to testify. I asked her about her decision to testify or not to testify. She said, My brain is totally addled. That was not her word, but pretty close to it. I can't think. And, basically, she said I cannot make a decision.

So, actually, she asked me to make the decision for her, which, as Your Honor well knows, I cannot make that decision. I can advise her of her right to testify and not to testify, and explain the ramifications of both.

Now, having said all that, Your Honor, I know we have been in this trial for a long, long time. It probably seems longer than it has been. But my concern is if she is not in a state of mind to make the decision to testify or not to testify -- and, again, I can't make that decision.

So the bottom line is what I am requesting -- it is now 2:30 on Wednesday afternoon. I'm requesting, Your Honor, that we adjourn for the day. Let's get her

medication in her and bring her back up in the morning for voir dire from Your Honor, and her decision as to whether to testify or not to testify.

THE COURT: Well, how do we know that that's going to make a difference? I mean, I don't know. I'm not a doctor. You're saying she's been off of it for three days now.

MR. DEJONG: I don't know that either. I get more from that in talking to her husband than I do from Ms. Brewer herself. "Her husband" being Robby Brewer. I can't say that it's going to work magic and miracles. I can't say that. But I think, at least, she deserves, and as her counsel, I deserve to give it a try, Your Honor.

THE COURT: All right. I'll be glad to hear from the State.

MS. HINTON: I mean, Your Honor, obviously, I haven't had any conversations with her. However, it was my understanding in chambers that she had been speaking with her lawyers throughout the day. She had asked them questions.

Like Your Honor said, we don't know that it would make any difference, nor do we know that the jail would be able to administer it as she needs because they have their requirements, too, on what they can and cannot administer.

I think this is an unnecessary delay. There's been

no real evidence that she can't effectively communicate with the Court or with her attorneys.

THE COURT: All right. Well, first, I'm going to -- Yes.

MR. DEJONG: One tag line on that, Your Honor. She really has not communicated with me that much today. She has written me a couple of notes. Mr. King, co-counsel, has dealt more with her today and probably dealt with her more throughout the trial than I have. My focus has been more over there.

Mr. King can speak for himself and I'll, certainly -- if Your Honor will allow, I'll let him address the Court. But he has, apparently, noticed some differences today.

MR. KING: May it please the Court, Your Honor.

THE COURT: Yes.

MR. KING: I have noticed a significant difference in how she's acting today, and her types of questions, and her number of questions, in particular, and just overall a much, much different personality through this whole trial today than the previous two days.

THE COURT: All right. Well, let me ask her -- let's go through -- let me ask her some questions along these lines.

And, Ms. Brewer, I'll let you just sit there. If you can speak loud enough so that the court reporter can hear

you.

If you'll raise your right hand. This is just for the purposes of my questions.

WHEREUPON,

ANGELA DENISE BREWER,

after first having been duly sworn, testified as follows:

THE COURT: All right. And what is your name?

DEFENDANT BREWER: Angela Denise Brewer.

THE COURT: All right. And where do you currently reside?

DEFENDANT BREWER: Clinton, South Carolina.

THE COURT: And how long have you lived there?

DEFENDANT BREWER: Six months.

THE COURT: All right. Now, there's been a mention of -- what medications are you on?

DEFENDANT BREWER: I take Cymbalta twice a day. I take Depakote at night once a day -- I mean, once at night. I take two blood pressure pills in the morning. I take Simvastatin at night. I take a heart pill every night. The Trazodone, it helps me sleep. And I have to take an aspirin a day for my heart. And I think that's all.

THE COURT: All right. So you're taking Trazodone. What kind of medication is that? What's that for?

DEFENDANT BREWER: It's like a mood stabilizer.

THE COURT: All right. And all these are taken -- are they prescriptions from your doctor?

DEFENDANT BREWER: Uh-huh.

THE COURT: Who is your doctor?

DEFENDANT BREWER: Sarah Moore.

THE COURT: How long have you been on the Trazodone?

DEFENDANT BREWER: Now, the Trazodone is Dr. Tolbert. She's my psychiatrist.

THE COURT: And how long have you been on that?

DEFENDANT BREWER: Since November of last year.

THE COURT: All right. Now, what's the purpose for your taking the Trazodone?

DEFENDANT BREWER: It stabilizes my moods with the Cymbalta. I have manic depressive bipolar, PTSD.

THE COURT: And you take Cymbalta?

DEFENDANT BREWER: Yeah.

THE COURT: And what kind of medication is that?

DEFENDANT BREWER: It's psychotic, I guess.

THE COURT: And how long have you been taking that?

DEFENDANT BREWER: This time, since October, November of last year. I had previously been on it before. That's what I'd been taking for years.

THE COURT: All right. And how long -- you have to take the Cymbalta. So, really, the only ones that -- I think that creates some concern are Trazodone and the

Cymbalta; is that correct?

DEFENDANT BREWER: And my heart pill.

THE COURT: And your heart pill. But how does -- does the heart pill have any affect on your being aware of things, or it's just --

DEFENDANT BREWER: Well, if my heart gets beating too fast, I'll pass out.

THE COURT: All right. And is it something you take every day and you took it until Monday when you went into custody?

DEFENDANT BREWER: Yes, sir.

THE COURT: And what kind of issues have you had since Monday since you haven't taken this?

DEFENDANT BREWER: I don't sleep. Cymbalta helps with my fibromyalgia and my mental. So it's been very painful. I mean, that's, basically, all I take for pain anymore.

THE COURT: Now, how do these drugs affect you when you do take them?

DEFENDANT BREWER: They just kind of keep me in line. My mind don't go from one to the other.

THE COURT: All right. Other than that, do you suffer from any mental illness?

DEFENDANT BREWER: Just the manic depressive bipolar.

THE COURT: And how does that affect you, generally?

DEFENDANT BREWER: If I don't take my medication?

THE COURT: Yeah. Before you took your medication, I mean, what kind of problems were you having?

DEFENDANT BREWER: I mean, I can't focus. I can't concentrate on nothing. My mind goes from here to there to here. And I don't get my words out like they're supposed to be out.

THE COURT: And how old are you?

DEFENDANT BREWER: 46.

THE COURT: And how far did you go in school?

DEFENDANT BREWER: Eleventh grade.

THE COURT: And were you on -- before the events of 2014 -- I mean, have all these medications been prescribed since 2014?

DEFENDANT BREWER: No. I was taking the Cymbalta, the Gabapentin, which I don't take anymore, because I had to move from Dr. Rogers. And I didn't go back to a neurologist. I had an appointment, actually, in November and I didn't get to go.

THE COURT: Now, did you ever have any period of time in the past where you didn't take this medication because your doctor didn't --

DEFENDANT BREWER: Just when I was -- well, I, actually, took Cymbalta while I was in jail.

THE COURT: How long were you in jail?

DEFENDANT BREWER: I was there 18 months.

THE COURT: Okay. When did you get out of jail?

DEFENDANT BREWER: June 20th.

THE COURT: So you've -- and I realize you've indicated you've had some issues with focus. But you have been able to communicate with both Mr. King and Mr. DeJong today?

DEFENDANT BREWER: Uh-huh.

THE COURT: And throughout this trial?

DEFENDANT BREWER: I mean, I'm not, you know, going to lie or anything. That's not what my --

THE COURT: No. I understand. But, I mean, have you -- you've heard the various witnesses that have been on the stand for the past few days. Have you understood everything they've said?

DEFENDANT BREWER: Not everything, but I'm kind of trying to follow along with them.

THE COURT: Anything you didn't understand, were you able to ask your attorneys to explain it to you?

DEFENDANT BREWER: There was a lot I didn't understand.

THE COURT: All right. What, in particular, have you not understood?

DEFENDANT BREWER: Doctors. I mean, I don't understand all them. I don't know that anybody does.

THE COURT: Okay. The doctor's testimony. But as far as -- you heard and you understood, but the terminology --

DEFENDANT BREWER: It takes a minute to imprint on my -- what needs to go in.

THE COURT: All right. And how would -- say, that your attorney -- based on your attorneys request that you be allowed to take this medication then come back tomorrow, how would it be different tomorrow?

DEFENDANT BREWER: Well, I mean, I've only been off it three -- I took it Monday. So I've only been off of it yesterday and this morning. So if I take it now, it will go back -- you know, it will kind of catch me up.

THE COURT: All right. And during -- since we broke for lunch, have you had time to talk with your attorney about the various issues?

DEFENDANT BREWER: Just a few minutes, yeah.

THE COURT: Okay. Have you had any problems understanding my questions?

DEFENDANT BREWER: Just now?

THE COURT: Yeah.

DEFENDANT BREWER: No.

THE COURT: You know, I believe -- based on my questions and her responses, I mean, I believe that she -- you know, I find that she -- it's appropriate for her to

decide whether she needs to testify or not. So I'm going to deny your request that this matter be continued until tomorrow.

And now, I guess, I want -- now, I want to, I guess, get into the Fifth Amendment rights, and so forth.

MR. DEJONG: Yes, sir.

THE COURT: All right. You're already under oath.

Let me ask you this before we get there. Have y'all had an indication whether she's going to take the stand or not?

MR. DEJONG: Well --

THE COURT: All right. Let me ask this question.

MR. DEJONG: That would depend on Ms. Brewer's decision, Your Honor.

THE COURT: Okay. Ms. Brewer, you realize that we're at the stage of the trial where the State has rested and put up all the evidence that they plan to put up?

DEFENDANT BREWER: Yes, sir.

THE COURT: In their case in chief?

DEFENDANT BREWER: (Defendant Brewer nodded.)

THE COURT: Okay. You know, if your attorney puts up any evidence, then they would have the right to put up reply or rebuttal --

DEFENDANT BREWER: Yes.

THE COURT: -- witnesses on a limited basis. But so,

now, it's up to you and -- for you to make a decision whether y'all are going to put up anything or not. And, first of all, I need to explain to you your rights.

Under our Constitution under the Fifth Amendment, it says no person shall be compelled in any criminal case to be a witness against him or herself. What that means is you have a right to testify, but you can't -- you, also, have a right not to testify.

DEFENDANT BREWER: Yes, sir.

THE COURT: That's totally your decision. And that's a decision that you need to make after discussions with your attorney, discussions with your family, if appropriate. And then, you know, if you testify, you're subject to all the same rules as any other witness. And part of that would be cross-examination by the Prosecutor.

Is there any criminal record that would apply?

MS. HINTON: No, Your Honor.

THE COURT: That's -- one of the reasons I ask that is one of the things -- you can be cross-examined on your criminal record. And based on what she's telling me, that would not come into play here, you know. Your decision to testify or not to testify must be freely, and voluntarily, intelligently made.

If you -- if you testify, you know, then that's something that will be presented to the jury. If you fail

to testify, decide you don't want to testify, then I will tell the jury that they cannot consider that in any way in their deliberations. That it's still -- it's up to the State to meet their burden to prove you guilty beyond a reasonable doubt.

Now, I'm sure there's, also -- as your attorney has talked with you about, there's strategic reasons which benefit the Defense usually for not testifying. And that gives them the last closing argument. There are other strategic reasons, which your attorney can discuss with you. But when it all comes down to it, it's your decision.

Do you understand that?

DEFENDANT BREWER: Yes, sir.

THE COURT: Okay. And that's a decision that, like I said, I always encourage you to make after discussions with your attorney. If you need to talk with your family about that decision as well, then I'll give you time to do that.

Do you need additional time to discuss this with your attorney and/or your family?

DEFENDANT BREWER: Yes, sir.

THE COURT: All right. We'll give you a few minutes then to have those discussions.

(WHEREUPON, a break was taken.)

THE COURT: He's standing up, therefore, he must have something to say.

MR. DEJONG: We've concluded.

Thank you, Your Honor for that additional time. I really appreciate it.

There was still a struggle, but I think -- I'm not a hundred percent sure, but I think Ms. Brewer has made a decision, Your Honor.

THE COURT: All right. Now, Ms. Brewer -- and you can just stay seated. That's fine.

Now, you've had a chance to talk with your family and your attorney about whether you should testify or not? Again, this is your decision.

DEFENDANT BREWER: Yes, sir.

THE COURT: And what do you wish to do?

DEFENDANT BREWER: No.

THE COURT: You don't wish to testify. And that's your decision?

DEFENDANT BREWER: Yes, sir.

THE COURT: After consultation with your attorneys and your family?

DEFENDANT BREWER: Yeah.

THE COURT: All right. And nobody has forced you to make that decision, that's your own decision?

DEFENDANT BREWER: Yeah.

THE COURT: Okay. It's 10 until 3:00. My thought is to argue and charge. And I'll give you a few minutes to --

MR. DEJONG: Your Honor, before we --

THE COURT: Well, I say -- now, we talked about her right to testify. But I guess I need to ask you if you were going to -- I mean, do you plan to put any additional evidence up?

MR. DEJONG: No, sir.

THE COURT: Okay.

MR. DEJONG: And we discussed that earlier today, and we discussed that just a few moments ago.

THE COURT: All right.

MR. DEJONG: There was a potential witness on the witness list. But I shared with Ms. Brewer that if she did not testify, I was not putting a case up at all in her defense. And I think she understands that.

THE COURT: One other thing I do have, I guess, did we want -- we had a conference in chambers about the jury charge. We went over that. And I'll be glad to put anything on the record that anybody wants.

I would like to note that I -- and this is something we did not discuss. Normally, in my -- in the normal charge when I talk about intent -- criminal intent, it discusses that criminal intent can arise from action or

now. But we'll talk about timing, and stuff like that.

But with that being said, at this point, we'll have closing arguments.

CLOSING ARGUMENTS

MS. HINTON: Thank you, Your Honor.

May it please the Court.

Mr. DeJong.

Mr. King.

On October the 17th of 2014, Minor died senselessly at the hands of Angela Brewer. Angela Brewer got up that day between 3:30 and 4:00. And she took her Oxycodone.

And the State maintains that she takes her Oxycodone by fixing a cup of lemonade, adding sugar to it so it won't taste as bad and bitter, and adding lemons to it to help it dissolve. And the reason she does that is because she's been on Oxycodone since February of 2013. And she's built up a tolerance to it. So that helps her get the medication quickly, and that's what she wants.

At 5:00 or 5:15, Minor wakes up for the day. He's fine. He's playing. His parents, Michael Lusk and Callen Harrison, take the children to school. And then they, also, head off to Georgia. Because they're remodeling the house across the street and they need to get some furniture for it.

They leave their youngest, Kayson, who is just two months old, and Minor in the care of Angela Brewer. She is the only adult in the house from 10:30 until Robby Brewer arrives back home sometime after 5:00. I believe that is undisputed in this case.

Angela Brewer has a routine. Every day during the week at 1:00, she watches Days of our Lives, and then she watches the rest of her shows. She talks to her sister. But those shows are so important to her that she can, actually, tell you what time of day it was based on when the show went off.

And Minor is not feeling well. He, as you heard, has pneumonia. He has some other viruss, the common cold. So he's a little fussy. And he's supposed to nap between 11:00 and 3:00 for an hour or two. But it's time for Angela Brewer's stories, and he hasn't gone to sleep yet.

So Angela Brewer decides that she'll give him some of the Oxycodone that she puts in her lemonade and he'll sleep. And, in fact, he does. But, unfortunately, Minor [redacted] died sometime between 1:15 and 2:00 by the pathologist's estimation.

Angela Brewer does a check on Minor. Her husband, Robby, calls on his way home and he tells her, You should probably wake him up. He's not going to sleep tonight if he's slept this long.

And then it's a little confusing, based on the reenactment, whether she, actually, goes and checks on him then and picks him up, or whether she checks on him. He's not moving. She goes and sits down for a little while and then picks him up. Either way, when she picks him up, he's lifeless. His head is bobbing around. He's cold to the touch. And instead of immediately hanging up and calling 911, Angela Brewer stays on the phone with Robby for, at a minimum, 12 to 15 minutes.

Not only does Angela Brewer not call 911, she couldn't even be bothered to turn on the lights. She tells you she couldn't see him real well. She keeps it dark in the house. And when Robby opened the door and the light came in, she could see him a little bit better. And Robby noticed his lips were blue. That's the State's case.

The Defendant's case is what I refer to as a kitchen sink case. They have thrown in a little bit of everything at you hoping that something will stick. Unfortunately for them, Angela Brewer locked herself into several statements throughout the course of this investigation. And those statements cannot be changed.

So what I would like to do now is go through some of the testimony and explain to you why the State's case makes sense, and why the Defendant's does not. You're

here on a homicide by child abuse. There is no doubt that the death of a child under 11 occurred. Minor was only a year old, and he is now dead.

The State must prove beyond a reasonable doubt that that death was the result of child abuse or neglect, and that child abuse or neglect showed an extreme indifference to life. And, in this case, we must show that Angela Brewer committed child abuse or neglect, and that that was an extreme indifference to his life.

Billy Trotter was the first on scene. And he stated that he arrived at 5:53. So we know that, at least, to some extent, 911 was not immediately called. So that is confirmed that there was some time after Robby arrived before 911 was called and, certainly, 911 was never called before Robby arrived.

Why wouldn't someone call 911 right away? You have an emergency situation on your hands. You have a lifeless 14-month old. Why doesn't someone call 911? Why doesn't someone run into the street screaming for help, going to a neighbor's house asking someone to help them revive their grandson? And that's because Angela Brewer knows that she's done something bad, and she doesn't want to be alone when law enforcement arrives.

Mark Pless is the EMS guy. And he arrives shortly thereafter. He's not dispatched until 5:41. So, again,

we know that 911 was not immediately called. He said that the victim had been dead for sometime.

Now, the Defendant says in one of her statements that she's screaming at the ambulance. Mark Pless and Billy Trotter both tell you that's not true. Mark Pless doesn't even remember seeing her. Robby Brewer, her own husband, testified she didn't come off of the porch. That's not someone who's super concerned with what's going on with their grandson. They want to keep their distance from this investigation.

Lane Byers told you that the last time that she had lemonade was at 1:15. And I think, at this point, we all know the significance of the lemonade. But I will get to that in more detail.

He has been in law enforcement for 20-plus years. And he said that the Defendant seemed incredibly worried and concerned about what law enforcement was doing that night. You're only worried and concerned about what law enforcement is doing if you think that you're a suspect.

Robby Brewer stated that he saw the victim before he left. So we know that he was up by, at least, 5:15 because that's when Robby said that he left. That he didn't fix any food or drink. That when he got the call he was unresponsive. They had been talking for a while, but he was at the Spinx in Dacusville.

Now, as we know, Swiss Entrance is in Pickens. So he said it took him, at least, 12 to 15 minutes to get there. When he got home, the victim was blue. They didn't call 911 until after he got home. And that the Defendant doesn't drop her Oxycodone. She keeps them in her purse. She keeps them close to her.

He said that when he left for the day that the Defendant had fixed the victim food and drink, that the victim was fine. Callen Harrison said -- and I'm sorry, Callen Harrison said that the Defendant had fixed the victim the food and the drink. The victim was fine. That she never said anything about the victim being sick because that conversation didn't happen.

When Callen Harrison gets the call that Minor is no longer breathing, she said that she left so quickly that she left the doors of the trailer open in Georgia. That is a normal response to the death of a child, especially a child that you love. You drop everything. And you go straight to where you need to be to see what you can do to help. And that's exactly what Callen Harrison did.

She confirmed that her mother watches Days every day at 1:00. And that she tries -- that the Defendant tries to get the victim to nap so that she can watch Days.

The first thing that the Defendant tells her is it had to have been SIDS. That didn't come from anyone at

the hospital that night, according to their testimony. The Defendant is trying to do whatever she can to throw out anything that it could be.

And then she says, He must have gotten one off the floor. How do we know that's not true? Because Angela Brewer said so. She said she knows she took her Oxy at 4:00. She doesn't drop them. She said that she keeps them in a pill container that is child proof, zipped up within her purse that's always with her. She's incredibly careful with it. He was not out of her sight. So we know that there's not a chance that she dropped it because Angela never said that she did.

Callen admitted to you that she had a prescription for OxyContin, but there's been -- or excuse me, Oxycodone, but there's been no testimony whatsoever that that was in the house. What Callen told you was that was located across the street because she wasn't currently prescribed it. It was old medication. She didn't need it anymore. She voluntarily passed that information along to the coroner because she was trying to be helpful. She was trying to do what she was supposed to do.

We know that the victim cannot open a cup for himself. He cannot make his own drink. He cannot reach any medication. So he relies on an adult. And the adult that day was Angela Harrison [sic] to fix his cup and to

close the lid on it.

We, also, know that the Defendant had not been watching Kayson and Minor together for very long. Minor [sic] was only two months old. Callen said that she had recently been back to work. She only normally worked two to four hours a day. So this day was different. On this day, Angela Brewer had both children all day long. And that's a lot of work.

Kayson sleeps most of the time, so he's fairly easy. I don't think Minor is a problem child. But on that day, he was her problem because he was fussy and he wouldn't go to sleep. And all she wanted to do was to watch her stories in peace.

Michael Lusk stated that he was gone all day and that the Defendant was the only one that fixed food or drink.

Gary Duncan told you that she related all the times to soap operas. And he went to sleep at 5:15 [sic], and that she sat down and watched TV, that no one else was there, and that she never checked on the victim.

Now, we get to Angela Brewer's statements. And all of them have been audio and video recorded so that you can review them.

And the reenactment, to me, is interesting. Because the first thing that she says on the reenactment is, I need to get this done because I need to go to sleep.

That's pretty harsh words on the day that your grandson has died. I, also, notice in that reenactment -- and you can watch it for yourself -- that she can turn it on and she can turn it off.

This is her first opportunity to tell police what has happened. And, unfortunately, in death investigations of a child, the best way for a police officer to know what happened is to use a doll to show what happened.

So she's reentered the house for the first time where this took place. She is using a doll to show law enforcement what happened. And she talks about it as if she's telling you what she got at the grocery store that day. There is zero emotion in her until the very end where she asked was he dead in that Pack 'n Play. The entire time she picks him up, talking about him being lifeless is completely cold.

In her second interview with Michael Hendricks in November of 2014 -- and keep in mind that, at that point, toxicology had not come back yet. So nobody knew what was in the lemonade. We didn't know what was in the lemonade until December the 12th, 2014. This interview took place on November the 8th of 2014.

And one of the first things that she says was this is the first time he drank lemonade. She's saying that because she's trying to equate this weird thing happening

because this is the first time he had lemonade. No one knows anything about lemonade at that point, no one, but Angela Brewer. Because she's the one who puts her pills in the lemonade.

She states he was drinking from her cup. She, also, states that he didn't usually take his second nap until 5:00. And that's not what Callen says and that is, also, not what Angela says again ever. So, to me, that was a strange statement.

But she had to be careful because if she dropped one of her pills, it would kill her dogs. This is a woman who has already lost a grandchild to a pill overdose. She has three more grandchildren in the house and her biggest concern is not that one of them would get a pill, but that her dogs would.

She doesn't know how any pill would have dropped because she always keeps them in her purse. She takes them on her bed. She knows she had her pill that morning. She counts the pills every day. But, interestingly, she didn't count them that day or the day after. And I'll get to the pill counts in a little bit.

That no one else in the house is prescribed OxyContin and takes it. That there's no way he could have gotten the pills. There's no way she could have dropped one. And he had to have gotten the pill from her. Those are

her words, he had to have gotten it from me.

And another interesting thing that she says when they're talking about did you put anything in your drink? And she says, If I put something in my drink, then I'd be asleep. Not why would I put anything in my drink? What is that going to do? That doesn't make any sense. I just swallow my pill. But, If I had put it in my drink, then I'd be asleep.

So she knows that if you put Oxycodone in your drink, you go to sleep. And that was confirmed by the pathologist. One of the side effects of Oxycodone is drowsiness.

In her interview with Christine Cauthen and Rita Burgess, she says that the victim did not act sick that day. That she woke up around 3:30 or 4:00 and watched the ID channel. She usually sleeps during the day because she wakes up so early. That's really hard to do when you're caring for two small children. That she made the lemonade in the container that morning.

So this whole thing of Mr. DeJong trying to say, well, what if somebody made it 15 hours before? How do we know that's not true? Because Angela Brewer told us. She made the lemonade that day.

Again, she says it's the first time she had made lemonade for him. She puts actual lemons in her lemonade.

The State would submit to you that is because that helps dissolve her Oxycodone pills. Anything she drank out of her cup, he drank. She was so careful with her pills.

And when they press her about it being an accident, if you're in a car accident, you know, you don't intentionally hit someone, accidents happen. She doesn't say, I didn't do this. She hangs her head and she says, That was my baby.

She had previously told Rita Burgess this shouldn't be happening. And that's right, because I don't think she gave that Oxycodone to Minor to kill him. She gave it to him for him to go to sleep. He shouldn't be dead. He should have slept for a little while. That's what she intended to do. He, also, wasn't out of her sight at all that day.

And she admits that when they tell her about being sleepy that she's usually napping around that time. And that time was around 12:20 in the afternoon. She, also, says, I thought I had this all in my head. She thought that she had worked out her story in her head and she wouldn't forget it. She, also, stated that she needs it to be over, not I need to figure out what happened to my grandson. She needs this to be over. What did she say?

Dr. Rogers told you that you can manipulate OxyContin, that you can dissolve OxyContin. That she

received a refill for six 80 milligram extended release pills on October 15th, 2015, the day before Minor died. That that is the highest dose of Oxycodone that they make, 80 milligrams. She was on it two times a day. That a simple Google search -- that there are web sites out there that tell you how you can manipulate your pills. It's not hard information to find. And that this is, certainly, not for children.

How do we know that Angela Brewer is kind of flippant about her medication? Well, I would, first, submit to you the last interview that you saw where she's slurring her speech and hard to stay wake.

The second is we know that Robby Brewer takes some. Now, he got up here and denied that. But Kevin Nichols, who is a DSS worker, who has no dog in this fight, when asked in reference to taking a drug test, he says, Well, I do take a quarter of her pill. He doesn't say how often he does it, or whatever. But he was concerned that that might be in his drug test.

Now, the actual evidence in this case was tested. Mr. DeJong wants you to believe that this is human error. Okay. And I'll get to that in a minute, too. But J.T. Albrecht told you that there's no chance of contamination in his lab because OxyContin, methamphetamine, those aren't handled in the same place where he transferred

these liquids. And that's important because it's important for you to know that this is solid and reliable evidence. That evidence is sent to SLED.

And Agent Grambow tested -- or excuse me, discussed at length that the testing that he does is reliable. That it is peer reviewed. That it is incredibly scientific, frankly, more than I can understand. That the red liquid, which J. T. Albrecht confirmed is the one that was located in the Pack 'n Play where Minor was found dead was positive for OxyContin. And that the yellow-brownish liquid was positive for methamphetamine and caffeine.

We're not dealing with an innocent grandmother. We are dealing with a house where there is, clearly, methamphetamine, where Oxycodone is given out to other people. This is not Mother Teresa's house.

He, also, testified that he takes putting his signature on a report very seriously. And unless he firmly believes that that is what happened, he's not going to attach his signature to it. And he's not going to risk his professional reputation on a report that he doesn't think is accurate. And Dr. Fulcher told you the same thing.

There was some question about sending it off to a lab, a nationally-recognized lab. And he said, I would not attach my signature to the thousands of reports that I

give if I didn't believe in what that lab was doing, if I didn't believe it was secure.

He told you that there were 2,700 nanograms per milliliter in Minor's blood. That there were 360,000 nanograms per milliliter in his gastric fluid, which is the stomach contents. That that is the highest he has ever seen. And that he has done thousands of these cases. And that that had to be a record for this county. That the amount in Minor's system would have killed an adult. And that he would have died within 30 minutes, at the most.

He, also, told you that acid would absolutely help dissolve. And when I asked him would lemons, that's, certainly, an acid, so yes.

Mr. DeJong asked him about biting a pill and then spitting it out. And he said, yes, that's a possible way to get Oxycodone, but that's not consistent with what I found. That's not consistent with the extremely high levels that I found in his system.

What it was consistent with is that it is highly likely that this was dissolved in a liquid. Because it is an extended-release tablet that would release a large amount of Oxycodone into the body very quickly. And that that is what he found. That there were no fragments in the stomach that would be consistent with chewing or

swallowing. And that it had to be slightly more than one pill.

So this is not one pill that was dropped on the floor and popped in Minor's mouth. This is more than one pill at a very high concentration. That he died from an acute Oxycodone overdose. It's the highest level that he had seen in the thousands of cases he's done.

Now, as I told you, you have three interviews you can view. And those are three very different Angela Brewers. I don't know what Angela Brewer was there on October the 17th, 2014. I imagine it was probably a little bit more like the last interview.

It is highly unlikely that we are here based on human error. Because SLED found Oxycodone in the cup, which is a completely different lab than tested Minor's blood. And in Minor's blood was Oxycodone. So either Angela Brewer is the most unlucky person in the State of South Carolina, or she put Oxycodone in Minor's lemonade and he died as a result of it.

This is the most senseless death. Angela Brewer could have done any number of things. She could have left the house that day if she was overwhelmed. She could have put Minor in his Pack 'n Play, Kayson in his carrier, put them in a room and closed the door. She could have called a neighbor for help. She could have called her sister for

help. And we may be here on a different case, but we wouldn't be here because Minor was dead.

Mr. DeJong will argue to you that this is just a circumstantial case. And I will submit to you that you will not hear the Judge tell you that Angela Brewer is not guilty if the State's case is merely circumstantial.

What he will tell you is that circumstantial evidence and direct evidence are given the same weight. But if we rely solely on a circumstantial case, that all the circumstances must be consistent with each other, and when taken together point conclusively to the guilt of Angela Brewer beyond a reasonable doubt.

Angela Brewer was the only caretaker for Minor. She was the one who made the lemonade. The lemonade cup was found in Minor's crib. And another significant thing is there -- you can look at the vials. There's not much in those vials. So she made Minor a cup of lemonade and he drank most of it.

She is the only one prescribed OxyContin. She is the only one who had OxyContin in the house. And he died from an acute Oxycodone overdose.

The State has the burden of proof in this case. And, as Caroline told you in the opening, it's the same burden in any case. I gladly accept that burden and Caroline gladly accepts that burden that Angela Brewer is guilty of

homicide by child abuse beyond a reasonable doubt.

Angela Brewer walked through these doors an innocent lady. She is clothed in cellophane, as Mr. DeJong told you. That is a fundamental right of our Constitution. But just because she walked in here an innocent person does not mean that she leaves one.

Minor should be celebrating his third Christmas with his family. And as Callen Harrison and Michael Lusk begin to prepare for the holidays, they'll do it with a big piece missing, and that's Minor.

Minor didn't have to die that way. I wish we were here on a different case. I wish we were here because Angela Brewer just had more than she could take and she needed a break that day so she left him alone. But that's not what happened.

Angela Brewer needed a break that day, but she was so neglectful that she thought that she could give Minor a little bit of Oxycodone and he would go to sleep. This is a child who can't speak for themselves. They can't go tell you what happened. They can't tell an adult no. They don't know any better. He was just over a year old.

Minor can't speak anymore, but I can. And I ask that you speak for him one last time. And I ask that you find the Defendant guilty of homicide by child abuse.

Thank you.

THE COURT: Mr. DeJong.

MR. DEJONG: Thank you, Your Honor.

May it please the Court.

Ms. Hinton.

Ms. Newton.

At the outset -- excuse me. Ladies and gentlemen, Madam Forelady, ladies and gentlemen of the jury. At the outset, I made two observations. That is, number one, His Honor is the law giver, not me, not Ms. Hinton, not Ms. Newton. Number two, you have heard all the testimony and seen all the evidence in this case that you're going to see and hear.

Now, again, I would ask you to listen as attentive -- I can't say the word -- with as much attention to the Judge's charge as, from my observation, each of you have paid during the course of this trial, because the charge on the law is crucial. And that is the law that you will apply.

Now, Ms. Hinton shared with you that she thought you will hear from the Judge that -- about circumstantial evidence. And, again, you take the law as he gives it to you. I don't think, if as I understand it, that she gave you all the law on that charge. Because I think that charge goes on to say -- but you listen to the Judge when we talk about circumstantial evidence -- if these

circumstances merely portray the Defendant's behavior as suspicious, then proof has not been met.

So I think we'll start out by addressing reasonable doubt. I'm going to try to be brief. I know y'all have had a long day, as we all have. And it is not over yet. I'm going to try to be brief. I'm not going to rehash all the testimony.

But, you know, I was watching a football game a couple weekends ago, a professional game. And it kind of made me think of a trial, because they do these video replays. And the call on the field was this, that, or the other and it is reviewed. And there must be irrefutable evidence to overturn that call on the field. A trial is much like that, ladies and gentlemen. The call on the field is not guilty. And the State must prove, I submit, by irrefutable evidence the Defendant's guilt.

Now -- and His Honor is going to charge you as well on reasonable doubt. I'm not going to belabor that point. I'm going to talk a little bit about the evidence. I will -- well, let me back up a little bit. And, again, take the law from the Judge as you hear it.

But the State must prove beyond a reasonable doubt, remembering the call on the field is not guilty. But under what my client is charged with, they must, first, prove beyond a reasonable doubt the death of a child under

11. We don't dispute the child was under 11, nor do we dispute his death, unfortunately. It is tremendously tragic. But under the age of 11, committing child abuse and neglect and -- not or -- the death occurs under circumstances manifesting an extreme indifference to human life. Now, both of those must be charged [sic] beyond a reasonable doubt, not just a suspicious, but beyond a reasonable doubt.

But I submit to you, number one, there is no direct evidence in this case, none whatsoever. And this is the difference between direct and circumstantial evidence. There's no direct evidence in this case that Ms. Brewer, my client, ever crushed a pill, ever put it in a bottle.

Now, I would note when we talk about that, there's been a lot of talk about pink lemonade. I do -- well, y'all can use your common sense. I would suspect all of y'all know what pink lemonade looks like, and it's not red.

And I find it rather fascinating that the gentleman from SLED, who says he did the testing, referred to this as a red liquid. And you'll have the evidence back there with you. You can look at it. But, nonetheless, he referred to it as a red liquid. And I apologize, I'm kind of going backwards here, so bear with me.

Now, the other thing about that test is this, they

talk about these levels of drugs that were in the deceased child. And they want to say, well, there was Hydrocodone in the sippy cup, where parenthetically, the sippy cups were never tested. They never went to SLED.

But in testing that, he said, okay, yeah, yeah, yeah, there was Hydrocodone in there. How much? I don't know. I don't do tests like that, as I recall. I don't even have the ability to do a test like that.

So, now, they're saying let's make the quantum leap they tested positive for Hydrocodone. We don't know how much was in the cup. But, now, obviously, Ms. Brewer gave the pink lemonade. And whether that substance was a pink lemonade or not, I don't know.

The Solicitor makes some deal out of putting lemons in the pink lemonade, as I recall. But I further recall that there is no evidence that has come before you that when either of those sippy cups were collected by Officer Albrecht, none of them had any lemonade. And they want to make a big deal out of there was lemons in that. But it was not there.

The other thing I find particularly interesting, I don't know -- excuse me. I don't know how much liquid was in that sippy cup from start to finish. To my knowledge, nobody has really tested it.

But jumping up to Dr. Fulcher for a minute with his

opinion of how much Hydrocodone, OxyContin, whatever you want to call it, was in that cup, Sergeant -- he's not a sergeant -- Officer Albrecht then goes back to the Pickens County Law Enforcement Center and pours part of both sippy cups into a little bottle.

Now, I would submit, ladies and gentlemen -- and we don't know -- number one, we don't know if the pill was crushed up. But if it was crushed up, we don't know what the form would be. I don't believe I heard anybody, including Dr. Fulcher, testifying what form it being in. We talked about husk. I'm not going to belabor that point. But it would make sense if a pill was crushed. I think Dr. Fulcher agreed with me, there would be some husks in there. There were no husks found in the child's system.

And the point I make on that, if when you look at State's Exhibit No. 20 -- and you'll have the exhibits back there with you. I asked Deputy Albrecht, Do you see any particulates, that's particles, of anything in that sample you took out of that sippy cup?

No.

I asked the SLED chemist, toxicologist, whatever he is, Were there any particles in there?

No.

Now, I would submit, ladies and gentlemen, if, as

Dr. Fulcher said, one to one and a half pills -- and, again, we don't know how much liquid is there the cup. I would suggest to you it's kind of like putting sugar in water. It doesn't all just immediately dissolve. There would be particulates floating around, which there were not.

Now, the other point I would make, it could have dissolved if it had been put in the cup hours before. That would only make sense. But for it to dissolve as quickly as the State would have you believe and there was that amount, I would still submit to you there would be particulates in that cup. So we talked about that.

I want to jump up to Dr. Fulcher here a little bit. And, again, I apologize to you. I'm jumping around a little bit here. But Dr. Fulcher's testimony, he conceded that -- I believe he conceded. You take it the way you believe it. That if a substance, OxyContin, has been put in a drink 15 hours before -- 15 hours was just a number I picked out, and then the child drank it at a later time, it would still have the same effect and level of toxicity as he, Dr. Fulcher, said it was. And in that, I have a little bit of a problem.

What Dr. Fulcher found at the autopsy, as I recall -- and you take it as you heard it. He found the child had a rhinovirus, I think maybe another virus, maybe some

pneumonia, or something like that. He didn't test this child for any drugs.

What he did, he took samples and specimens and shipped them off to Pennsylvania to a lab, which he says he's used often. That's fine. But does he know how these specimens were testified -- or tested in this case? He doesn't have a clue.

I asked him, Do you know what protocols they follow? Do you know what kind of controls they had? I asked all that stuff. No, he doesn't know. Nor, I believe he said he did not know what condition his package that went FedEx, or whatever, arrived in Pennsylvania, however many miles away that is, and it's quite a few.

And something else I find really fascinating -- remember the burden of proof is on the State. Where is the person from this lab that did this testing? Why didn't they bring them down here and let them tell you how they did the testing, what the protocols were, what the controls were, how they prevented contamination? Why did they not bring those people in? Certainly, again, the burden of proof is on the State of South Carolina.

Let's talk a little bit -- which we could talk. I guess you have to listen and I talk. Let's -- let me talk a little bit about Angela Brewer and they're making a big deal out of her demeanor. She was frantic at the

hospital, everybody testified to that.

Now, they talk about the reenactment. And, again, I would suggest to you, ladies and gentlemen, that according to one of the witnesses, I believe it was Mr. Nichols from DSS, during the reenactment, he said she was up and down. Now, you've got the video. I suspect if you want to see it again, that is, certainly, possible. You might have to come out here and watch it and listen to it, but that is possible.

But you've seen the reenactment. And what I find fascinating throughout this case is how cooperative Ms. Brewer was. They asked her to do a reenactment. She did it. They asked her to give a statement to Detective Hendricks. She came in under her own steam and gave it. Totally cooperative.

She was asked by Detective Burgess and Agent Cauthen to come in again and give a statement. And she fully cooperated. On the last statement to Rita Burgess and Agent Cauthen, she said, I don't have a ride. You come and get me and I'll come in. That's exactly what she did.

Now, the demeanor, I would suggest to you, ladies and gentlemen, you take it as you saw it, was a tearful, not remorseful, a tearful reaction to this entire tragic event. And I can't really imagine anything worse than having a child die. The only thing I can think worse than

that is being charged with that child's death. And if you are responsible for that child's death, would you be that cooperative with law enforcement? I suggest you would not be.

His Honor is going to charge you on the Defendant's statements. I'm not sure exactly how that charge goes, but you listen to it. Obviously, they have come in via the video, via the reenactment, all of that stuff. But simply because they are in, you can give those statements such credibility, you can weigh the statements, you can accept them. You can ignore them, or take part of them and not take part of them, whatever. And I think his judge -- His Honor will touch on that.

But especially, ladies and gentlemen, I ask you to look at the interview with Detective Burgess and Rita Cauthen -- I'm sorry, Agent Cauthen. Look at that. You saw the video of Sergeant Hendricks. You saw the video of Rita Burgess and Cauthen.

Part of what I think His Honor is going to charge you with, you must determine for yourself, number one, whether the Miranda warnings were given. Number two, I believe is were they knowingly and intentionally waived? And, number three, whether the statement given was voluntary. I'm not going to belabor that. I just want you to look at that and think about Ms. Brewer's demeanor and her speech

patterns during that interview. And you decide whether it was knowingly and intelligently given. You decide whether the statement was voluntary.

And, indeed, on that case -- and, again, you can see it. But I submit to you that Detective Burgess directed Ms. Brewer where to sign the waiver. That is that she would talk. Is that freely and voluntarily, knowingly and intelligently? That's your determination.

On the day in question, there's been a lot of different testimony or, at least, the State has tried to elicit testimony that Minor was fussy that day. I don't recall any testimony that he was fussy that day, maybe you recall something. I didn't hear anything. They heard from his mother before they left for her to go to work and then on to Georgia that he was doing what he normally does. He was playing. He seemed to be fine. Robby Brewer, the step-grandfather, said he saw him briefly before he went to work. He was doing what a child would do.

Dr. Fulcher, when asked about even though he had these viruses, number one, would that slow him down. And he said, Well, it might slow him down a little, but it's not going to really slow him down that much. He would still do what he normally does and go about his business.

The reason I bring that up is the State wants you to

believe that this child was fussy, irritable, upset, whatever, and that Ms. Brewer then medicated him. I don't recall any testimony to that. I don't recall any evidence to that, that he was fussy or upset. Momma said he wasn't. Ms. Brewer, I believe in her statement, said he wasn't. Michael Lusk, I think he said he wasn't.

So I would submit to you that there's no evidence that he was fussy or upset. And Dr. Fulcher said dealing with these infections he had, he would not necessarily run a fever. So even though he had this stuff, according to Dr. Fulcher, the State's expert, that would not slow this child down. It would not really give him any indication or give anybody any indication that he was sick. And he was sick. There's no two ways about that. But not that it would go to the point of slowing him down.

Now, this was a crowded household. There were four adults and four children living in a double wide.

Ms. Brewer, in her interviews, in her statements readily and openly acknowledges that she had a prescription for OxyContin. No question about that. She, also, said she kept it secured.

Callen Harrison, also, had a prescription for OxyContin. She says it wasn't in the house. That's a credibility issue and that's for y'all to decide. You can decide whether it was or not, whether to believe her or

not. That's totally up to you.

Again, remembering, however, and according to Dr. Fulcher, that if something had been put in a cup 15 hours before and not -- what's the word -- not drank, I guess. I'm not sure that's good English. But not drank, but someone drank it at a later date, that would still have the same effect.

And jumping back to SLED just for a moment. I may have touched on this. My mind goes in a thousand different directions sometimes. They made a big deal of the pink lemonade. The SLED chemist said, I can't tell you if that's pink lemonade. I don't know. To him, it was a red liquid. That was it. So it's up to you to decide whether or not -- based on what you've heard today, whether or not that was pink lemonade.

Ms. Brewer's doctor came in and testified. I don't remember his name right now, hopefully, y'all recall. His name is not particularly that important. But what I would note is that when asked about Ms. Brewer's pill counts, he said they were all -- they were always good. He had no problem with pill counts. Not only that, he said her blood tests, her blood levels -- I think there was something else he said, but they were all consistent with her, as I recall, taking her medication as prescribed.

Now, they make a big deal out of Robby Brewer and his

admission. And, as far as I know, that's what he said. He did not -- and I don't believe there's any testimony, ladies and gentlemen, that he took a half of an OxyContin. He was tested for Hydrocodone. But I gather the State is trying to portray to you that he took half of one of her OxyContins. And we know that altering OxyContin from the pill capsule it comes in is not a good idea. So simply because there was Hydrocodone in the system does not mean that he took an OxyContin.

Now, I'm kind of through with rehashing what I've seen with the case. When I talked to you on Monday, I talked about presumption of innocence. And, again, ladies and gentlemen, that is not -- when we talk about presumption of innocence, that is not legal theory. It is not legal mumbo jumbo. It is a substantial right that is afforded to every citizen of this country who is charged with a crime. And until or unless the State proves beyond a reasonable doubt, Ms. Brewer remains shrouded in that presumption of innocence. It is still there.

And they have to prove it -- "they" being the State has to prove it beyond a reasonable doubt, not a mere suspicion, not that she was just there all day. And that's what they're really trying to say is she was there all day.

They're asking the 12 of you -- 14 of you for the

moment, but only 12 of you will, actually, deliberate. What they're asking you to do is make the quantum leap that because she was there, she was the only one there, she did it. I don't consider that, ladies and gentlemen, proof beyond a reasonable doubt. It might raise a suspicion, but not proof beyond a reasonable doubt.

It's obvious, at this point in time, that Ms. Brewer did not testify. And in that regard, I'm going to ask you to go back, way back to Monday, which seems like it's been a long time ago. Remember that oath you took. You will well and truly try this case based on the law and evidence that you got from this courtroom.

And His Honor is going to charge you, I believe, on Ms. Brewer not testifying. He'll charge you the law. And it's going to be that you are not to consider that, and you are not to talk about that in your deliberations. Because that kind of goes hand in hand with this presumption of innocence.

And I submit to you, ladies and gentlemen, when you get back there and start deliberating and it comes to your mind, boy, if I was charged with this, I probably would want to testify. No, no, no. That's a violation of your oath. And I know all 14 of you -- 12 will go and deliberate and take that oath very seriously.

So what I am going to ask you to do, ladies and

gentlemen, is in a little bit, after you hear His Honor's charge, not to dwell on the fact that Ms. Brewer was there and that this child died of an Oxy -- I forget what Dr. Fulcher called it, but of an overdose. Certainly, you can take that into consideration.

But look at the big picture, look at everything, everything you have heard, everything you have seen, all the evidence that has been presented to you. And once you look at all of that, I'm going to ask you, based on His Honor's charge, to consider this statement, well, maybe you raised a suspicious. But, at best, it is only a suspicion. That is not good enough under the law.

And, in this case, ladies and gentlemen, it is a tragic case. It's a horrible case. I will stand before you and say that I think every one of our hearts have been tugged and goes out -- my heart goes out to the parents of the child, certainly, Ms. Brewer. My heart can't go out to the child because of his tragic death.

But in this case, it is not to be decided on passion or prejudice. It is to be decided on the law and the evidence. And, in this case, ladies and gentlemen, you have no friends to reward. You have no enemies to punish. Yours is purely under the oath you took to determine whether or not the State has proven its case by the elements of the case beyond a reasonable doubt.

And I'm asking you, once you look at that and you look at this entire case, please, don't dwell on any one thing, but you'll come back with a verdict of not guilty.

Thank you so much for your time and patience.

THE COURT: All right. Ladies and gentlemen, I'm going to ask everybody to just stand for a second before I give my charge.

(Pause.)

CHARGE ON THE LAW

THE COURT: All right. You may sit back down now.

All right. This is the charge on the law.

And it's -- I told you in the beginning, the indictment charges the Defendant with homicide by child abuse. I remind you of the fact -- that the fact the Defendant was arrested, charged, and indicted is not something that you are -- is not evidence in this case, and not something that can be considered by you in determining the evidence of guilt in this case, nor does it create any type of presumption or inference. This document is simply the formal written charge against the Defendant that brings this matter into court. It's nothing more.

As I told you in the beginning, the Defendant has pled not guilty to this indictment. And that plea puts the burden on the State to prove that the Defendant is

guilty.

A person charged with committing a criminal offense in South Carolina is never required to prove herself innocent. I charge you that that is an important rule of law that the Defendant in a criminal trial, no matter what -- how serious the charges may be will always be presumed innocent of the crime for which the indictment was issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. And I'll discuss reasonable doubt with you more in just a few minutes.

This presumption of innocence does not end when you begin your deliberations. But it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is not merely a legal theory. It's not just a legal phrase to be used by lawyers and heard on TV. It is a substantial right which every defendant is entitled to, unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

As I told you in beginning of this trial, you and I have very distinct -- or very clear and very important roles. My duty is to preside over the trial of the case

and rule on the admissibility of evidence that's being offered in the case. You are only to consider competent evidence that was before you.

If there was any testimony ordered stricken from the record in the case during the trial, then you're not to consider that testimony. You're to consider only the testimony which has been presented from this witness stand and any exhibits which have been made part of the record, which will go back into the -- in your jury room with you, and any stipulations that counsel have entered into.

I have the duty -- the additional duty to charge you the law which applies to this case. I am the sole judge of the law. And it's your duty, as jurors, to accept the law that I charge you here now.

If you already have an idea what the law is, or what you think it should be, or that you picked up from any other source, then you are to disregard that. Because you have taken an oath that says you will apply the law that I'm giving to you now.

In every case tried before a jury, you are the sole and exclusive judge of the facts. I cannot intimate, state, or have any opinion about those facts, or comment on them. Because that would be invading your province as a jury. And if anything I have said during the trial makes you think that I have an opinion on those facts or I

have inferred that I have an opinion about certain facts, please, disregard that because that is not my job. That is your job to determine what the facts are based on the evidence.

Like I said, the law says I can't have an opinion on the facts. And, as jurors, it's your duty to determine the effect, value, weight, and truth of the evidence which was presented during this trial.

Now, reasonable doubt, that's a phrase that has been mentioned several times by me and throughout the trial. The State has the burden of proving the Defendant guilty beyond a reasonable doubt.

Some of you may have served as jurors in a civil matter, which has a totally -- or seen something on TV. That's a totally different standard. That's by the preponderance of the evidence. That does not apply here. But in criminal cases, again, that burden is much higher. It's beyond a reasonable doubt.

And what is reasonable doubt? Reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

There are very few things in this world that we know for absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible

doubt.

But if based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, then you must find her guilty. On the other hand, if you think there is a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find her not guilty.

Facts and circumstances that merely place upon the Defendant a grave suspicion of the crime charged, or that merely raises a speculation or conjecture of her guilt are not sufficient to authorize a conviction of the accused.

Now, there's two types of evidence which are considered in trials, direct and circumstantial. I'm going to define the two to you. Direct evidence directly proves the existence of a particular fact. It does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by direct or circumstantial evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If

these circumstances merely portray the Defendant's behavior as suspicious, then the proof has failed.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. That burden rests with the State, regardless of whether the State relies on direct, circumstantial evidence, or some combination of the two.

Now, let me talk to you a little bit about the credibility of witnesses. Now, you must normally -- necessarily, you have to determine the credibility of the witnesses that testified in this case. Credibility simply means believability. It becomes your duty, as jurors, to analyze and to evaluate the evidence and determine which evidence convinces you of the truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe part of the testimony of a witness and reject the remaining part of that testimony. Or you may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may, also, consider the appearance and manner

of a witness while on the witness stand.

In this matter, there's been a statement alleged to have been made by the Defendant and which has been admitted into the evidence of the case. While the Court has determined that the statement was admissible, I instruct you that you make the ultimate decision of whether or not the Defendant made the statement.

If the statement -- if the Defendant did make the statement, you must determine whether the statement was made by the Defendant voluntarily and of her own free will. That means the statement was not caused by pressure, force, fear, threats, coercion, or intimidation, or by hope or a promise of leniency, or a reward of any kind.

In determining whether the statement was voluntary, you should consider both the characteristics of the Defendant and the details of the questioning. Here is a list of factors which you can consider when determining whether such a statement was voluntary: The age of the Defendant, the Defendant's education or lack of education, the Defendant's mental ability or capacity, the Defendant's IQ or intelligence, the Defendant's background and environment, the place and length of the detention, the nature of the questioning, and the advice or lack thereof to the Defendant of her Constitutional rights,

which include but are not limited to the right to remain silent, that any statement could be used against her in a court of law, the right to have a lawyer present, that if she could not afford a lawyer, a lawyer would be appointed to represent her without any cost, and that she could stop making the statement at any time. You must consider all the surrounding circumstances before you give any weight to such an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, then you must give -- then you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the alleged statement. If you determine the alleged statement was not the free and voluntary statement of the Defendant, you should not consider that statement.

There, also, has been evidence -- there's been evidence presented that witnesses have made prior statements which are not consistent with the witness's present testimony. You may use this evidence to decide whether to believe the witness.

You may, also, use evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe the earlier statement or the testimony given at trial. If

the witness is shown to have knowingly testified untruthfully, you may consider this in determining whether to trust the witness's testimony as to other matters. You may reject all the testimony of that witness, or give all or part of the testimony the weight you think it deserves.

Now, we, also, had certain witnesses who were qualified as expert witnesses. And, at that time, I gave you a very similar charge to this, but I want to reiterate this because this is something for your consideration.

As I said, the rules of evidence normally do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. This is a person who by their education and experience have become expert in some art, science, profession, or some calling. And they can state an opinion as to relevant matters in which the witness claims to be an expert. They may, also, state their reasons for that opinion.

You should consider any expert opinion received in this case like any other evidence, and give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude the reason given in support of the opinion is not sound, or the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness has been designated as an expert. Further, you're not required to accept an expert's opinion even though it is not contradicted.

All right. I instruct you -- and this is very important. And I emphasize the fact that the Defendant did not testify is not -- and I repeat is not a factor to be considered by you in any way in your deliberations. And in your consideration of the question of guilt or innocence of the Defendant, it must not be considered by you in any manner whatsoever. A Defendant has the Constitutional right to remain silent. And the assertion of this right must not be considered by you in your deliberations.

I repeat, under your oath, you are to draw no conclusions whatsoever from the fact the Defendant in the case did not testify. The fact that this Defendant did not testify should not even be discussed in the jury room.

The burden of proof, as I have said, is on the State. The Defendant is not required to prove her innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, let's talk about intent. In order to establish criminal liability, criminal intent is required. For

example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt, as with every element of the crime.

Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There's no way to prove intent to a mathematical certainty. There's no way medical science can dissect a person's brain and determine what the person had in mind.

So the law says that criminal intent may be inferred from the circumstances shown to have existed at the time. This is how you, the jury, make the determination whether or not the element requiring intent was present.

It is not necessary to establish intent by direct and positive evidence. But intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Now, criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed at the time. Criminal intent can arise from action or failure to act. But it must arise from

extreme negligence as will be defined in just a minute in this charge, which is the equivalent of criminal intent.

Now, there's, also, been a reference to homicide by witnesses and testimony by one or more of the witnesses. This term used in this context is from a medical standpoint. It is not the same definition which you must apply in your deliberations, which I'm going to be giving you in just a minute.

In determining whether the Defendant is guilty, you must apply the elements and definitions as I will instruct you as to what the elements of this charge are, not based on the term that was used by any of the witnesses.

All right. As indicated the charge is homicide by child abuse or neglect. That's what the Defendant is charged with. And the State must prove beyond a reasonable doubt that the Defendant caused the death of a child under the age of 11 while committing child abuse or neglect.

Child abuse or neglect is an act or failure to act which causes harm to the child's physical health or welfare. Harm to the child's physical health or welfare means that the Defendant inflicted or allowed to be inflicted on the child physical injury.

The State must, also, prove beyond a reasonable doubt that the death occurred under circumstances showing an

extreme indifference to human life. An extreme indifference is defined as a mental state akin to intent characterized by a deliberate act culminating in death. So that's the charge, and that's the elements the State must prove.

All right. At this time, Madam Forelady, I'm going to hand you the verdict form and go over it with you.

All right. If you will look at the top part, that's just merely the caption of the case and the indictment number. It says, Please answer the following question: As to the charge of homicide by child abuse, indictment number 2016-GS-39-2265, we, the jury, unanimously find the Defendant, Angela Denise Brewer, check one. You have to either check -- you're going to have to -- after you -- it's a unanimous decision, either guilty or not guilty.

All right. There's no significance in the order of those. We have to put them in some order. So, please, pay no attention to the significant -- or what order they're in.

But, basically, if you feel that the State has met its burden beyond a reasonable doubt, then you would find the Defendant guilty. If you find after consideration of all the evidence that the State has not met its burden beyond a reasonable doubt, then you would check not guilty.

Now, you would, also -- at the time you've reached a verdict, you will sign as foreperson and you will date it.

Now, I must remind you that the verdict is unanimous. That means all 12 of you must decide what the verdict is and y'all must agree on it.

Now, a verdict cannot be based on sympathy, passion, prejudice, emotion, or any other consideration but the evidence that is presented.

Now, a couple of things I want to talk about. You have -- one of your duties as foreperson is if you have any questions or comments -- or questions, then you need to write those on a piece of paper and hand them to the bailiff. The bailiff will bring those to me. And I will either respond by writing back to you, or bringing you out here for further instructions.

I will, also, tell you that a lot of time the questions we get from jurors is, we would like to know what such and such report said, or something. You only will be allowed to consider what is in evidence at this time. In other words, that's what the -- that's all that's in evidence. That's all that you can consider. Any additional reports that may be helpful or you may want to hear, you can't hear that. It's only for what's in evidence here.

Now, also, I want to talk to you about the timing.

All right. I realize it is now 20 until 5:00. And I made a decision that we would put this before you today. As it turns out, it was an ambitious decision, and I realize that now. But -- and I'm going to have to take some direction from you.

What I want y'all to do is when I give you the signal to begin your deliberations, I want y'all to deliberate. I don't want to create any undue hardship. But I would like for y'all to begin your deliberations.

Madam Forelady, if you have specific concerns after talking with your fellow jurors, or any restraints, then you need to let me know how long -- I want us to do this for a reasonable amount of time. I don't want anybody to be rushed or feel like there's any time constraints. I want y'all to feel that y'all can take as much time as y'all need to take to make this decision. Because this is a very important decision for both the State and the Defendant.

So I don't want anybody to feel rushed or pressured in any way. If at some point, you feel we're going to get too long in this evening, then you just need to let me know. And we can come back in the morning and continue deliberations at that time after I give you further instructions. So I'm just going to have to rely on you to communicate with me as you feel necessary.

Now, let's see. My alternates, you and you. This has been a little bit different. I want to make -- I want to tell you one thing.

Well, first of all, unfortunately, you're not allowed to stay in the room during deliberations or participate in the deliberations. But that does not mean that your role in the matter has not been important, because it is. It's kind of like the backup quarterback in the big game. That backup quarterback may not play, but if that number one quarterback gets hurt, then that backup quarterback is crucial.

And that's like I've been in many trials where, for some reason, a juror could not continue and that alternate juror had to step in. Otherwise, we would have had to declare a mistrial. So even though you can't participate, your role has been crucial in this matter. But, unfortunately, you cannot participate further.

Once you have reached a verdict, you're to let -- you're to knock on the door and let the bailiff know. And then I will call you out after we've gathered everybody together, and stuff like that.

So, at this time, I'm going to ask that you put -- put the verdict form right there on the bar. You're going to go back. But you're not going to be able to discuss the case quite yet. And the signal is -- one, I've got to

make sure that I've told you all the law that I need to tell you. And if there's any corrections to that, I may need to bring you back out here and tell you some additional law.

All right. If there's no additional law for me to tell you, then I will give you a signal when you can deliberate -- let me see if I can get this out -- that you can begin deliberations. And that is, you will get the verdict form and the exhibits. And the bailiff is going to exchange those for the two alternates, so -- and bring the alternates out and give you the exhibits and the jury [sic] form. At that point, that's the signal that you can begin discussing the case among yourselves.

So, at this time, I'm going to ask that you retire to your jury room and await for further instructions or my signal, so.

(WHEREUPON, the jury was excused from open court at approximately 4:41 p.m.)

THE COURT: Any exceptions or objections from the State?

MS. HINTON: No, Your Honor.

THE COURT: Any objections or exceptions from the Defendant?

MR. DEJONG: Not as given, Your Honor.

But I would renew my request for a mere presence

charge.

THE COURT: All right. Okay. Well, make sure you have all the exhibits.

(Pause.)

THE COURT: All right. We'll be at ease until further notice. Don't go far.

(WHEREUPON, the proceedings were recessed at approximately 4:44 p.m.)

(WHEREUPON, Court's Exhibit No. 4 was marked for identification and admitted into evidence.)

NOTE FROM THE JURY

THE COURT: All right. Court's Exhibit No. 4, We, the jury, would like to view State's Exhibit Nos. 16, 17, and 18.

Are those the videos?

MS. HINTON: Yes, Your Honor.

THE COURT: I guess we're going to have to have it in the courtroom.

MS. HINTON: Yes, Your Honor.

THE COURT: And all of those together will be about an hour and a half, all the videos?

MS. HINTON: Probably close to that, yes, Your Honor.

THE COURT: I'm trying to figure out -- there's no way we can do that and all the other stuff we're supposed to do tomorrow.

THE CLERK: Your Honor, could they view the videos in courtroom four?

THE COURT: We don't have a way to put them -- have them to listen to them --

MS. HINTON: Well, that one is redacted, basically, by hand.

THE COURT: That's right. But the other two --

MS. HINTON: The other two, we could. We would have to remove some things from our laptop.

THE COURT: Okay. We'll figure that out.

Given the time of day, we ask to adjourn today and begin deliberations again in the morning. We would like to begin tomorrow at 10:00 a.m., if possible. Thank you, signed the Foreperson.

MR. DEJONG: The only -- and that may cover -- we had one juror that was to be protected tomorrow?

THE COURT: No. She came up and we excused her during the process.

MR. DEJONG: Okay. I just wanted to make sure.

THE COURT: All right. I'm going to bring them out and give them instructions -- 10:00 is the starting -- I'm going to ask them.

SOLICITOR BAKER CLEVELAND: Judge, if I may?

THE COURT: Yes.

SOLICITOR BAKER CLEVELAND: Would you consider

letting them deliberate on the third floor outside of courtroom four? We can even present the video -- the State can even present the videos up there in courtroom four. Obviously, they would be sealed off. There wouldn't be court going on in there.

But that would allow -- and Your Honor can be up there, too. That would just allow the mass to kind of be down here. We can, obviously, take any matters up down here. But just for purposes of deliberation -- and I think, honestly, by 10:00 in the morning, the crowd usually starts to leave by then. Anybody that's not going to do anything will be sent home.

THE COURT: Is that presentable?

Does that present a problem, Mr. Clerk?

THE CLERK: No, sir.

THE COURT: Okay. Bring them out.

All right. So I'll tell you what we're going to do. We're going to meet them here and then take them up. That way they don't have to --

(WHEREUPON, the jury came into open court at approximately 6:02 p.m.)

THE COURT: All right. That was my prediction, what y'all were going to do. I said they will come back at 6:00 and want to come back tomorrow, which is perfectly fine. That's what I wanted you to do is communicate.

All right. Let me tell you a couple of things that we're going to do. One is let me just kind of read it for the record, We, the jury, would like to view State's Exhibit Nos. 16, 17, and 18. Obviously, we'll set that up in the morning.

And because we have some other things going on, we may move y'all to the third floor jury room so we can -- anyway, we'll work out the logistics of that in the morning. Given the time of day, we ask to adjourn and begin our deliberations again in the morning.

Y'all have requested 10:00 a.m., is that -- does somebody need -- is that pretty firm on that?

JUROR #208, SARAH WILLIAMS: Yes, Your Honor. We have personal obligations that the jury has requested 10:00 a.m.

THE COURT: All right. So I'm going to ask that you be back in this jury room at 10:00 a.m. And then what we're going to do is we're going to move you as a group at that point.

So still just come back just like you've done every day. And you'll see a flurry of activity going on in the hallway, but just make sure -- the bailiffs will be out there waiting for you, so grab them. And then once everybody gets here, we will move y'all to the next room up there.

All right. Once y'all are back there -- and I realize you want to see these exhibits. And we're going to make arrangements for that. But once y'all are all together and have moved up there, y'all can continue your deliberations at that point.

It may take us some time to get everything set up as far as those exhibits that you want to hear. But that doesn't mean you can't continue talking about the case once y'all are all together in that jury room. All right. So that way y'all can do that.

So that -- we're good with that. Let me enforce -- now, this is even more important than before. It is very -- I know y'all have already started discussing the case among yourselves and began your deliberations. But it is very, very important that you do not discuss the case, you know, as of this point until you get back in the jury room, not only among yourselves, but your family members and friends. I know that's very difficult.

I'm sure that many of you are probably going to church tonight. And somebody is going to say, what have y'all been doing today? It's, like, well, you just can't tell them. And that's very, very important.

It's, also, very important -- do not do any type of research. I know you probably have a lot more questions than you probably did before. It is not permissible. If

you have any questions about anything, then that's what you're to ask me tomorrow. Okay.

Do not pay any attention to any media coverage. I'm -- I haven't seen the cameraman back, so I'm not sure there is anything out there. But, again, if there is, do not pay attention to any media coverage. And, also, again, if you receive any contact from anybody other than the Clerk's Office, you know, please, let the bailiffs know when you get here.

And it's, also, very, very important that all 12 of you come back tomorrow. So if there's any issues about that, make sure you call the clerk. Because that's very important once the deliberation process has begun.

So I'm going to let y'all go home. And y'all can come back tomorrow. And, again, you know, I want to reiterate that there's no pressure on time for y'all. Y'all need to take the time -- as much time as y'all need to deliberate on this.

So -- but I'm glad y'all, at least, got a start on it today. Y'all can come back tomorrow fresh and start anew.

So, at this point -- did I cover everything, answer all the questions that you would have as far as --

JUROR #208, SARAH WILLIAMS: Yes, Your Honor.

THE COURT: Our other option is to put you in a hotel tonight. No, we don't do that. You only see that on TV,

but I've never had to do it. Go back to your jury room.

Again, you're coming back in here. And then we'll move you in the morning when all of y'all get here. If y'all get here a little before 10:00, if everybody's here at 9:45, or something, then we can move you at that point, so.

All right. Thank y'all.

Have a good evening. And we will see y'all in the morning.

(WHEREUPON, the jury was excused from open court at approximately 6:07 p.m.)

THE COURT: All right. And let's figure out -- my thoughts are two of the statements they can -- I think they can be reviewed -- if I'm comfortable, they can be reviewed without -- and we can put them in the courtroom up there and let them review them. I know that one, we're going to have to go in there and --

MS. HINTON: Right.

And the other one, Judge, we did cut out just some silence. You may just want to let them know what we cut out out here so that they can do the same back there to save some time.

THE COURT: Well, no, we need to make sure. Anything we're going to do, we need to do exactly the same thing we did in here. So it's just going to be some logistical

issues tomorrow, but we'll work through that.

MS. HINTON: Okay. Well, that was on the one where there wasn't anything other than her writing her --

THE COURT: Right. But we'll still have to go in and stop -- let me think through that.

MS. HINTON: Okay.

THE COURT: Anything else before we break for the evening?

MR. DEJONG: Your Honor, maybe we need to address this in the morning. But I am not comfortable with them having a laptop, unless I know it is a virgin laptop. And it concerns me. I don't think the Solicitor --

THE COURT: No, no. I -- we would have -- all right. Let me think through all that. I know in Greenville, they, actually, have one that's totally wiped out.

MS. HINTON: And we don't, Your Honor, unfortunately.

THE COURT: Well, we'll think about that and see what we can do in the morning.

THE CLERK: Your Honor, I do have a county laptop --

THE COURT: Well, the problem is -- I bet you can't do that video. The way this video is set up, it wouldn't work on anything but that computer.

MS. NEWTON: Well, and that is the one that we have to redact anyway.

THE COURT: The best laid plans.

THE BAILIFF: Yes.

THE COURT: And take this note. And we'll have them in in about 10 minutes.

(Pause.)

THE COURT: Are the videos ready?

MS. NEWTON: Yes.

THE COURT: Tell them when they're ready to come in and view the videos to let us know.

THE BAILIFF: Okay.

(Pause.)

NOTES FROM THE JURY

THE COURT: All right. This is a note from the Foreperson. She writes really nice notes. I mean, they're all very legible.

To clarify timelines and ensure we have an accurate count, we request to take notes during the viewing of State's Exhibit Nos. 16, 17, and 18. Thank you, Sarah Williams, Foreperson.

This is my thought. This is what I usually -- I mean, I'm not huge on the note taking thing. But my problem -- I don't know.

What are y'all's thoughts?

MS. HINTON: I don't really have a problem with them doing it, at this point, as long as you do your standard instruction of, you know, you remember it as you remember

it sort of thing.

THE COURT: Yeah.

MR. DEJONG: Yeah. That's -- everybody is entitled to their own notes, and all of that good stuff.

THE COURT: Okay. Well, I'll go with that.

Do they have pads? They have plenty of candy.

THE CLERK: Are the pads and pencils up here?

THE BAILIFF: I'll check.

(WHEREUPON, Court's Exhibit No. 5 was marked for identification and admitted into evidence.)

THE COURT: Okay. Next note. This will be -- this will be Court's Exhibit 6. We request to have the written instructions and charge given to the jury at the conclusion of court yesterday prior to deliberations.

I'm not inclined to do that. I mean, what I will do is tell them when they come out if they need any portion read to them, then I'll be glad to do that. I know some judges do that, but I just haven't crossed that barrier yet. All right. And I'll just explain that to them.

What I will do is I will tell them after they've watched the video and they've gone back in there --

I'll quit talking so you can do --

(WHEREUPON, Court's Exhibit No. 6 was marked for identification and admitted into evidence.)

THE COURT: What I will do is I will tell them after

they've watched the videos and they have gone back, they can advise me of which portion of the jury instructions they want me to review with them. And I'll be glad to do that upon their request. And I'm not going to do that now because a lot of times what happens, when they go back there, they decide what they, actually, need.

MS. HINTON: Sure.

THE COURT: Are we ready for the jury to come in?

MS. HINTON: The State is, Your Honor.

MR. DEJONG: The Defense is ready.

THE COURT: What we've got is we're going to watch three videos. And y'all's are all set up -- I know the first one is -- it's in toto?

MS. HINTON: Correct.

THE COURT: The second one is it goes up to a certain point and then there's that huge gap. And the third one is the one where you have to be very active?

MS. HINTON: Correct.

THE COURT: All right. Bring them in.

(WHEREUPON, the jury came into open court at approximately 10:33 a.m.)

THE COURT: Good morning, ladies and gentlemen.

I hope everybody had a pleasant evening.

And, Madam Forelady, I want to commend you. You have the nicest, neatest, politest notes I've ever gotten.

All right. We have the videos. And the reason we weren't able to just send these back to you is because a couple of them have to -- there were some redactions, and that's why we have to watch them in here.

All right. One of your notes was to clarify timelines -- now, do you all have pen and paper?

(WHEREUPON, the jurors indicated in the negative.)

THE COURT: Do you have pen and paper for them? They're going to be able to take notes.

THE BAILIFF: We'll have to get it. We don't have it here.

THE COURT: All right. I thought that's what we had in place already.

Do we have note pads coming?

THE BAILIFF: They're coming.

THE COURT: Clarify timelines and ensure we have an accurate count, we request to take notes during the viewing of State's Exhibit Nos. 16, 17, and 18.

All right. I will allow you to take notes, but I'm going to have an instruction on that.

You can take notes during the trial of a case. However, you must remember that some people are better note takers than others. I know I'm a horrible note taker. Jurors notes should not be given any greater weight than the recollection of other jurors. In other

words, if you remember something one way and these people over here next to you say, well, my note says that. You need to rely on your memory. The recollection of individual jurors should be considered as reliable as notes taken by any other juror.

I, also, warn you that when you're taking notes, you may not notice the body language of a witness, which could be used in deciding that witness's credibility. So I realize it will assist you, but it's only a tool. So it's not to take the place of your own memory -- collective memory.

All right. The next note was, We request to have written instructions and charge given to the jury at the conclusion of court yesterday prior to deliberations.

What I -- I do not send the written charges back. I think some judges do and some judges don't. I've always taken the position not to. But when you get back -- after you've seen the videos, if you want any particular portion read back to you, then I can bring you back in and give you whatever charge you need.

So let's just do it that way. And so, you know, if there's any particular portion that you need, then I'll be glad to recharge you on that part.

All right. Well, as soon as we get the note pads, then we'll go ahead and proceed.

(Pause.)

MS. HINTON: I think we're a few short, Judge.

(Pause.)

THE COURT: All right. Let's proceed.

Thank you for your patience.

All right. This will be State's Exhibit No. 16; correct?

MS. HINTON: Yes, Your Honor.

THE COURT: All right.

(WHEREUPON, State's Exhibit No. 16 was played in open court.)

THE COURT: All right. Now, State's Exhibit No. 17?

MS. HINTON: Yes, Your Honor.

(WHEREUPON, State's Exhibit No. 17 was played in open court.)

THE COURT: Does anyone need to take a break? The next one is about 25 minutes.

JUROR #208, SARAH WILLIAMS: Your Honor, I think we'll continue.

THE COURT: Well, I had somebody shake their head.

JUROR #208, SARAH WILLIAMS: Don't take a break --

UNIDENTIFIED JUROR: Yeah.

THE COURT: Okay. Let's just take a quick break. The next one is about 27 minutes. We'll take a quick break. We've been sitting here for a while.

(WHEREUPON, the jury was excused from open court at approximately 11:40 a.m.)

THE COURT: We'll be at ease for about five minutes.

(WHEREUPON, a break was taken.)

THE COURT: Are we ready?

MS. HINTON: The only thing, Judge, is I can't see really well. So I can't see the time. So do you think it will be distracting if I sit here so I can actually --

THE COURT: No. That's fine. Yeah, whatever you need to do.

So based upon my rulings, y'all have agreed to the period of time you're cutting out?

MS. HINTON: Correct.

THE COURT: All right. Are they ready? If so, bring them in.

(WHEREUPON, the jury came into open court at approximately 11:51 a.m.)

THE COURT: All right. I, also, want to let you know that we have ordered lunch. I believe --

Usually it's, pizza, isn't it?

THE CLERK: Uh-huh.

THE COURT: All right. Pizza. But we have ordered lunch. And it should be ready when you get back there or shortly thereafter.

All right. Now, this is State's Exhibit No. 18?

MS. HINTON: Yes, Your Honor.

THE COURT: You may proceed.

(WHEREUPON, State's Exhibit No. 18 was played in open court.)

THE COURT: All right. Ladies and gentlemen, those are the three exhibits you wanted to review. So if you'll go back in your room and continue deliberations. Even while you have lunch, you can continue to deliberate.

And once you have further discussions, if you want me to recharge any portion of the jury charge, then you just send me a note -- all right -- or any other notes and questions you have.

All right. At this time, you can go back to your jury room.

(WHEREUPON, the jury was excused from open court at approximately 12:31 p.m.)

THE COURT: All right. Any objections or exceptions from the State?

MS. HINTON: No, Your Honor.

THE COURT: From the Defense?

MR. DEJONG: I didn't like it the first time, Your Honor, and even less the second time. But no objection to what was played, Your Honor.

THE COURT: I guess we'll be at ease until further notice.

(WHEREUPON, the proceedings were recessed at approximately 12:33 p.m.)

(WHEREUPON, Court's Exhibit No. 7 was marked for identification and admitted into evidence.)

THE COURT: We're back on the record in State v. Brewer.

I've got a note marked as Court's Exhibit No. 7. We request to have the charge regarding reasonable doubt and extreme indifference to human life explained or written. Thank you, Foreperson.

My thoughts are to read the entire section I said on reasonable doubt in my charge and then reread -- they don't ask for the whole charge on homicide, just, specifically, extreme indifference, which the last paragraph said, The State must prove beyond a reasonable doubt that the death occurred under circumstances showing an extreme indifference to human life. An extreme indifference is defined as a mental state akin to intent characterized by a deliberate act culminating in death. So that's what I will read to the jury.

Any additional comments or suggestions?

(WHEREUPON, there was no response.)

THE COURT: Anything else before we bring the jury in from the State?

MS. HINTON: No, Your Honor.