

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Steven H. John, Circuit Court Judge

JULIA SHAWNETTE GORMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000908

APPENDIX

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BRENDA R. BABB
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1 The Court: We've got sixty jurors so it's going
2 to be sort of packed in here. I've asked all the
3 spectators, the bailiffs to get them out so we can seat as
4 many of our jurors as we can. Spectators, of course,
5 they're welcome to stand in the back as best they can for
6 right now until we have this jury selected.

7 Are there any questions for voir dire which have
8 been prepared by either side?

9 Ms. Grabert-Lowenstein: Those are the ones that
10 we already went through, Your Honor, that the defense on
11 behalf of Mr. Palmer prepared.

12 The Court: Do you have a copy of them? My law
13 clerk is being sworn in today and --

14 Ms. Grabert-Lowenstein: Okay, I believe so,
15 Your Honor, just a moment.

16 The Court: Candice, do you have it?

17 Ms. Lively: I do, Your Honor, and what I've
18 got, and I'll just show it to defense counsel as well, are
19 the ones that I kept my notes on, scratched out the ones
20 that you said can be asked and then I added in the ones
21 that you asked at the very end.

22 The Court: Did you have any, Ms. Lively?

23 Ms. Lively: No, Your Honor, mine are pretty
24 much encompassed in what she has, I believe there were
25 police questions, DSS questions, so that's pretty much

1 along with your standard voir dire.

2 The Court: Ms. Lively, do you have the
3 indictments, or copies that I might can use?

4 Ms. Grabert-Lowenstein: This is consistent with
5 my notes, Your Honor.

6 Ms. Lively: If you'll hand that up to Judge
7 Hyman, please.

8 The Court: I apologize for that but we're just
9 going to have to --

10 Ms. Lively: Your Honor, if you recall we had a
11 pretrial motion regarding the indictments where you agreed
12 that the State would be allowed to amend those indictments,
13 the indictments to state that the date of homicide by child
14 abuse instead of July the 11th that it would be July the
15 14th, and I'm just asking whether or not Your Honor is
16 going to handwrite that change to the indictment for the
17 record?

18 The Court: That's what I intend to do.

19 Ms. Lively: Yes, sir.

20 The Court: These are not the originals that I
21 have anyway, are they, yes, they are.

22 Ms. Lively: No, those are the originals, Your
23 Honor.

24 The Court: July the 14th?

25 Ms. Lively: July the 14th, 2008, instead of

1 July the 11th, 2008.

2 The Court: I'm going to change it from on or
3 about July the 14th, okay, and I'll take out through July
4 the 14th, 2008, okay?

5 Ms. Lively: Yes, sir.

6 The Court: And that's Ms. Gorman as well July
7 the 14th?

8 Ms. Lively: Yes, sir, in regards to the
9 homicide by child abuse and the homicide by child abuse
10 aiding and abetting, so there should be four indictments
11 that will reflect the on or about date of July the 14th,
12 2008, and the unlawful conduct towards a child is those two
13 indictments are not included in the amendment.

14 The Court: All right, I have, wait a minute now

15 --

16 Ms. Lively: Yes, sir.

17 The Court: I have indictment number 2194,
18 homicide by child abuse as it pertains to Julia Shawnette
19 Gorman, that one should be July the 14th?

20 Ms. Lively: Hold on, let me just see cause I've
21 got them, 2194, correct, Your Honor, homicide by child
22 abuse against Julia Gorman.

23 The Court: Okay, and I have unlawful conduct
24 towards a child as to Julia Shawnette Gorman July the 11th,
25 2008.

1 Ms. Lively: Correct, Your Honor.

2 The Court: That would be indictment number 841.

3 Ms. Lively: Eight forty-one, correct.

4 The Court: Should that one be changed to July
5 the 14th? .

6 Ms. Lively: That one should be like the one for
7 Mr. Palmer's which is July the 11th, 2008 through July the
8 14th, 2008.

9 The Court: Well this one unfortunately just
10 says on or about July the 11th.

11 Ms. Lively: Yes, sir.

12 The Court: But the amendment was to change it
13 to July the 11th through July the 14th?

14 Ms. Lively: July the 14th, correct. They
15 should all reflect July the 14th in some form or fashion,
16 and the only one that has a time span are the unlawful
17 conduct towards a child from July the 11th to the 14th.

18 The Court: All right, I want to make sure I got
19 it. The next one I'm looking at is an indictment for
20 homicide by child abuse, again as to Ms. Gorman, and this
21 one says July the 14th, the 11th, 2008, and it's changed to
22 July the 14th, 2008.

23 Ms. Lively: Correct, Your Honor.

24 The Court: Is that correct?

25 Ms. Lively: Yes, sir.

1 The Court: So they're two, all right, one is
2 aiding and abetting; is that right?

3 Ms. Lively: Correct.

4 The Court: All right, let me get the ones as to
5 Ms. Gorman.

6 Ms. Lively: The aiding and abetting is the
7 2194, the first one that you --

8 The Court: Okay, all right, all right, now I
9 have one as to Mr. Palmer ---

10 Ms. Lively: Yes, sir.

11 The Court: That indictment is 2196?

12 Ms. Lively: Yes, sir.

13 The Court: Correct, that should be the 14th?

14 Ms. Lively: Yes, sir.

15 The Court: All right, that one is the 14th?

16 Ms. Lively: Yes, sir.

17 The Court: I have one for Mr. Palmer, aiding
18 and abetting 11th through the 14th; is that correct?

19 Ms. Lively: No, sir, that should be July the
20 14th as well.

21 The Court: And through July 14th to be taken
22 out?

23 Ms. Lively: No, it should just say on or about
24 July the 14th on indictment 2195.

25 The Court: Okay, all right, and then I have one

1 for unlawful conduct and it says, it is actually 4120, and
2 it is for Mr. Palmer, unlawful conduct towards a child and
3 it originally says July the 11th but it's July the 14th; is
4 that correct?

5 Ms. Lively: No, sir, it's July the 11th.

6 That's the one where we're claiming that there were
7 injuries, or there were problems, with the child over the
8 weekend.

9 The Court: Okay, that one says only July the
10 11th. Okay, all right.

11 Mr. Galmore: Your Honor, I need, respectfully I
12 need to enter my objection. I know the Court had ruled on
13 this issue previously, but it is my position that changing
14 the dates of the alleged offense is the date is a crucial
15 issue and it's a critical part of this case when these
16 injuries were inflicted and for the State to be allowed to
17 change those without going back before the grand jury I
18 think these indictments need to be quashed. I think they
19 need to re-indict.

20 The Court: All right, thank you very much. All
21 right, Ms. ---

22 Ms. Grabert-Lowenstein: Your Honor, if I could
23 just the record, I know my objections were on the record
24 previously but I'll join Mr. Galmore's objections.

25 The Court: All right, very well, okay, and voir

1 dire this sheet, of course my standard voir dire should be
2 sufficient; is that correct?

3 Ms. Lively: Correct, Your Honor.

4 Mr. Galmore: Yes, sir.

5 The Court: Very well, any reason why we should
6 not bring in the jury and begin the jury selection process?

7 Ms. Lively: No, Your Honor, the State is ready
8 to proceed.

9 Mr. Galmore: We're ready to proceed, Your
10 Honor.

11 Ms. Grabert-Lowenstein: We're ready to proceed,
12 Your Honor.

13 The Court: Very well, all right. Bobby, if you
14 could bring in the jury and let's see how many we can get
15 seated.

16 Ms. Grabert-Lowenstein: Your Honor, if we could
17 Mr. Galmore and I have decided to split the peremptory that
18 we have exchanging ten.

19 The Court: Wait a minute, my understanding is
20 multiple defendants you have ten; is that correct?

21 Mr. Galmore: Yes, sir.

22 Ms. Grabert-Lowenstein: Ten each.

23 Ms. Lively: That's correct, Your Honor.

24 The Court: All right, ten each, okay.

25 Ms. Grabert-Lowenstein: And we're just going to

1 exercise them individually, Your Honor, and I just want to
2 put that on the record.

3 The Court: Very well, all right, and the State
4 has --

5 Ms. Lively: No objection to that, Your Honor.

6 The Court: You have five or ten?

7 Ms. Lively: I have ten, Your Honor, because of
8 the --

9 The Court: Two defendants.

10 Ms. Lively: Correct.

11 The Court: Okay, and as to the alternates I
12 think two alternates should suffice?

13 Ms. Lively: Yes, sir.

14 The Court: All right, the strikes will be one
15 for the State and two for each, I mean two for the defense,
16 or are you planning four?

17 Mr. Galmore: I don't, I think we're supposed to
18 get four. We get ten strikes apiece, I mean each alternate
19 is one and two, right?

20 The Court: Yes.

21 Ms. Grabert-Lowenstein: But we should get two
22 apiece.

23 The Court: Then she would get two and four; is
24 that right?

25 Ms. Lively: Yes, sir.

1 The Court: Two?

2 Ms. Lively: I get two.

3 The Court: And four?

4 Ms. Lively: For each alternate.

5 Mr. Galmore: Yes.

6 The Court: Is that what everyone agrees to?

7 Ms. Grabert-Lowenstein: Two.

8 Ms. Lively: Yes, sir.

9 The Court: Two for her, two for each of you?

10 Mr. Galmore: Yes.

11 Ms. Grabert-Lowenstein: Yes.

12 Ms. Lively: Yes, sir.

13 The Court: Okay, all right, let's bring them
14 in, Bobby.

15 (Whereupon, jury pool enters courtroom.)

16 The Court: Tell you what, Ms. Lively --

17 Ms. Lively: Yes, sir.

18 The Court: -- could we put jurors in that row
19 behind you and, and here behind Mr. Galmore as well?

20 Ms. Lively: I don't see a problem with that.

21 The Court: Let's see if we can get as many
22 jurors seated as possible. They're the only ones who can't
23 leave.

24 There you are, all right. Ladies and gentlemen,
25 it's good to see you again. As I told you this morning

1 what we're going to do now is qualify you as jurors for a
2 specific case, that being the case that we are about to
3 try. In order to qualify you I'm going to have to ask you
4 some very specific questions about this case and, of
5 course, you don't know anything about the case or I would
6 not think that you know anything about the case. You
7 probably don't even know what case we are about to try.

8 We are about to try the case of The State v.
9 Julia Shawnette Gorman and Robert Andrew Palmer. Ms.
10 Gorman is seated here with her attorney Mr. Galmore. Would
11 you have her stand for just one moment so that the jury can
12 see her. All right, thank you very much.

13 And Mr. Palmer is here with his attorney Ms.
14 Grabert-Lowenstein. He is the gentleman in the gray suit,
15 thank you very much.

16 Mr. and Ms., or Mr. Palmer and Ms. Gorman have
17 been charged with several charges in this case and they
18 will be tried jointly. I want to point out to you, though,
19 at the very outset, and I will be instructing you about
20 this much later, but these are two separate defendants.
21 Any verdict that you render must be a verdict as to each
22 charge and each defendant. The guilt of one could not be
23 based upon the guilt of the other, innocence of one should
24 not be based upon the innocence of the other.

25 Ms. Gorman in this case is charged with homicide

1 by child abuse, it is alleged, and I'm going to tell you
2 what I find in these indictments. An indictment is not
3 evidence in any form or fashion. The only evidence that
4 you would consider in this case would be evidence that you
5 hear from this witness stand, however, I must refer to the
6 indictment solely for the purpose of letting you know what
7 this case is about. Again, what I'm about to say is not
8 evidence and should not be considered by you as evidence,
9 it's merely an accusation that has been made.

10 As to Ms. Gorman, homicide by child abuse
11 indictment, alleges that on or about July the 14th of 2008
12 she did cause the death of one Minor, a seventeen-month-
13 old child while committing child abuse or neglect and the
14 child's death occurred under circumstances manifesting an
15 extreme indifference to human life.

16 She is also charged with the offense of aiding
17 and abetting homicide by child abuse. It is alleged that
18 Julia Shawnette Gorman did in Horry County from, I mean,
19 excuse me, on or about July the 14th of 2008 knowingly aid
20 and abet another to commit child abuse and neglect upon
21 Minor, Minor, a minor seventeen-month-old child resulting
22 in his death in violation of the laws of this State.

23 Furthermore, she is charged with unlawful conduct
24 towards a child in that she did on or about July the 11th,
25 2008, through July the 14th of 2008, having charge or

1 custody or being the parent or guardian or being
2 responsible for the welfare of the minor child [Minor], age
3 seventeen months, placed the child at unreasonable risk of
4 harm affecting the child's life, physical or mental health,
5 or safety, or did unlawfully or maliciously cause or cause
6 to be done bodily harm to the child so that the life or
7 health of the child was in danger or was likely to be in
8 danger or did willfully abandon the child.

9 As to Mr. Palmer, he again is charged, and again
10 these indictments are not evidence, he is charged with
11 homicide by child abuse in that he did on or about July the
12 14th, 2008, inflict fatal injuries that consequently caused
13 the death of [Minor], a minor seventeen-month-old child,
14 while committing child abuse or neglect and the child's
15 death occurred under circumstances manifesting an extreme
16 indifference to human life, that child's death resulting
17 from one of the injuries declared on July the 16th of 2008.

18 Mr. Palmer is also charged with aiding and
19 abetting homicide by child abuse in that Robert Andrew
20 Palmer did in Horry County from on, excuse me, on or about
21 July the 14th of 2008, knowingly aid and abet another to
22 commit child abuse and neglect upon [Minor], a minor
23 seventeen month old child, resulting in his suffering
24 severe fatal injuries and death as a result of those
25 injuries, his subsequent death declared on July the 16th of

1 2008.

2 He is also charged, that being Mr. Andrew Palmer,
3 Robert Andrew Palmer, with unlawful conduct towards a child
4 in that on or about July the 11th, 2008, in Horry County
5 while having charge or custody or being the parent or
6 guardian or being responsible for the welfare of the minor
7 child **Minor**, age seventeen months, place the child at
8 unreasonable risk of harm affecting the child's life,
9 physical or mental health or safety or did unlawfully or
10 maliciously cause or cause to be done bodily harm to the
11 child so that the life or health of the child was in danger
12 or likely to be in danger or did abandon or willfully
13 abandon the child.

14 Those are the allegations made by the State and
15 again these are mere allegations made by the State in this
16 particular case.

17 I described the events to you so you will know a
18 little bit about the case and can respond to the questions
19 that I'm going to ask you.

20 Now before a jury is seated in this State we do a
21 lot of swearing. You took an oath this morning; you're
22 going to have to take an oath now that you will truthfully
23 answer the questions that are put to you by the Court
24 during this qualification process.

25 The reason we do that is it is absolutely

1 essential that we have honest and truthful answers from you
2 for the selection of the jury panel is the foundation of
3 our judicial system and we must have a fair and impartial
4 panel and all these questions are put to you for that
5 purpose.

6 If you would, Madam Clerk, have the jury stand
7 and take the oath.

8 (Whereupon, the jury panel was sworn.)

9 The Court: All right, was there anyone who
10 refused to take that oath?

11 (No Response.)

12 The Court: And let the record reflect that
13 there was no response to that question.

14 Has anyone of you ever been related by blood or
15 marriage, a close personal friend of or have a social
16 relationship in any form or fashion with either Ms. Gorman
17 who I've previously introduced to you or Mr. Palmer?

18 Yes, ma'am?

19 Jury Panel Member: I'm a family friend of
20 Palmer's.

21 The Court: All right, and would that cause you
22 to have difficulty being a fair and impartial juror?

23 Jury Panel Member: Yes, sir.

24 The Court: You don't think that you could set
25 that aside?

1 Jury Panel Member: No, sir.

2 The Court: And your number is?

3 Jury Panel Member: 14.

4 The Court: And your name?

5 Jury Panel Member: Heather Barfield.

6 The Court: I am going to excuse you from the
7 trial of this case. If you would just move out from the
8 jury panel, thank you very much.

9 All right, is there any member of the jury panel
10 who is a close personal friend, related by blood or
11 marriage, have any professional relationship with or there
12 is any contact between yourself and these potential
13 witnesses? Now I'm going to read the names of potential
14 jurors in this case. If this case proceeds as the normal
15 case you will probably not hear from all these witnesses.
16 You will place no emphasis whatsoever on the fact that you
17 may hear a witnesses name called and that witness is not
18 called during the process of the trial. It means nothing,
19 it's just that I require the attorneys to give me the names
20 of anyone who might possibly have any information about
21 this particular trial.

22 The witnesses who you may see in this trial are:

23 David -- let me go through the list and keep
24 track of anyone who you think that you might know.

25 David Weaver, Mr. Weaver works for the Horry

1 County Police Department;

2 Tim Troxell, likewise he works for the Horry
3 County Police Department;

4 Mr. Palmer, of course;

5 Ms. Gorman, of course;

6 John Cacace, Dr. John Cacace, c-a-c-a-c-e; he is
7 at the Conway Hospital;

8 Dr. Scott Crane, also from the Conway Hospital;

9 Mark Mossey, Dr. Mark Mossey also at the Conway
10 Hospital;

11 Dr. Ann Able of the Medical University of South
12 Carolina;

13 Fred, Dr. Fred Tecklenburg, Medical University of
14 South Carolina;

15 Dr. Ronald Teed, t-e-e-d, Medical University of
16 South Carolina;

17 Natasha Simeon-Major at MUSC;

18 Dr. Cynthia Shandl, s-c-h-a-n-d-l, a pathologist
19 at MUSC;

20 Richard Grimes;

21 Cesalee Carnaghie, c-a-r-n-a-g-h-i-e;

22 Gail Palmer;

23 Brad Whiteis, w-h-i-t-e-i-s. He's with the Horry
24 County Department of Social Services;

25 Yvette Brown, again with the Horry County

1 Department of Social Services;

2 Tom Delpercio, Horry County Police Department;

3 Jean, Dr. Jean Allen;

4 Lisa Kelly, nurse at Conway Medical Center;

5 Tina Millan, nurse, Conway Medical Center;

6 Jody Hutson, Dr. Jody Hutson, excuse me, Aynor

7 Family Practice;

8 Johnny Cody Smith;

9 Renee Hardwick, who's with the Horry County 911
10 group;

11 Martha Carmichael, again Horry County 911;

12 Marsha Bessant;

13 Brian Bussa, b-u-s-s-a, Horry County FR, what is

14 -

15 Mr. Galmore: Fire and Rescue.

16 The Court: Fire and Rescue, all right.

17 Erica Rosenthal, Horry County Fire and Rescue;

18 Dr. Donna Roberts, MUSC;

19 Dr. Pam, excuse me, Pamela Burke, nurse, MUSC;

20 Cynthia Juberg, nurse, Conway Medical Center;

21 Timothy Rainbolt, Horry County Fire and Rescue;

22 Dr. Jean Troncoso of Baltimore, Maryland;

23 Ray Berry;

24 Isla Bain, i-s-l-i-a, Bain;

25 James Palmer;

1 Gail Palmer, I think I've asked, already called
2 her name, and;

3 Adrian Roberts.

4 Those are the potential witnesses in this
5 particular case. Is anyone related by blood or marriage,
6 do you have a social or friendly relationship with these
7 people in any form or fashion, do you have a professional
8 relationship with any of these folks, if so please raise
9 your hand?

10 Yes, sir?

11 Jury Panel Member: I work with Dr. Cacace, Dr.
12 Mossey, Tina Millan, Lisa Kelly.

13 The Court: I would imagine that you work at
14 Conway Hospital? .

15 Jury Panel Member: Yes, sir, in the emergency
16 room.

17 The Court: All right, and would the fact that
18 you know these doctors and these nurses affect your ability
19 to be a fair and impartial juror?

20 Jury Panel Member: Yes, sir.

21 The Court: It would?

22 Jury Panel Member: Yes, sir.

23 The Court: You would have a tendency to believe
24 them more than you would someone else?

25 Jury Panel Member: Absolutely.

1 The Court: You could not set aside your
2 relationship with them?

3 Jury Panel Member: No, sir.

4 The Court: And your name?

5 Jury Panel Member: Matt Cooper.

6 The Court: Matt Cooper. I will excuse you, Mr.
7 Cooper, then, you may leave, all right. Thank you very
8 much. Anyone else?

9 And the record reflect that there are no other
10 responses.

11 The attorneys in this case are Ms. Candice
12 Lively. Ms. Lively, introduce those that might be
13 assisting you.

14 Ms. Lively: Thank you, Your Honor. I'm Candice
15 Lively with the Fifteenth Circuit and I have with me Nancy
16 Code who is also an assistant solicitor here in the office
17 and will be presenting the case for the State.

18 The Court: All right, and, of course, I've
19 already pointed out to you Mr. James Galmore, Mr. Galmore
20 is representing Ms. Gorman. Mr. Galmore has been a
21 practicing attorney many years here and has I believe
22 always worked with the Horry County Public Defender; is
23 that correct?

24 Mr. Galmore: Yes, sir.

25 The Court: All right, and Ms. Carla Grabert-

1 Lowenstein, I think I've introduced her to you, she comes
2 to us via California, I think, some while back.

3 Ms. Grabert-Lowenstein: Some while back, Your
4 Honor, and it's a pleasure to be here and I do have my
5 assistant Christina Ray who will be assisting me.

6 The Court: All right, is anyone related by
7 blood or marriage to any of these attorneys, do you have a
8 close personal relationship with them, a social
9 relationship, professional relationship?

10 Yes, sir, and I am ignoring you, am I not?

11 Mr. Ritner: Not at all. I'm Andrew Ritner, I
12 hate to interrupt, Your Honor. I work at the Horry County
13 Public Defenders Office. I'll be assisting James Galmore.

14 The Court: And I didn't see Mr. Ritner around
15 there, but he is likewise with them.

16 Yes, ma'am?

17 Jury Panel Member: I have a professional
18 relationship with Ms. Grabert-Lowenstein.

19 The Court: All right, and the next thing I was
20 going to ask is anybody represented by them, are you
21 represented by her or do you have, what's your
22 relationship?

23 Jury Panel Member: We had a consultation about
24 two years ago.

25 The Court: Okay, would the fact, has that

1 relationship ended?

2 Jury Panel Member: Yes.

3 The Court: Would the fact that you had met with
4 her sometime back any way affect your ability to be a fair
5 and impartial juror?

6 Jury Panel Member: No, it wouldn't.

7 The Court: Could you set that aside and give
8 both the plaintiff, I mean the defendant and the State a
9 fair trial in this matter?

10 Jury Panel Member: I believe I could.

11 The Court: Very well, and your name?

12 Jury Panel Member: Vivian McCain.

13 The Court: Thank you, Ms. McCain, for sharing
14 that with us, and your number was?

15 Jury Panel Member: 188.

16 The Court: 188, thank you very much. Anyone
17 else?

18 (No response.)

19 The record will reflect that we have no other
20 responses to that question.

21 Has anyone on this jury panel formed or expressed
22 an opinion about this case? In that regard I want to know
23 if you have read newspaper reports, if you have seen
24 internet reports, twitters, facebook, any information that
25 you may have got electronically, have you discussed this

1 case with anyone, have you formed any opinion about this
2 particular case?

3 And there is no response.

4 Is there any member of the jury panel who has
5 formed any interest, prejudice, or bias that might affect
6 your ability to be fair to the plaintiff, I mean the State
7 and the defendants in this particular case?

8 The Court: Yes, ma'am?

9 Jury Panel Member: I'm Marsha Knight.

10 The Court: Just one second, ma'am, it might be
11 a sensitive matter. Would you please come forward so that
12 you can just tell me up here. Counsel. Yes, ma'am?

13 (Whereupon, a bench conference was held off the
14 record out of the hearing of the jury panel and the court
15 reporter.)

16 The Court: I'm going to excuse you. Thank you,
17 your name?

18 Jury Panel Member: Marsha Knight.

19 The Court: And your number, Ms. Knight?

20 Jury Panel Member: 163.

21 The Court: All right, thank you. Yes, ma'am?

22 (Whereupon, a bench conference was held off the
23 out of the hearing of the jury panel and the court
24 reporter.)

25 The Court: Thank you very much, I'm going to

1 excuse you. Your name and number?

2 Jury Panel Member: Veita Brisendine, number 33.

3 The Court: Yes, ma'am?

4 (Whereupon, a bench conference was held off the
5 out of the hearing of the jury panel and the court
6 reporter.)

7 The Court: You're excused. Your name and
8 number, please?

9 Jury Panel Member: Number 275, Judy Shields.

10 The Court: Yes, sir?

11 (Whereupon, a bench conference was held off the
12 out of the hearing of the jury panel and the court
13 reporter.)

14 The Court: Thank you very much, you're excused.

15 Ms. Lively: What was your name?

16 Jury Panel Member: Vennell.

17 Ms. Lively: And your number.

18 Jury Panel Member: 330.

19 The Court: Yes, sir?

20 (Whereupon, a bench conference was held off the
21 out of the hearing of the jury panel and the court
22 reporter.)

23 The Court: You stay with us.

24 Ms. Lively: I'm sorry, what was your number?

25 Jury Panel Member: Robert Smith, 289.

1 The Court: Yes, ma'am?

2 (Whereupon, a bench conference was held off the
3 out of the hearing of the jury panel and the court
4 reporter.)

5 The Court: What's your number?

6 Jury Panel Member: 136.

7 The Court: And your name?

8 Jury Panel Member: Elizabeth Humphreys.

9 The Court: Thank you, you're excused. All
10 right, and no further response, Madam Clerk.

11 Has anyone here ever served in the military or
12 been close to someone who has served in the military? And
13 we're just asking that for general information, if you
14 would just give your names, if you have, if you've been in
15 the military or you're close to someone in the military and
16 let's start back over here. Everyone stand up, yes, ma'am?

17 Jury Panel Member: My husband has been in the
18 Coast Guard twenty-three years.

19 The Court: And your number?

20 Jury Panel Member: 308.

21 The Court: 308, and the gentleman right here in
22 the front?

23 Jury Panel Member: 42, I had two uncles, one in
24 Korea and the other one in Iraq.

25 The Court: Okay, and your number?

1 Jury Panel Member: 42.

2 The Court: 42, and the gentleman right, and sit
3 down as we --

4 Jury Panel Member: Frank Kolbe, 164, I served
5 in the Army.

6 The Court: All right, thank you, and the
7 gentleman right here?

8 Jury Panel Member: 183, I was in the Navy in
9 submarines.

10 The Court: All right, thank you, sir.

11 Jury Panel Member: Number 101, my father served
12 four years in the Navy, my uncle served four years in the
13 Army.

14 The Court: Thank you very much.

15 Jury Panel Member: 278, my father and uncle
16 were in the armed forces.

17 The Court: Thank you very much.

18 Jury Panel Member: Number 124, spent six years,
19 seven months, five days in the Army, tour in Viet Nam. I
20 have a brother in law that spent two tours in Iraq, cousin
21 Afghanistan now, and one in deployment.

22 The Court: Thank you, sir. Yes, ma'am?

23 Jury Panel Member: 326, my husband spent four
24 years in the Army Jag.

25 The Court: Thank you.

1 Jury Panel Member: Number 209, my grandfather
2 was in the Navy.

3 The Court: All right, yes, ma'am?

4 Jury Panel Member: 204, my husband was in the
5 Army.

6 The Court: All right.

7 Jury Panel Member: 168, my father served
8 twenty-two years in the Air Force, retired, I served
9 thirty-five years in the Air Force and retired.

10 The Court: All right, sir, Mr. Smith?

11 Jury Panel Member: 289, Air Force.

12 The Court: All right, thank you, right here on
13 the front?

14 Jury Panel Member: 280, I have an uncle who is
15 retired military.

16 The Court: All right, thank you.

17 Jury Panel Member: 294, my husband and I have
18 two sons that are in Afghanistan right now.

19 Jury Panel Member: 188, my grandfather was in
20 the Air Force.

21 The Court: Thank you, yes, ma'am?

22 Jury Panel Member: My father and grandfather
23 were both Navy.

24 The Court: And your number?

25 Jury Panel Member: 211.

1 The Court: Thank you very much, and the
2 gentleman by her?

3 Jury Panel Member: 237, my father was in the
4 Army, my brother in law was in the Marines.

5 The Court: All right, yes, ma'am?

6 Jury Panel Member: 121, my father is retired
7 Navy and my nephew is in the Navy.

8 The Court: Thank you.

9 Jury Panel Member: Number 220, my father was in
10 the SeaBees, my husband was in the Army, and I have a son
11 in the Navy.

12 The Court: All right, and with the yellow
13 sweater?

14 Jury Panel Member: 325, my father and several
15 uncles and one grandfather served in various branches.

16 Jury Panel Member: 109, my father was in the
17 Navy.

18 The Court: Thank you.

19 Jury Panel Member: 157, my brother was in the
20 Army.

21 The Court: Thank you.

22 Jury Panel Member: My fiance was in the Marines
23 for thirteen years.

24 The Court: Thank you.

25 Jury Panel Member: 91, several members of my

1 family have been in all branches.

2 The Court: Yes, sir?

3 Jury Panel Member: 54, my father and
4 grandfather served in the Navy.

5 Jury Panel Member: 179, my husband was in the
6 Navy.

7 The Court: All right.

8 Jury Panel Member: 92, I was in the Marine
9 Corps.

10 Jury Panel Member: 198, my father and my uncle
11 served in World War II, my father served as an officer for
12 twenty-two years and also I have a brother that served in
13 Viet Nam.

14 The Court: Thank you.

15 Jury Panel Member: 105, my father was in the
16 Navy.

17 Jury Panel Member: 323, my stepfather was a
18 Marine and my uncle is currently in the Air Force.

19 The Court: Thank you. Has anyone ever been
20 employed or educated in the medical profession?

21 Yes, ma'am?

22 Jury Panel Member: I have a nursing degree.

23 The Court: And your number?

24 Jury Panel Member: 66.

25 The Court: 66, yes, ma'am?

1 Jury Panel Member: I have education in a
2 medical office.

3 The Court: And your number?

4 Jury Panel Member: My name is Jeannie Ujvari.

5 The Court: And your number?

6 Jury Panel Member: 323.

7 The Court: Thank you, yes, ma'am?

8 Jury Panel Member: Certified ---

9 The Court: I'm sorry, I could not hear you?

10 Jury Panel Member: Certified in drawing blood
11 for the Red Cross

12 The Court: All right, and your number?

13 Jury Panel Member: 324.

14 The Court: Thank you, yes, sir?

15 Jury Panel Member: 325, I was a certified
16 respiratory therapist for a while.

17 The Court: All right.

18 Jury Panel Member: 280, I was a certified EMT.

19 The Court: All right.

20 Jury Panel Member: 121, I currently work at
21 Grand Strand, I'm a secretary.

22 The Court: Thank you very much. Anyone here a
23 parent or grandparent? Everybody get up, every single one.
24 Why don't we do it this way, you sit down and if you're not
25 a parent or grandparent stand?

1 Yeah, that's easier. So, Mr. Galmore, everyone
2 but this, yes, ma'am?

3 Jury Panel Member: 66.

4 The Court: Yes, sir?

5 Jury Panel Member: 278.

6 The Court: 278, and the lady in the back?

7 Jury Panel Member: 334.

8 The Court: 334, and the gentleman up front?

9 Jury Panel Member: 25.

10 Jury Panel Member: 209.

11 Jury Panel Member: 101.

12 Jury Panel Member: 192.

13 Jury Panel Member: 211.

14 Jury Panel Member: 77.

15 Jury Panel Member: 144.

16 Jury Panel Member: 179.

17 Jury Panel Member: 54.

18 The Court: And 54, okay, is there anyone here
19 who has ever been -- oh, one more, I'm sorry?

20 Jury Panel Member: 161.

21 The Court: All right, is there anyone here who
22 has ever been a victim of abuse or known the victim of
23 abuse?

24 Yes, ma'am, would you please stand, and would
25 that affect your ability to a fair and impartial juror in

1 this case?

2 Jury Panel Member: Somewhat..

3 The Court: Could you be fair and impartial,
4 could you set that aside?

5 Jury Panel Member: Right now it's going on in
6 my family so it's hard to say.

7 The Court: Well unless you can tell me that you
8 can I'm compelled to excuse you?

9 Jury Panel Member: I don't think I could.

10 The Court: All right, and your number?

11 Jury Panel Member: 308.

12 The Court: 308, all right, thank you, you may
13 leave. Yes, sir?

14 Jury Panel Member: Yeah, I've known people that
15 have been abused but I don't think it would affect my
16 decision.

17 The Court: Could you be fair and impartial both
18 to the State and the defendant?

19 Jury Panel Member: I think so.

20 The Court: And your number?

21 Jury Panel Member: 278.

22 The Court: Thank you very much. Yes, ma'am?

23 Jury Panel Member: I'm not sure that I would,
24 I'm not sure that I could be fair and partial.

25 The Court: And how long, was this someone you

1 knew or some ---

2 Jury Panel Member: I was a victim.

3 The Court: It would have been you, and that was
4 some time ago?

5 Jury Panel Member: It was.

6 The Court: And you do not believe that you
7 could set that aside and be a fair and impartial juror?

8 Jury Panel Member: It would depend on the
9 specifics, if it's in one area then it would.

10 The Court: And what area would that be?

11 Jury Panel Member: Sexual abuse.

12 The Court: All right, well I don't think, this
13 case has no overtones of that but could you be fair and
14 impartial if it does not?

15 Jury Panel Member: I'm not sure.

16 The Court: All right, and your number?

17 Jury Panel Member: 209.

18 The Court: 209, and I would excuse you. Yes,
19 ma'am?

20 Jury Panel Member: 66. I know someone.

21 The Court: Could you set that aside and be fair
22 and impartial?

23 Jury Panel Member: I believe so.

24 The Court: All right, thank you very much, yes,
25 ma'am?

1 Jury Panel Member: My sister was in an abusive
2 relationship by her husband.

3 The Court: Could you set that aside and be fair
4 and impartial to both parties or both the State and the
5 defense here?

6 Jury Panel Member: I'd like to think so. She
7 was an adult so I think this is different situation.

8 The Court: Could you be fair and impartial in
9 this trial?

10 Jury Panel Member: If there was no abusive
11 adults involved.

12 The Court: Okay, all right, thank you.

13 Ms. Lively: Her number?

14 The Court: And your number?

15 Jury Panel Member: 188.

16 The Court: 188, the gentleman in the back row?

17 Jury Panel Member: 54. I know someone that was
18 abused.

19 The Court: Would that affect your ability to be
20 a fair and impartial juror?

21 Jury Panel Member: I think it would.

22 The Court: Would it keep you from giving both
23 the State and the defense a fair trial in this case?

24 Jury Panel Member: I think it would.

25 The Court: You believe that it would?

1 Jury Panel Member: Yes, sir.

2 The Court: You could not set it aside?

3 Jury Panel Member: I don't think so.

4 The Court: And your number?

5 Jury Panel Member: 54.

6 The Court: 54, all right, you're excused. Yes,
7 sir?

8 Jury Panel Member: Number 91.

9 The Court: All right?

10 Jury Panel Member: Family member abused by
11 another family member and I helped prosecute that person.

12 The Court: Do you believe -- how long ago was
13 that?

14 Jury Panel Member: Two and a half years ago.

15 The Court: Do you believe that that would
16 affect your ability to be fair and impartial in this trial?

17 Jury Panel Member: Yes, sir, it would affect
18 me.

19 The Court: You could not be fair to both the
20 defense and the State?

21 Jury Panel Member: No.

22 The Court: All right, your number?

23 Jury Panel Member: 91.

24 The Court: 91, thank you very much, you're
25 excused.

1 Has anyone here ever been involved in an
2 investigation by the Department of Social Services or known
3 someone who was? Yes, sir?

4 Jury Panel Member: 183.

5 The Court: Would the fact that you have been
6 investigated or known someone who's been investigated
7 affect your ability to be fair and impartial?

8 Jury Panel Member: I'm not sure, I have two
9 adopted children and ---

10 The Court: Is that the reason that you were
11 investigated you had two adopted children?

12 Jury Panel Member: Right.

13 The Court: You were not investigated in
14 reference ---

15 Jury Panel Member: Their parents were
16 investigated.

17 The Court: But you were never investigated?

18 Jury Panel Member: They investigated us before
19 we adopted the children.

20 The Court: But just for the adoption?

21 Jury Panel Member: Yes.

22 The Court: Would that experience prevent you
23 from being a fair and impartial juror?

24 Jury Panel Member: I don't think so.

25 The Court: Thank you very much. Yes, sir?

1 Jury Panel Member: I know someone that was
2 investigated by the Department.

3 The Court: Would that prevent you from being
4 fair and impartial in this case?

5 Jury Panel Member: I don't believe so.

6 The Court: Thank you very much. Okay, has
7 anyone read about this case in the newspaper, on the
8 internet, or anything of that nature? Yes, sir?

9 Jury Panel Member: I believe I have, from the
10 long list of names you gave.

11 The Court: Do you have any specific
12 information?

13 Jury Panel Member: Pardon?

14 The Court: Were you given any specific
15 information that you can recall? Don't tell me what it
16 was?

17 Jury Panel Member: No, I just remember the
18 names and places.

19 The Court: Do you, would anything that you may
20 have heard or seen in any way prevent you from being a fair
21 and impartial juror?

22 Jury Panel Member: I'll try my best to be fair
23 and impartial.

24 The Court: Could you be fair and impartial,
25 that's what I have to know?

1 Jury Panel Member: Probably not.

2 The Court: All right, sir, and your name?

3 Jury Panel Member: From the earlier
4 implications.

5 The Court: And your name, sir?

6 Jury Panel Member: George Miller.

7 The Court: And your number?

8 Jury Panel Member: 198.

9 The Court: Thank you, sir, Mr. Miller, I'm
10 going to excuse you. And I think I asked you about the
11 internet. Has anyone here ever been the care giver, the
12 primary care giver for a small child other than your own
13 child or an adopted child? Yes, ma'am?

14 Jury Panel Member: For a few months I took care
15 of a nine-year-old child.

16 The Court: You just took care of a nine-year-
17 old child for a few months?

18 Jury Panel Member: That's right.

19 The Court: Thank you, ma'am, yes, ma'am?

20 Jury Panel Member: I had a day care in my home
21 for seniors.

22 The Court: All right, and that was here in
23 Horry County?

24 Jury Panel Member: No, actually that was in
25 Maryland.

1 The Court: Okay, and that was your, your
2 profession job, you were a professional day care person?

3 Jury Panel Member: Yes.

4 The Court: Thank you very much.

5 Mr. Galtmore: I missed the juror number.

6 The Court: Thank you very much.

7 Mr. Galtmore: Juror number?

8 The Court: Your number?

9 Jury Panel Member: I'm sorry, 294.

10 The Court: 294. All right, that concludes the
11 voir dire. Anything further, well let me just ask this
12 final question, does any member of this jury panel know any
13 reason whatsoever why he or she should not serve as a juror
14 on this case with particular emphasis being placed on your
15 ability to be fair and impartial both to the State and the
16 defense?

17 And there's no response. Anything further, Ms.
18 Lively?

19 Ms. Lively: Not from the State, Your Honor.

20 The Court: Anything further, Mr. Galtmore?

21 Mr. Galtmore: No, sir.

22 The Court: Anything further, Ms. Grabert-
23 Lowenstein?

24 Ms. Grabert-Lowenstein: Not on behalf of Mr.
25 Palmer, Your Honor, thank you.

1 The Court: Thank you very much, all right,
2 ladies and gentlemen, the way we, we select a jury in this
3 court depends on the type of case that we have. If would
4 have a civil case perspective jurors after the
5 qualification they're placed on a list, the attorneys are
6 given a list, everybody is given a new number, so when the
7 strike process starts you don't even know if you have been
8 struck or not, what a kind way to do it.

9 In the criminal side we do it differently, your
10 name is called and you're required to come forward and turn
11 and face your fellow jurors, the attorneys and the parties
12 in this case. You may or may not be struck, The State has
13 the first opportunity to either present you or strike you.
14 That's followed by each of the defendants which have also
15 an option to accept you to strike you.

16 Let me just say this about that process, some
17 people find it to be intimidating, some people find it be
18 embarrassing. What I can tell you after practicing for
19 over thirty years about the way these attorneys strike is
20 they don't have a clue what they are doing. I can promise
21 you that. The striking process, the selection of a jury, I
22 don't care what attorney you ask that they're going to tell
23 you, you say why did you place this juror on your jury, why
24 did you strike this jury, and nine out of ten times they
25 cannot tell you. It's nothing but a gut feeling that the

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1 attorneys often have. It may be the side of your head you
2 part your hair on or whether your got no hair to part.
3 There's just no telling. Many times it's nothing more than
4 the attorney sees a person down that jury panel that they
5 hope or think might be sympathetic to their position in the
6 case and they're merely trying to reach that, so I ask you
7 not to be embarrassed or feel bad if you're, if you're
8 struck. You know I'm telling you this and you're probably
9 all sitting there thinking I hope I don't get picked, but I
10 don't want anyone to, to have any bad feelings about, about
11 the process.

12 Madam Clerk, are you prepared to go forward?

13 Madam Clerk: Yes, sir.

14 The Court: All right, call the first juror,
15 Bobby.

16 Madam Clerk: Juror Number 188, Vivian McCain.

17 Jury Panel Member: Where do I go?

18 Madam Clerk: You just come right ---

19 The Court: Come right here and we'll see how
20 well Ms. McCain does it, she'll be the model for all of us.

21 Madam Clerk: Also if you have any belongings if
22 you'll bring those with you when your name is called.

23 The Court: Cause you may be seated.

24 Jury Panel Member: Okay.

25 Madam Clerk: What say the State? Yes, ma'am,

1 just turn around and face the back of the courtroom.

2 Ms. Lively: Present the juror.

3 Madam Clerk: Defense Palmer?

4 Ms. Grabert-Lowenstein: Accept the juror.

5 Madam Clerk: Defense Gorman?

6 Mr. Galmore: Please excuse the juror in the
7 trial of this case.

8 Madam Clerk: You're excused on this particular
9 case.

10 The Court: Please take your seat, see what a
11 wonderful job she did.

12 Madam Clerk: 168, Ronald Lee. What say the
13 State?

14 Ms. Lively: Present the juror.

15 Madam Clerk: Defense Palmer?

16 Ms. Grabert-Lowenstein: Accept the juror.

17 Madam Clerk: Gorman?

18 Mr. Galmore: Please seat the juror.

19 Madam Clerk: Please be seated in the jury box.

20 60, Edna Cook. What say the State?

21 Ms. Lively: Excuse the juror from the trial of
22 this case.

23 Madam Clerk: You're excused from this
24 particular case.

25 144, Candice Johnson. What say the State?

1 Ms. Lively: Excuse the juror from the trial of
2 this case.

3 Madam Clerk: You're excused from this
4 particular case.

5 42, Orvis Buie. What say the State?

6 Ms. Lively: Present the juror.

7 Madam Clerk: Defense Palmer?

8 Ms. Grabert-Lowenstein: Accept the juror.

9 Madam Clerk: Gorman?

10 Mr. Galmore: Please seat the juror.

11 Madam Clerk: Please be seated in the jury box.

12 148, Eli Jones. What say the State?

13 Ms. Lively: Present the juror.

14 Madam Clerk: Defense Palmer?

15 Ms. Grabert-Lowenstein: Excuse the juror.

16 Madam Clerk: You're excused from this
17 particular case.

18 227, Nancy Pittman. What say the State?

19 Ms. Lively: Present the juror.

20 Madam Clerk: Defense Palmer?

21 Ms. Grabert-Lowenstein: Excuse the juror.

22 Madam Clerk: You're excused from this
23 particular case.

24 220, Arlene Pate. What say the State?

25 Ms. Lively: Present the juror.

1 Madam Clerk: Defense Palmer?

2 Ms. Grabert-Lowenstein: Accept the juror.

3 Madam Clerk: Defense Gorman?

4 Mr. Galmore: Please seat the juror.

5 Madam Clerk: Please be seated in the jury box.

6 183, Gilbert MacKenna. What say the State?

7 Ms. Lively: Excuse the juror from the trial of
8 this case.

9 Madam Clerk: You're excused from this
10 particular case.

11 332, Felice Walker. What say the State?

12 Ms. Lively: Present the juror.

13 Madam Clerk: Defense Palmer?

14 Ms. Grabert-Lowenstein: Accept.

15 Madam Clerk: Defense Gorman?

16 Mr. Galmore: Please seat the juror.

17 Madam Clerk: Please be seated in the jury box.

18 319, Hartley Turner, Jr. What say the State?

19 Ms. Lively: Present the juror.

20 Madam Clerk: Defense Palmer?

21 Ms. Grabert-Lowenstein: Excuse the juror.

22 Madam Clerk: You're excused from this
23 particular case.

24 113, Alice Gore. What say the State?

25 Ms. Lively: Present the juror.

1 Madam Clerk: Defense Palmer?
2 Ms. Grabert-Lowenstein: Accept the juror.
3 Madam Clerk: Defense Gorman?
4 Mr. Galmore: Please seat the juror.
5 Madam Clerk: Please be seated in the jury box.
6 278, David Silverman.
7 The Court: Right there is good.
8 Madam Clerk: What say the State?
9 Ms. Lively: Present the juror.
10 Madam Clerk: Defense Palmer?
11 Ms. Grabert-Lowenstein: Excuse the juror.
12 Madam Clerk: You're excused from this
13 particular case.
14 157, Robert Kidd. What say the State?
15 Ms. Lively: Present the juror.
16 Madam Clerk: Defense Palmer?
17 Ms. Grabert-Lowenstein: Accept the juror.
18 Madam Clerk: Defense Gorman?
19 Mr. Galmore: Please seat the juror.
20 Madam Clerk: Please be seated in the jury box.
21 323, Jeannie Ujvari. What say the State?
22 Ms. Lively: Present the juror.
23 Madam Clerk: Defense Gorman?
24 Ms. Grabert-Lowenstein: Accept the juror.
25 Madam Clerk: I'm sorry, Defense Palmer, I'm

1 sorry, Your Honor, excuse me, accept the juror?

2 Ms. Grabert-Lowenstein: Accept.

3 Madam Clerk: Defense Gorman?

4 Mr. Galmore: We'd excuse the juror from the
5 trial of this case.

6 Madam Clerk: You're excused from this
7 particular case.

8 211, Julie Newcomb. What say the State?

9 Ms. Lively: Present the juror.

10 Madam Clerk: Defense Palmer?

11 Ms. Grabert-Lowenstein: Excuse the juror.

12 Madam Clerk: You're excused from this
13 particular case.

14 121, Cynthia Hamilton.

15 What say the State?

16 Ms. Lively: Present the juror.

17 Madam Clerk: Defense Palmer?

18 Ms. Grabert-Lowenstein: Accept the juror.

19 Madam Clerk: Defense Gorman?

20 Mr. Galmore: Please excuse the juror in the
21 trial of this case.

22 Madam Clerk: You're excused in this particular
23 case.

24 92, Mario Eori. What say the State?

25 Ms. Lively: Present the juror.

1 Madam Clerk: Defense Palmer?

2 Ms. Grabert-Lowenstein: Accept the juror.

3 Madam Clerk: Defense Gorman?

4 Mr. Galmore: Please seat the juror.

5 Madam Clerk: Please be seated in the jury box.

6 109, Lenora Gennarelli. What say the State?

7 Ms. Lively: Present the juror.

8 Madam Clerk: Defense Palmer?

9 Ms. Grabert-Lowenstein: Accept the juror.

10 Madam Clerk: Defense Gorman?

11 Mr. Galmore: Please seat the juror.

12 Madam Clerk: Please be seated in the jury box.

13 149, James Jordan, Jr. What say the State?

14 Ms. Lively: Present the juror.

15 Madam Clerk: Defense Palmer?

16 Ms. Grabert-Lowenstein: Excuse the juror.

17 Madam Clerk: You're excused from this

18 particular case.

19 294, Deborah Speck. What say the State?

20 Ms. Lively: Present the juror.

21 Madam Clerk: Defense Palmer?

22 Ms. Grabert-Lowenstein: Accept.

23 Madam Clerk: Defense Gorman?

24 Mr. Galmore: Please excuse the juror in the

25 trial of this case.

1 Madam Clerk: You're excused from this
2 particular case.

3 77, Thomas Decarlo, Jr. What say the State?

4 Ms. Lively: Present the juror.

5 Madam Clerk: Defense Palmer?

6 Ms. Grabert-Lowenstein: Accept.

7 Madam Clerk: Defense Gorman?

8 Mr. Galmore: Please excuse the juror in the
9 trial of this case.

10 Madam Clerk: You're excused from this
11 particular case.

12 289, Robert Smith.

13 What say the State?

14 Ms. Lively: Present the juror.

15 Madam Clerk: Defense Palmer?

16 Ms. Grabert-Lowenstein: May I have just a
17 moment? Accept.

18 Madam Clerk: Defense Gorman?

19 Mr. Galmore: Please excuse the juror in the
20 trial of this case.

21 Madam Clerk: You're excused from this
22 particular case.

23 34, Dale Brooks. What say the State?

24 Ms. Lively: Excuse the juror from the trial of
25 this case.

1 Madam Clerk: You're excused from this
2 particular case.

3 237, Kenneth Rheault. What say the State?

4 Ms. Lively: Present the juror.

5 Madam Clerk: Defense Palmer?

6 Ms. Grabert-Lowenstein: Accept.

7 Madam Clerk: Defense Gorman?

8 Mr. Galmore: Please seat the juror.

9 Madam Clerk: Please be seated in the jury box.

10 161, Kara Kleps. What say the State?

11 Ms. Lively: Present the juror.

12 Madam Clerk: Defense Palmer?

13 Ms. Grabert-Lowenstein: Excuse the juror.

14 Madam Clerk: You're excused from this
15 particular case.

16 107, James Garrity. What say the State?

17 Ms. Lively: Present the juror.

18 Madam Clerk: Defense Palmer?

19 Ms. Grabert-Lowenstein: Accept.

20 Madam Clerk: Defense Gorman?

21 Mr. Galmore: Please seat the juror.

22 Madam Clerk: Please be seated in the jury box.

23 25, David Berryhill. What say the State?

24 Ms. Lively: Present the juror.

25 Madam Clerk: Defense Palmer?

1 Ms. Grabert-Lowenstein: Excuse.

2 Madam Clerk: You're excused from this
3 particular case.

4 311, Kimberly Swartz. What say the State?

5 Ms. Lively: Present the juror.

6 Madam Clerk: Defense Palmer?

7 Ms. Grabert-Lowenstein: Accept.

8 Madam Clerk: Defense Gorman?

9 Mr. Galmore: Please excuse the juror in the
10 trial of this case.

11 Madam Clerk: You're excused from this
12 particular case.

13 346, Gail Yaus. What say the State?

14 Ms. Lively: Excuse the juror from the trial of
15 this case.

16 Madam Clerk: You're excused from this
17 particular case.

18 18, Carolyn Beaty. What say the State?

19 Ms. Lively: Present the juror.

20 Ms. Grabert-Lowenstein: Accept.

21 Madam Clerk: Defense Gorman?

22 Mr. Galmore: Please seat the juror in the trial
23 of this case.

24 Madam Clerk: Please be seated in the jury box.

25 204, Betty Moss. What say the State?

1 Ms. Lively: Present the juror.

2 Madam Clerk: Defense Palmer?

3 Ms. Grabert-Lowenstein: Accept.

4 Madam Clerk: Defense Gorman?

5 Mr. Galmore: Please seat the juror.

6 Madam Clerk: Please be seated in the jury box.

7 221, Francisco Perez.

8 The Court: All right, we're selecting
9 alternates now.

10 Madam Clerk: What say the State?

11 Ms. Lively: Present the juror.

12 Madam Clerk: Defense Palmer?

13 Ms. Grabert-Lowenstein: Excuse, please.

14 Madam Clerk: You're excused from this
15 particular case.

16 262, Jill Sarvis. What say the State?

17 Ms. Lively: Present the juror.

18 Madam Clerk: Defense Palmer?

19 Ms. Grabert-Lowenstein: Excuse.

20 Madam Clerk: You're excused from this
21 particular case.

22 192, Shane Mcdade. What say the State?

23 Ms. Lively: Present the juror.

24 Madam Clerk: Defense Palmer?

25 Ms. Grabert-Lowenstein: One moment.

1 Madam Clerk: Any challenges?

2 Ms. Grabert-Lowenstein: No.

3 Madam Clerk: Defense Gorman?

4 Mr. Galtmore: Just a moment, please excuse the
5 juror in the trial of this case.

6 Madam Clerk: You're excused from this
7 particular case.

8 280, Tyron Singleton. What say the State?

9 Ms. Lively: Present the juror.

10 Madam Clerk: Defense Palmer?

11 Ms. Grabert-Lowenstein: No challenges, thank
12 you.

13 Madam Clerk: Defense Gorman?

14 Mr. Galtmore: Please excuse the juror in the
15 trial of this case.

16 Madam Clerk: You're excused from this
17 particular case.

18 164, Franklin Kolbe.

19 What say the State?

20 Ms. Lively: Present the juror.

21 Madam Clerk: Defense Palmer?

22 Ms. Grabert-Lowenstein: No challenge.

23 Madam Clerk: Defense Gorman?

24 Mr. Galtmore: No challenge.

25 Madam Clerk: Please be seated in the jury box.

1 265, Christopher Schafehen. What say the State?

2 Ms. Lively: Present the juror.

3 Madam Clerk: Defense Palmer?

4 Ms. Grabert-Lowenstein: No challenge.

5 Madam Clerk: Defense Gorman?

6 Mr. Galmore: Please seat the juror.

7 Madam Clerk: Please be seated in the jury box.

8 The Court: Would there be challenges?

9 Ms. Lively: None from the State, Your Honor.

10 Mr. Galmore: No, sir.

11 Ms. Grabert-Lowenstein: No, Your Honor.

12 The Court: All right, very well, the balance of
13 the jury panel is excused for the week. This counts as
14 your jury service for the next three years. It's a
15 pleasure having you here. I hope that I see you in and
16 about the county, if you do see me, please, stop me and
17 tell me what you thought about this process. I know it was
18 rather lengthy today but it's usually not quite this bad.
19 Good to have you here, you've moved a lot of cases this
20 week, been working hard, thank you again.

21 (Whereupon, the jury venire was excused for the
22 week.)

23 The Court: I'm trying to make the best use of
24 the time we have left today; there's some housekeeping
25 matters that the attorneys and I need to address and it's

1 1:20 now. What I'm going to do is let you go to lunch and
2 ask you to come back at three. We're going to come back
3 earlier than that, I promise you, and I'm going to try to
4 get some things done and I thought I would let them make
5 their, the attorneys make their opening remark to you so
6 they can tell you what they expect to show and we'll get
7 into the evidence tomorrow. I think that's the most
8 efficient way to do it and I think that's the way we'll
9 proceed. Was it Mr. Buie?

10 Jury Panel Member: Yes.

11 The Court: When we come back I want you to take
12 that first seat there, okay, right there on the corner.

13 Mr. Ropp will show it to you. I want you to be my
14 foreperson. I'm going to swear this jury before we go to
15 lunch; if you would administer the oath?

16 (Whereupon, the jury was sworn.)

17 The Court: Mr. Schafehen, is it Schafehen?

18 Jury Panel Member: Schafehen.

19 The Court: Schafehen, Mr. Kolbe, if you would
20 always occupy those two seats. Mr. Buie, first corner seat
21 here, Mr. Buie will be the foreperson, you are alternates,
22 so you'll always occupy those two seats.

23 You are under oath and I would caution you not to
24 allow anyone to speak to you about this case or approach
25 you about the case and I'm going to give you some

1 instructions when you come back but I'm going to ask you
2 during your lunch hour now not to even discuss the case
3 among yourselves, okay. I'm going to have Bobby take you
4 back show you where our jury room. It's where you'll spend
5 the time that you're not in Court and he'll show you how to
6 get out of the courtroom in an easier fashion than you
7 probably entered. If you would, Bobby, take them on back.

8 (Whereupon, the jury retired to the jury room at
9 1:24 p.m.)

10 The Court: All right, ladies, I want you back
11 about 2:30, okay, that's a little over an hour, it's an
12 hour and five minutes, let's be back at 2:30, and be ready
13 to go and I'll take up the housekeeping matters that you
14 indicated are out there and perhaps when the jury gets back
15 we'll be ready to have me give them a little preliminary
16 charge and then you can do your opening remarks, and that's
17 all we will do this afternoon. I don't want to get into
18 your witnesses till they're fresh, okay, thank you.

19 Mr. Galmore: Your Honor, there is one brief
20 issue. We were hoping the Court might allow Ms. Gorman and
21 I'm sure Ms. Grabert-Lowenstein would agree with me for our
22 clients to remain ---

23 The Court: I'm sure she would agree but the
24 person that we've got to please will be Ms. Lively. Ms.
25 Lively is shaking her head like the State has an objection

1 to allowing them to stay out. Of course their bond ends
2 once the trial starts and the jury is sworn and the trial
3 is definitely started to they're not under bond now and
4 occasionally I let people stay out under bond but it's
5 usually when the State agrees to allow them to be out on
6 bond.

7 Ms. Lively: And normally, Your Honor, I would
8 agree if the charges and seriousness of this case were not
9 so crucial and I know that they have the ability to flee.
10 We've had a rampant occasion of that going on in Horry
11 County lately, not with these individuals, but under the
12 current circumstances with the severity of the charges ---

13 The Court: The State objects.

14 Ms. Lively: I object, yes, sir, Your Honor.

15 The Court: All right, Mr. Galmore, then your
16 clients will have to be in custody, there's no bond, thank
17 you.

18 Mr. Galmore: Yes, sir.

19 Ms. Lively: Thank you, Your Honor.

20 (Whereupon, court was recessed for lunch at 1:30
21 p.m. and the following takes place on the record after the
22 lunch break.)

23 (Whereupon, State's Exhibit 1, 2, 3, 4, 5, 6, 7,
24 8, 9, 10, 11, 12 and 13 marked for identification.)

25 The Court: What do we have before we bring the

1 jury in?

2 Ms. Lively: Nothing from the State, Your Honor.

3 The Court: I think Ms. Grabert-Lowenstein has
4 something.

5 Ms. Grabert-Lowenstein: Your Honor, I do, I
6 have three matters. The first one I'll take up is that we
7 have left the matter of the autopsy photos undecided.
8 Counsel for the State had proffered colored as well as
9 black and whites and we're objecting to any of them. As I
10 indicated when we visited that issue with all the other
11 pretrial motions the prosecution has engaged the services
12 of an neuro-radiologist, that radiologist has prepared a
13 PowerPoint of forty-two photos. There isn't anything that
14 isn't covered in those forty-two photos that would be
15 covered in the graphic even in black and white autopsy
16 photos. It, you know, I'm objecting to the autopsy photos
17 on behalf of Mr. Palmer and asking that the State not be
18 allowed to use them since they are using the extensive
19 PowerPoint.

20 The Court: What's in the PowerPoint,
21 photographs?

22 Ms. Grabert-Lowenstein: The CT scans and all
23 those, you know, fractures, the split of the suture in the
24 front; it's all the injuries that they're going to be
25 talking about in much less graphic fashion.

1 The Court: Well, Ms. Lively, I was concerned
2 about the photographs because of the nature of the injury
3 and the age of the child. I was concerned from the point
4 of rule 403. As I left it, as I recall, I was going to
5 reserve my ruling until I had an opportunity to discuss
6 this with the pathologist. You had indicated that she was
7 of the opinion that she could not show the nature of the
8 injuries without the use, I think of two photographs, and
9 that's what I wanted to hear; she's not here today; is that
10 correct?

11 Ms. Lively: No, Your Honor, we already talked
12 about that. You said that whenever she got here on the day
13 she was going to testify we'd proffer her testimony, she
14 could say why she needed to use them to corroborate her
15 opinion and we decide at that time.

16 The Court: And I recall, Ms. Lowenstein, wasn't
17 that exactly what I said?

18 Ms. Grabert-Lowenstein: Your Honor, I knew we
19 had left it, I just wanted to make sure we didn't let it
20 go.

21 The Court: We're not going to forget it.

22 Ms. Grabert-Lowenstein: Okay, Your Honor,
23 there, we were sent a disk of a number of photographs of
24 [REDACTED] and I think there were a total of thirteen. Some of
25 those photographs go from January of '08. There's one

1 that, there's a couple in March and then one in May and I'm
2 not sure, there's no date on another photograph. I'm
3 objecting to any photographs that are before June as not
4 relevant as the child's condition could change ---

5 The Court: Could I see the photographs that
6 we're talking about?

7 Ms. Grabert-Lowenstein: I'll show Ms. Lively
8 exactly the ones that I'm objecting to, if I may approach?

9 The Court: And your objection?

10 Ms. Grabert-Lowenstein: My objection is that
11 anything before June wouldn't be relevant. Those
12 photographs, unless the ones at the pool, is in June are no
13 more recent than May and as old as January of '08. I, I
14 believe what they're trying to do is it's just frankly to
15 inflame the jury. If there becomes an issue about the
16 condition of the child ---

17 The Court: Let's just, let's have the State
18 respond to your 401 motion as to why it's relevant, first
19 let's establish that there's any relevance, okay.

20 Ms. Grabert-Lowenstein: Thank you, Your Honor.

21 Ms. Lively: Thank you, Your Honor.

22 The Court: All right?

23 Ms. Lively: Those photos are specifically
24 relevant to show that [REDACTED] was not a child who his
25 parents basically through away, didn't want. There's been

1 several statements made by Julia Gorman throughout both the
2 care of the child as well as to the medical experts as well
3 as in her own statement that Cesalee, who is the mother,
4 and Richard basically were too young, didn't want the
5 child, couldn't take care of him, that type of thing, and
6 then even the Palmer's, that would be Mr. Palmer's parents,
7 stated that there was just something not right with this
8 kid, that he was either not developing --

9 The Court: Developing.

10 Ms. Lively: Developing, thank you, the way that
11 he's supposed to, that there was just something wrong with
12 him, and, Your Honor, that is specifically relevant to show
13 that this for all intense and purposes, at least with these
14 pictures, to show that there was some normalcy there as
15 well as the child looking at times to be smiling and
16 responding to the environment that he's in. They
17 specifically brought this issue up by saying that there was
18 something wrong with the child and that he was either when
19 he got here they were saying stuff like he looked like he
20 had been neglected either developmentally or he looked
21 malnourished. These things were brought up as well as that
22 Cesalee didn't want him and specifically Cesalee more so
23 than Richard. He was a little bit more out of the picture
24 as to regards to what happened here, but that would go
25 specifically to those issues.

1 The Court: Okay, I find that there is some
2 relevance. Now Ms. Grabert-Lowenstein says that they are
3 intended to inflame. Rule 403 instructs us that to exclude
4 it only if the prejudice created by the photographs
5 substantially outweighs any probative value. I think it's
6 probative not only for the reasons you say but also the
7 child it just has a diaper on in most of the photographs
8 and is pretty clearly unmarked, I don't see any bruises or
9 any type of abuse on this child. If there is a suggestion
10 that the child is not being cared for properly; what do you
11 say ---

12 Ms. Lively: That is what was brought up, Your
13 Honor, in a statement by both Mr. Palmer and his family as
14 well as Julia Gorman, the defendant.

15 The Court: Well what do you say about that, Ms.
16 Grabert-Lowenstein?

17 Ms. Grabert-Lowenstein: Your Honor, I thought
18 there were no statement about that the child has bruises or
19 had been abused, I believe, and my concern is that we've
20 got this time frame that is as much as six months and as
21 much as a two month prior to the time of death.

22 The Court: Well how would, how would the
23 photographs be prejudicial? I mean what is there
24 prejudicial about these photographs?

25 Ms. Grabert-Lowenstein: I think, Your Honor,

1 that ---

2 The Court: This shows a healthy, what appears
3 to be a healthy little old boy laughing and running around
4 in the summer time.

5 Ms. Grabert-Lowenstein: And she can try to turn
6 that all around and say that starting from the time he was
7 left that, you know, it was strictly the two defendants who
8 had an issue with him, that harmed him. I think that when
9 you look at a situation where a mother leaves her child and
10 for an extensive period of time, there's a statement I
11 think as much as September, and hadn't really been there in
12 June to care for her child, that the portrayal of a happy
13 family frankly is negated and I don't want a false
14 impression out there ---

15 The Court: Well you can certainly negate that
16 by the testimony that you have and I think that's what Ms.
17 Lively's concerned about.

18 Ms. Grabert-Lowenstein: Your Honor, I just, I
19 just feel that they are prejudicial because they are so
20 old. Anything can happen having nothing to do with ill
21 manner of care to a child from the end of May or the middle
22 of May, which one of those pictures is, I think it's on the
23 17th, to July, even if you take it the first of July when
24 he was left with Mr. Palmer and, and Ms. Gorman.

25 The Court: Well I'm going to allow them, I do

1 not believe that if they had any prejudicial value that it
2 would outweigh the significance of its probative value.
3 It's probative to show that the child appears to be
4 healthy, appears to be unmarked, appears to be well cared
5 for.

6 All right, what else do we have?

7 Ms. Grabert-Lowenstein: Your Honor, actually I
8 kind of want a clarification, my understanding was the
9 Court's ruling was that witnesses are sequestered. There
10 are two sequestered witnesses sitting here now and I don't
11 want, I don't want to seem ill hearted or, you know, like I
12 don't have any feelings because I do, they lost a child
13 here, but the parent's child are going to be called as
14 witnesses, are they going to be allowed, we would object to
15 them being allowed to sit in during the opening?

16 The Court: What do you say about it, Ms.
17 Lively?

18 Ms. Lively: Well we did discuss this at length
19 and what I understood your ruling to be was that as long as
20 they were one of the first witnesses that I called then I
21 could have them in here because under the victims rights
22 act allowing them to be here for the trial of their dead
23 child ---

24 The Court: I think they're entitled to be here.

25 Ms. Lively: Exactly, and so I've agreed and

1 I've rearranged it to be where every, I'm going to call Mr.
2 Grimes first and then I'm going to call Cesalee, the
3 mother, second, and I intend to do that as I stated before.

4 The Court: This is what we discussed last week,
5 Ms. Grabert-Lowenstein, and I thought that that was
6 agreeable to everyone.

7 Ms. Grabert-Lowenstein: No, Your Honor, it was,
8 and like I said I was asking for clarification because my
9 understanding was that it had to do with the order of
10 testimony and I, and I apologize if I missed something but
11 I wasn't aware they were going to be allowed to sit in
12 during openings because certainly they can glean things,
13 and again I don't want to, you know, like I don't have any
14 feeling ---

15 The Court: I don't think they can glean any
16 more than they may have from Ms. Lively after spending the
17 last month or year with her. I'm sure she's discussed her
18 theory of the case et infinitum with them.

19 Ms. Grabert-Lowenstein: Just needed to put it
20 on the record, Your Honor.

21 The Court: All right, all right.

22 Ms. Grabert-Lowenstein: And, Your Honor, if I
23 may and I wish, with all due respect I would ask the Court
24 if they could, and I understand the Court's ruling about
25 taking the defendants into custody. My client has

1 extensive family here, this is his home. I would just
2 respectfully request that you reconsider despite the
3 State's objection.

4 The Court: And I have no way of controlling
5 your client. Like I say it's not like Federal Court where
6 the bond remains open until a, a jury verdict. In the
7 state court's the bondsman is relieved the moment the trial
8 starts and the defendants would be on no bond; there would
9 be nothing to assure their appearance whatsoever.

10 Ms. Grabert-Lowenstein: Then, Your Honor, may I
11 with all due respect request a recognizance bond on behalf
12 of my client. He fits all the criteria. When the proffer
13 was pulled, when he was arraigned on the homicide by child
14 abuse charges the bondsman even did not require any more
15 bond, made it all concurrent that that was set, and I
16 understand the Court's ruling. I just feel like my client
17 ---

18 The Court: Why should I engage in that fiction
19 of requiring a bond. I mean a personal recognizance bond;
20 what is that?

21 Ms. Grabert-Lowenstein: Well you, you have the
22 ability to go get him if he doesn't appear.

23 The Court: Well these are very serious, I would
24 have to have the ability to go get him anyway, but these
25 are serious charges and the State has posed an objection.

1 The State usually agrees, and on lesser charges at least,
2 to allow the defendant to remain on bond but here the State
3 has strenuously objected to it and that is the law of this
4 State that the defendants go into custody at the, at the
5 beginning of the trial. Now unless Ms. Lively has changed
6 her mind she tells me that she objects to allowing them to
7 be at large during the trial of the case and this is a case
8 that may take several days.

9 Ms. Grabert-Lowenstein: And, and ---

10 The Court: I anticipate it will.

11 Ms. Grabert-Lowenstein: I'm sorry, I understand
12 that, the basis of her objection is because there's been
13 people who apparently haven't appeared for trial. Part of
14 the reason that I am bringing this back up is that is not
15 something that is, quite frankly, should be any kind of a
16 concern in terms of my client. You can put him under house
17 arrest, he lives with his parents.

18 The Court: Am I not supposed to keep him
19 incarcerated; isn't that the law of this State?

20 Ms. Grabert-Lowenstein: As I, as I understand
21 it, yes, Your Honor, I'm just, I'm just putting things on
22 the record and pleading it out, thank you.

23 The Court: All right.

24 Ms. Grabert-Lowenstein: Thank you, Your Honor.

25 The Court: Anything further, Mr. Galmore, from

1 you?

2 Mr. Galmore: No, sir.

3 The Court: Very well, anything further, Ms.
4 Lively?

5 Ms. Lively: No, Your Honor.

6 The Court: Okay, is our jury here?

7 Madam Clerk: Yes, sir.

8 The Court: They're all here?

9 Madam Clerk: Yes, sir.

10 The Court: You want to bring them in.

11 (Whereupon, the jury returns to the courtroom at
12 2:50 p.m.)

13 The Court: It's good to see that everyone made
14 it back. Mr. Buie, as I indicated at this morning when we
15 selected the jury you are the foreperson of this jury. In
16 that regard you are the jury's liaison between the Court.
17 Any problems that arise, any questions that you may have,
18 any concerns that you have if you will just bring them to
19 the attention of Ms. Graham or Mr. Ropp, who will be in the
20 ante room of your jury this week all during this trial,
21 they will bring that directly to me. You will also preside
22 over the deliberations of the jury during this trial.

23 Now we're about to begin this trial but before we
24 do I want to talk with you a few moments about what you can
25 expect and what your duties are.

1 What I am telling you now is certainly not a
2 charge on the law. I will charge you fully on the law at
3 the end of this trial, but I always find it's appropriate
4 to make a few opening remarks to the jury just so that you
5 will better understand what's expected of you and what you
6 can expect because I learned a long time ago that we go and
7 we randomly select you folks, we bring you in here from
8 your daily lives, the jobs and things that you are familiar
9 with, and we just expect you to understand everything we do
10 or say in the courtroom, and that is certainly not any more
11 fair than if I went to work with you and you expected me to
12 understand everything that you were doing or saying in
13 your, your work place.

14 Let me just begin by saying this that this trial
15 is probably not going to be like you might see on t.v. How
16 many of you have been on a high court jury before? Have
17 any of you been in the court of general sessions or common
18 pleas as jurors before? Well isn't that interesting, that
19 is interesting. Well I'm sure that all of you have seen
20 trials on t.v. I can't even get American Pickers tuned in
21 for cop shows and court shows that are on t.v. and it seems
22 that in everyone one of them there is something exciting
23 going on. There's a thrill a minute and there's a surprise
24 around every corner in those trials. You're probably going
25 to find out that that's not the case in this trial. It

1 might be but probably not because the search for justice,
2 the search for the truth, and that's what you're on, you're
3 on a search for the truth in this jury experience that
4 you're about to have. That search for, for the truth is
5 going to be slow and at times it's going to be very
6 deliberate. It's going to be repetitive but I think as the
7 trial goes on most jurors begin to understand why we have
8 to do that and why it's necessary that we move along at
9 that pace.

10 I want to remind you that you took an oath a
11 moment ago. These attorneys, I, the court reporter, we
12 have all taken oaths during our career to act honorably and
13 to act ethically in the trial of these cases. You as
14 jurors now have that same obligation placed on you and it's
15 an important obligation and the reason that it is so
16 important as you as jurors have become the sole and
17 exclusive judges of the facts in this case.

18 At the end of the trial you're going to be asked
19 to deliberate and that deliberation process is really sort
20 of like three parts. The first part is to find out what
21 the facts are and let me tell you, if I say or do anything
22 during this trial that suggests to you that I have an
23 opinion about a piece of evidence or an opinion about what
24 the facts are I hope that you will ignore it, it is totally
25 unintentional that I convey that to you. The law does not

1 even allow me to have an opinion about the facts in the
2 case. That is solely in your prerogative; you determine
3 what the facts are.

4 The second part is the law and that's going to be
5 pretty easy for you because whether you agree with it or
6 not I'm going to give you the law at the end of this case.
7 I'm going to give you the law that you must under your oath
8 apply to the facts in this case and I say apply, think in
9 terms of two great big ears, one is the facts, one is the
10 law, you bring them together. That's what the deliberation
11 process is to bring them together to see how they fit.

12 The third part of that deliberation process is
13 judging how that fit is. That's what we call determining
14 whether or not the burden of proof has been met in the
15 deliberation process.

16 The State has the burden of proof in this trial
17 as in all criminal trials, that is the State must convince
18 you. The defendant doesn't have to convince you of
19 anything. The State has to prove to you or convince you of
20 the defendants guilt beyond a reasonable doubt.

21 At the end of the trial I'm going to explain to
22 you what reasonable doubt is. I'll give you a pretty
23 detailed explanation of it as I know it but that burden
24 remains with the State throughout the trial of this case.
25 It never shifts to the defendants and that's something that

1 you should keep in your mind as we begin to approach this
2 case.

3 Now I know you're sitting here thinking well,
4 Judge, what you've told us is all we got to do is determine
5 what the facts are in the case. We got to listen to all
6 the evidence and determine what the facts is, the facts
7 are, well that's the whole case, I mean that's the most
8 important job of anyone in this, this trial. I'm going to
9 give you the law but you've got to determine what the facts
10 are. How do we do it; how do we determine what the facts
11 are when we have contradictory evidence?

12 Let me tell you what you can do, you can apply
13 any test that has proven to you through your experience and
14 your combined experiences to lead you to the truth. You
15 can consider such things as a witness' demeanor or
16 appearance on the witness stand. You can consider where
17 that witness, whether that witness was in a position to
18 actually see or hear what that witness may say that he or
19 she heard or, or, or saw. You can consider such things as
20 whether a witness has any interest, prejudice, or bias in
21 the outcome of the trial. You can believe one witness over
22 many, many over one, part of what a witness says and reject
23 the balance, none of what a witness says, or you can
24 believe everything that a particular witness says in your
25 search for the truth but it is your search and a search

1 that you have to make as jurors.

2 Now from time to time during this trial you may
3 hear something like this, one of the attorneys will get up
4 and say, I object, Your Honor, or, Your Honor, I have a
5 matter that we need to take up outside the presence of the
6 jury, and I may ask Mr. Ropp to take you back into to jury
7 room and when you get back there you may look at each other
8 and think what are they trying to keep from us, what is it
9 that's going on in that courtroom that we need to know.
10 Let me tell you what normally happens there, why we usually
11 take you out.

12 Normally there is an issue involving a piece of
13 evidence, how it will be presented, if it will be
14 presented. It's not that anything has to be hidden from
15 you, this is why you as jurors should not hear that, that
16 conversation that goes on, during those situations I am
17 often asked to express my opinion about a piece of
18 evidence. I may have to say what I think about a piece of
19 evidence when I'm asked to, to, to rule on it and that
20 would be highly improper for you to hear cause as I said I
21 don't even have the right to have an opinion about evidence
22 except when ruling on its admissibility or, or, or whether
23 or not it should be admitted.

24 Those are the things that we take you out of the
25 courtroom for, not to hide anything from you, we're going

1 to present or I'm going to try to make sure all of the
2 relevant evidence in this case is presented for your
3 consideration in your deliberation process, this search for
4 the truth.

5 Let me say that during this trial, and this trial
6 as you heard from the witness list, could last several
7 days. If it does I'm going to ask you to do something
8 that's going to be very hard to do and that is not to
9 discuss this case with anyone including that significant
10 other that's at home. I know when you get home your
11 husband, your wife is going to say what kind of case are
12 you on, are you on a case, what's it about, and they're
13 going to want to know everything about it. Don't discuss
14 it with them.

15 Don't do any free lance investigation in this
16 case. Don't go on the internet; don't go on facebook;
17 don't go on twitter. Don't go on any of the many sites
18 that we have where we go for information, that's highly
19 improper. You know they sent me a charge that I'm supposed
20 to read off to ya'll about the internet now, but you know
21 why I have to just sort of make up as I go along, they
22 emailed it to me and I lost it, but I ask you to consider
23 this case only based on the evidence that you hear from
24 this witness stand.

25 I ask you not to pre deliberate this case, to

1 keep an open mind throughout the trial. If you go back
2 there after every witness and you analyze that witness and
3 you start talking about what that witness said, you're
4 going to start forming opinions about this case and you
5 should not form an opinion. You should not express an
6 opinion until you have heard all of the evidence from both
7 sides in this case.

8 Now in must a minute we're going to start and
9 when we start Ms. Lively is going to give you an opening
10 remark. I read to you briefly from the indictments just to
11 let, enough to let you know what the case is about, but Ms.
12 Lively is going to give you a much more detailed summary of
13 what she expects and hopes that she can show to you beyond
14 a reasonable doubt during the trial of this case.

15 Mr. Galmore and Ms. Grabert-Lowenstein if they
16 choose to do so have an opportunity following her to also
17 make an opening remark. After that Ms. Lively is going to
18 put up the State's case, that is she's going to put up the
19 evidence in this case.

20 I'm not going to begin the witnesses until
21 tomorrow morning cause I think that we will have used up
22 just about the most of the day and I'm sure you're tired
23 and I want you fresh when you start hearing witnesses
24 testimony.

25 Following the State's case the defendants, or

1 both of them or either of them, may, if they choose, they
2 have no obligation to do so, but they may put up witnesses
3 for the defense. After all that is done we will begin
4 closing remarks or closing arguments and you will hear
5 again from Ms. Lively and the defendants. The order will
6 depend on what's been presented during this trial but that
7 will be the final thing before I charge you on the law.

8 I ask you again, please, pay close attention to
9 these attorneys as they make their opening remarks. It's
10 going to be their summary of what they intend to prove.
11 It's going to lay out the case for you and it's very
12 helpful in understanding why witnesses are called and what
13 witnesses are going to say. Ms. Lively?

14 Ms. Lively: Thank you, Your Honor.

15 Opening Statement

16 By Ms. Lively:

17 Your Honor is correct, I'm going to give you
18 enough information to know why you're here for this week so
19 you can understand a little bit about what you're going to
20 hear from that witness stand.

21 Ladies and gentlemen, we're here because [REDACTED]
22 [REDACTED], seventeen months old, visiting his
23 grandmother, Julia Gorman, the defendant, for the first
24 time, his trip to the beach with his mom Cesalee, died in
25 her care and in Palmer's care, seventeen months old.

1 One of the things that you need to understand in
2 child abuse cases is that child abuse is a crime that
3 happens in silence. It's not often that we have a video
4 camera that's taping the event. We don't have pictures a
5 lot of times showing the inflicted injury. Instead what we
6 have to rely on whenever we have the body of a child before
7 us we have to rely on that child, that body, as our silent
8 witness, and it is a shame that we have to work our way
9 backwards to know the truth of what happened to this child,
10 so let me just give you a brief scenario about why he was
11 here.

12 Cesalee comes here to South Carolina to visit her
13 mother with [REDACTED] his name is [REDACTED] [REDACTED]. His
14 father Richard Grimes is here as well, he's in the
15 military. So Cesalee comes here with [REDACTED] after a two-
16 day bus ride from Pensacola, Florida, because Julia said
17 come on, I'd love to meet my grandson, spend some time with
18 him, so in June of 2008 Cesalee did just that. Her's and
19 Richard's only child, [REDACTED] brings him here and while
20 they're here they go to the beach. They spend time, he
21 plays in a wading pool, he's a typical toddler.

22 Now Cesalee has to leave and right before she's
23 getting ready to leave to go back and meet up with Richard,
24 he's packing, he's getting ready to have to do basic
25 training or something, he'll tell that to you, you're going

1 to hear from him, [REDACTED] gets sick. He has a fever, some
2 type of cold, and anyone who's ever been around toddlers
3 know that's about every other week, snotty nose, fussy, and
4 on top of that the poor kid gets bit by ant bites, so he's
5 got ant bites all over him, so he goes into, they take him
6 to the doctor, Cesalee, Julia Gorman, and [REDACTED] at the
7 doctor, and you're going to hear from that doctor. He's a
8 family practitioner in Aynor, Dr. Jody Hutson. He's going
9 to come in here and tell you, yeah, I saw [REDACTED] He came
10 in for ant bites and a cold, treated him, gave him some
11 medicine, then they left.

12 Now here was the decision that ended up being
13 unbeknownst to Cesalee, the decision that cost [REDACTED] his
14 life and it is in no way shape or form her fault. The
15 plane trip was six hours, this child is sick, fussy, so
16 Cesalee makes a decision after speaking with her husband to
17 sign over a temporary guardianship to Julia and Robert
18 Palmer, watch him for me, you want to spend some more time
19 with your grandson, this is a perfect chance and Gorman
20 welcomed it, let him stay here with me, we'll take care of
21 him.

22 Cesalee, young, wanted to get back to her
23 husband, excited about the perspective move, thinking about
24 having a toddler on a six-hour plane ride, makes that
25 decision and you'll hear about that.

1 She leaves on July 2nd, 2008, other than the cold
2 and the ant bites, same toddler, nothing different. July
3 the 14th, 2008, 911 is called, he's actively seizing. He's
4 taken to the Conway Medical Center.

5 You're going to hear medical evidence and
6 testimony that he had multiple, not one, multiple skull
7 fractures, bleeding on his brain, bruises on his body.
8 July the 16th, 2008, they have to pull the plug, he has no
9 more brain reflexes, he's dead.

10 So for sixteen months of that child's life he's
11 running around a toddler, only child to these parents, two
12 weeks with Palmer and Gorman, he's dead.

13 Now, ladies and gentlemen, you're going to hear
14 from that silent witness this whole week. That silent
15 witness is [REDACTED], seventeen months old. You're
16 going to see pictures; you're going to hear medical
17 evidence. Medical evidence that is going to show you and
18 prove to you beyond a reasonable doubt that this was
19 nothing less than a deliberate, violent, forceful act, done
20 by the defendants.

21 There were three people in that trailer, single
22 wide, not even fourteen feet wide trailer, with two
23 bedrooms, one bathroom, three people in that trailer, one
24 of them is dead, nobody else. Their testimony, everybody's
25 testimony you will hear is consistent in regards to who the

1 only two caretakers of that child were on July the 14th,
2 2008, when he presented at the hospital actively seizing,
3 only two people.

4 He ate that day, he was functioning that day.
5 You will hear medical testimony that someone with his type
6 of injuries you would expect to think that he had either
7 been thrown out of a motor vehicle at a high rate of speed
8 or fallen from stories high, but you wait and listen to the
9 medical evidence.

10 The experts, the people who come in here who
11 deal with these type of things are going to help you
12 understand what you have to do with all that information
13 cause you have to put it together and you have to make it
14 make sense to you, and I'll tell you it will make sense.
15 You will have no doubt as to who is responsible for this
16 child's death; and what the law is in South Carolina, and
17 our legislature clearly understands that child abuse
18 happens in private, okay, that's what our legislature
19 knows; and the statute in regards to what they're charged
20 with we don't have to show motive in South Carolina, okay,
21 don't have to necessarily make it make sense. What it has
22 to do is it has to fit the elements of the crime.

23 "A person is guilty of homicide by child abuse if
24 the person causes the death of a child under the age of
25 eleven while committing child abuse or neglect and the

1 death occurs under circumstances manifesting an extreme
2 indifference to human life or knowingly aids and abets the
3 other person to commit that child abuse or neglect and it
4 results in the death of a child," guardians of the child.
5 He died in their care, no reasonable explanation for it but
6 you listen for that yourself.

7 Extreme indifference to human life meaning that
8 if I am doing something so horrific to a child that by
9 looking at it you know that that could cause injury or
10 death to the child I have extreme indifference because I'm
11 doing it anyway. That's extreme indifference to human
12 life.

13 Abuse and neglect is an act or omission by any
14 person which causes harm to the child's physical health and
15 welfare, okay, seems pretty straightforward, and then harm
16 to a child, inflicts or allows to be inflicted upon the
17 child physical injury even if it's corporal punishment.

18 And then the other issues that can be brought up
19 in other circumstances, we're focusing on the physical
20 here, because that's what we're going to show you, clearly
21 the physical abuse and neglect of this child, so, ladies
22 and gentlemen, it's not going to be a fast case.

23 It's such an important case to [REDACTED] He is a
24 silent witness and he is going to speak loudly to you this
25 week. He is going to provide you with all the information

1 and the ability you need to make the right decision for
2 him. We're going to hand it to you, give you all the
3 admissible relevant evidence so you can make that decision
4 for [REDACTED] and find them guilty, thank you.

5 Ms. Grabert-Lowenstein: Your Honor, the defense
6 on behalf of Mr. Palmer wishes to make an opening at this
7 point, Mr. Galmore and I have decided the order of things.

8 Opening Statement

9 By Ms. Grabert-Lowenstein:

10 Ladies and gentlemen of the jury, my name is
11 Carla Grabert-Lowenstein and it is my absolute honor to
12 represent Mr. Palmer. We are going to ask you to take a
13 long hard look at all the evidence that's going to be
14 presented in this case and it won't be a fast case and as
15 important as it is to [REDACTED] it's important to Mr. Palmer.
16 We are convinced that when you look at all the cold hard
17 evidence you'll reach the conclusion that there weren't
18 three people in that trailer, there were two, [REDACTED] and
19 the actual perpetrator and that my client had no knowledge
20 of what went on, had no knowledge of any injuries to [REDACTED]
21 and you will be able to find him not guilty of all the
22 charges.

23 We ask you to examine the actual evidence, not
24 speculation or innuendo, but simply the evidence that's
25 admitted before you. The events of July 14th of 2008 were

1 incredibly tragic. They were tragic to [REDACTED] they were
2 tragic to the people who care about him, and that included
3 my client.

4 Mr. Palmer's odyssey end to that tragedy began in
5 2004. He was in the Navy; he met Ms. Gorman. They became
6 a couple and after he was honorably discharged he moved
7 with her back to Horry County, back to Horry County where
8 he had been raised and where his extremely close knit
9 family still lives.

10 During the odyssey of this relationship between
11 Robert and Ms. Gorman he found that she had had two
12 children by a previous marriage, Kyle and Kala, and then
13 later he learned about her daughter Cesalee. He learned
14 that this wasn't a close good relationship; they didn't get
15 along. It was troubled.

16 Now in June of 2008 it had been a substantial
17 period of time since Cesalee and her mother had seen each
18 other, and this was the first time that Robert had the
19 pleasure of seeing [REDACTED] but more importantly it was the
20 first time that his grandmother saw him, the first time in
21 seventeen months.

22 Cesalee came to visit Robert and Ms. Gorman where
23 they lived in Aynor and she did make the decision to leave
24 him. The evidence may be different as to when she was
25 going to come back or the circumstances but she made that

1 decision. Now during this period of time my client was the
2 primary caretaker for [REDACTED] This was a role that Robert
3 felt entirely comfortable with. He's a father; he had a
4 son who was five years old at that time. The evidence is
5 going to show he's a caring loving father and never were
6 there any issues about people being concerned about him
7 being around children or the care of [REDACTED], his own son,
8 or more relevant [REDACTED]

9 During this time period Ms. Gorman was working a
10 distance away from their home at Bass Pro Shop. She would
11 take the duties of taking care of [REDACTED] over when she came
12 home. Now evidence is going to show that she was
13 frustrated about work and yet she was frustrated at their
14 relationship. It wasn't exactly going well.

15 The evidence as to July 14th, those late
16 afternoon early evening hours, will be that Ms. Gorman got
17 home at about 4:15 or so. The first words out of her mouth
18 were where is he; Robert says [REDACTED] is sleeping, he's
19 taking his nap. They had been concerned about being a
20 little sick still and they had an appointment the next day.

21 You're going to find that just as the prosecutor
22 said this child was taken while in their care for medical
23 appointments. Now she comes home like I said, the first
24 words out of her mouth were where is he, [REDACTED] is asleep,
25 he's taking his nap. The evidence will show they both go

1 in, they check on him, he's fine, he's sleeping. They then
2 have a discussion and it was suggested by Ms. Gorman that
3 they let him sleep, let us eat dinner alone. Mr. Palmer
4 agrees.

5 While dinner is ostensibly being prepared Robert
6 goes out with Logan, the evidence is going to show, and
7 Logan is a bull dog puppy. The evidence is going to show
8 he was outside and Ms. Gorman during her interview
9 confirmed he had gone out to walk the dog. He comes back
10 in, and he was quite some distance away the evidence is
11 going to show, this is a big, big piece of property, comes
12 back, they eat dinner. The evidence is going to show they
13 ate dinner pretty quickly and it's then Ms. Gorman who goes
14 in to get [REDACTED] and [REDACTED] is seizing. Robert says give
15 him to me, get me a cold cloth cause he's burning up, and
16 call 911, which Ms. Gorman does.

17 The medical evidence is going to show that this
18 case is not a what happened but it's a who happened. The
19 injuries were severe and the evidence is going to show that
20 the time frame for when those injuries happened was exactly
21 when Mr. Palmer was outside. This is a who done it and you
22 will have some extensive evidence to show you that.

23 We'll have the opportunity to hear the two
24 interviews, one of Mr. Palmer and one of Ms. Gorman. The
25 interview of Robert he said, the officers acknowledge you

1 cared for this child, you've shown emotion, can you tell us
2 what happened. Robert consistently said I don't know, I
3 know I didn't hurt him, and at that time he didn't, he even
4 says he doesn't think that Julia hurt him.

5 You turn to the interview of Ms. Gorman and you
6 get an entirely different picture. First of all the person
7 she starts talking about, the very first thing in the
8 interview is her daughter Cesalee. The officers let her
9 talk for a while. They then bring it home, the evidence is
10 going to show that, you know, Cesalee wasn't involved in
11 this, Ms. Gorman.

12 She talks about how [REDACTED] was whining, crying
13 and this goes on for a while. She is given a doll and
14 after saying she's not sure if she can remember she shook
15 him, she said I shook him but it wasn't hard, it was like
16 this, and she describes an incident when she was trying to
17 cook, grabbing, he was crawling up her leg. She makes it
18 very clear in her statement that [REDACTED] was climbing all
19 over her, she couldn't get the cooking and the cleaning
20 done, it was frustrating. She talks about he must have
21 wanted his mom so, you know, the minute I got home from
22 work he was climbing on me, he was whining, I'd step out,
23 I'd step back in it would start again. She was frustrated;
24 she was frustrated and that frustration caused [REDACTED] his
25 life.

1 The evidence is also going to make it clear when
2 you look at the interview of Mr. Palmer that when he
3 doesn't tell the officers what they want that's why he's
4 here. The evidence is going to show it wasn't that he
5 didn't want to tell them, he makes it clear, he wouldn't
6 cover for her, she wasn't worth going to jail for, but you
7 can't say something you don't know if you have no
8 knowledge.

9 Ladies and gentlemen, again on behalf of Mr.
10 Palmer we just ask you to listen to all the evidence, not
11 make any conclusions till you've heard all of it and we're
12 confident that you'll reach the conclusion that Robert
13 Palmer was not the perpetrator of the injuries to [REDACTED]
14 [REDACTED], had no knowledge of it. Julia didn't say anything
15 to him either that she was so frustrated it might happen or
16 even after, and that's all covered in the interview, that
17 he had absolutely no knowledge. Ladies and gentlemen, if
18 he had no knowledge how can he be held responsible, and
19 we're confident that you will reach that same conclusion
20 and find him not guilty on all charges.

21 The Court: Mr. Galmore?

22 Mr. Galmore: May it please the Court?

23 Opening Statement

24 By Mr. Galmore:

25 We don't know what happened to [REDACTED] [REDACTED], we

1 don't know. Did Robert Palmer strike this child to cause
2 his injuries, we don't know. Did Julia Gorman strike this
3 child and cause these injuries? She will take that witness
4 stand and tell you that she did not, but the truth is we
5 don't know. We simply don't know and we have a problem.
6 We've had this problem since July 14th, 2008, 2008, 2009,
7 2010, here we are 2011, and we have the same problem. They
8 don't know what happened; we don't know what happened. We
9 don't know when he was struck.

10 You'll hear three or four different time frames
11 for when these injuries were inflicted. We don't know who
12 inflicted these injuries. As Ms. Grabert-Lowenstein said
13 her client felt like Julia Gorman wasn't that type of
14 person. You'll hear Julia likewise say I dated this man
15 for four years, he never seemed to be the type of person
16 that would cause these injuries to a child, we don't know.

17 The evidence in this case is unfortunately
18 lacking. Let me just leave that out there for just a
19 second and let me talk to you about what your job is here
20 today. I want to talk to you about roles and
21 responsibilities because everybody in this courtroom, all
22 these court officials have responsibilities here today and
23 so do you.

24 Madam Court Reporter, her job is to take down a
25 record of everything that's being said in this courtroom.

1 If you think you heard something from a witness and you're
2 in the back deliberating and you're not real sure what the
3 witness said you can ask the Judge to have the court
4 reporter play that testimony back so you'll know for sure;
5 she's recording everything.

6 Madam Clerk, we know that one of her jobs is to
7 give the oath and you've taken three so far today but her
8 job is to keep a record; keep all of the exhibits, keep all
9 of the documents, keep them locked up in the file
10 downstairs in perpetuity. If State's evidence comes to
11 earth in a thousand years and asks about this case you will
12 have a Clerk of Court for Horry County who can go into the
13 vault downstairs and pull this case out and give it to
14 them. If you want to know about a case from 1928 you can
15 go downstairs right now and ask the Clerk of Court for it;
16 they'll go into the vault and pull it out. That's her job
17 to maintain these files. All the legal proceedings that go
18 on in this case, all the legal wrangling, she's going to
19 have it in her file.

20 His Honor's job, as he explained to you, he's the
21 judge of the law. He gives you the law and you have to
22 apply it. His Honor is sort of like a referee at a
23 football game. If the Solicitor and I have a disagreement
24 about the evidence, the Solicitor and Ms. Grabert-
25 Lowenstein have a disagreement, me and Ms. Grabert-

1 Lowenstein have a disagreement about the evidence the Judge
2 decides what happens and he gives you the law and he asks
3 you to apply the facts of the case to the law, give you a
4 very simple example.

5 Say it's a auto accident case and the Judge tells
6 you the law of the State of South Carolina is that it is
7 unlawful to enter an intersection on a red light, that's
8 the law; and you as jurors will have to apply the facts of
9 the case to the law. So as witnesses are called to the
10 witness stand, some witness says the light was green,
11 another witness says the light was red, you as the judge of
12 the facts have to decide who do you believe, what color was
13 that light, and if you as a jury decide the light was red
14 then you have the law. The law says it's unlawful to enter
15 the intersection on a red light. If you as the jury decide
16 the light as green you have the law, it doesn't fit and the
17 facts don't fit, the person is not guilty of the offense.

18 Now your job is to interpret, excuse me, not to
19 interpret, but to judge these facts. When this case is
20 over and you go back to your jury room before you start
21 your deliberations you close your eyes, close your ears,
22 don't talk to your other jurors, just close your eyes and
23 think to yourself, you ask yourself the question what
24 happened to [REDACTED] [REDACTED], the answer to that question is
25 we don't know, then we charge you on your oath that you

1 have to find Julia Gorman not guilty.

2 Back to jobs, my job is to try and get my client
3 off. Everybody has pretty much figured that part out. The
4 Solicitor's job is to bring you evidence and you're
5 supposed to use that evidence to decide if a person is
6 guilty or not guilty of a crime. Now I don't know how
7 closely you were listening to the Solicitor, one thing they
8 didn't say who struck [REDACTED] That's because like I said
9 probably ten times now we don't know.

10 Now your job is not to find evidence for them.
11 The Judge has told you don't go home and look on the
12 internet and see what you can figure out about the case.
13 If these people don't bring you evidence then you don't
14 have a case and that is the situation that we have here.
15 Ever since 2008 no one has been able to answer this
16 question. They'll tell you that Julia Gorman did it;
17 they'll tell you that Robert Palmer did it. They'll tell
18 you that Julia did it and Robert didn't know about it.
19 They'll tell you that Robert did it and Julia didn't know
20 about it, then they'll tell you Robert did it and Julia
21 knew about it and helped cover it up. We don't even know
22 if a crime was committed.

23 They're going to bring you doctors. The doctors
24 are all going to say we think a crime was committed but
25 when you listen to all of the evidence and you're back in

1 that jury room and you ask yourself that question, was a
2 crime actually committed. The answer to that one also, we
3 don't know. I'm sorry, I wish we did know, I'm sorry
4 [REDACTED] is not here with us, but respectfully that's not my
5 job. My job is to point out to you that the State of South
6 Carolina has not and will not meet their burden of proof,
7 and let me explain what a burden of proof is because that
8 is the obligation that they have today.

9 Quite frankly, you're not here to decide who did
10 it, you're not here to decide if either one of them is
11 guilty or not guilty. What you're here to decide is
12 whether or not the State has met its burden of proof. Now
13 we have in the law three different burdens of proof. I
14 know that's kind of complicated. We have a burden of proof
15 for civil cases, auto accidents and things like that, and
16 the easiest way to describe it is to show it to you.

17 Let's imagine this as a football field, a hundred
18 yards in the end. The burden of proof in a civil case is
19 called by a greater weight or a preponderance of the
20 evidence.

21 The easiest way to show you that football team
22 comes up to the fifty yard line and just gets one toe
23 across that fifty yard line that will be sufficient for an
24 auto accident to show that these people are responsible.

25 We have a burden of proof called clear and

1 convincing evidence and that one is kind of up here
2 somewhere and we use clear and convincing evidence in
3 administrative cases. It's not in courtrooms very often.

4 Now for a general sessions case, that is what
5 this is a criminal case, where you're being asked to find
6 someone guilty of a crime. In a general sessions case the
7 burden of proof is high. It is, that's why it's called a
8 burden, it is responsibility that they must carry. The
9 burden of proof in a criminal case is beyond a reasonable
10 doubt so when the question comes up, did she do it, are you
11 convinced of her guilt beyond a reasonable doubt. We will
12 show you that you cannot be convinced of her guilt.

13 We're on this football field and like I said
14 civil burden, clear and convincing evidence, beyond a
15 reasonable doubt. is up here, march that ball all the way
16 down the field. Now the State of South Carolina is not
17 required to score a touchdown. That would be beyond every
18 doubt. I could say there's a doubt that the sun is going
19 to come up tomorrow morning and you would say that's
20 probably an unreasonable doubt; that's probably a stupid
21 doubt. It's come up every day for four billion years; it's
22 probably going to come up in the morning. That is an
23 unreasonable doubt. I could say there ain't no fish in the
24 Waccamaw River, again that's an unreasonable doubt, but
25 when the question arises what happened, when did it happen,

1 who did it, and you don't have clear answers to those
2 questions then this is a case where the State has not,
3 cannot, and will not meet their burden of proof. We ask
4 you to keep an open mind, we ask you to listen to the
5 evidence, we ask you to pay attention. This is an
6 important case, lives are on the line, and I submit to you
7 that at the end of this case, at the end of the evidence,
8 let me back up, you take out all the assumptions, you take
9 out all of the rumors, take out all of the gossip, the
10 innuendo, take all of that out and you look at the facts,
11 the facts of this case, Ms. Gorman did not strike her
12 grandson and cause these injuries which caused his death.
13 The State of South Carolina didn't say that to you in the
14 opening; they didn't say she did it and when the case is
15 over at the end they're not going to say she did it because
16 they can't and because they cannot tell you beyond a
17 reasonable doubt what happened to this child, when it
18 happened, and who did it, again I ask you as jurors to
19 follow your oath, don't do their job for them, find Julia
20 Gorman not guilty of these offenses, thank you for your
21 attention.

22 The Court: Ladies and gentlemen, it is almost
23 4:00 and as I told you we were going to break this
24 afternoon and you can get a fresh start with the witnesses
25 in the morning. I'm sure these lawyers have something for

1 me to do after we break but I'm going to have Mr. Ropp take
2 you in your courtroom, I mean in your jury room, let you
3 get your things together, and I'll ask you to be back in
4 that jury room at 9:30 in the morning.

5 Again let me caution you, please don't try to do
6 any investigation on your part in this case, don't go on
7 the internet, don't go on facebook, twitter, logged in,
8 logged out, what all those other sites may be, I don't
9 know, you have to make a decision in this case based on the
10 evidence you hear here so don't taint your opinion of the
11 evidence by something that you might read on the internet.

12 If there's anything reported, reported in the
13 newspapers tomorrow you see that there's a newspaper
14 article just ignore it, don't read it, and again don't
15 discuss the case with anyone.

16 Mr. Ropp, if you would take this jury into their
17 jury room.

18 (Whereupon, the jury retired to the jury room at
19 3:50 p.m.)

20 The Court: Ms. Lively, you'll be ready to kick
21 off, right, in the morning?

22 Ms. Lively: That's correct, Your Honor.

23 The Court: First thing, okay, anything I can do
24 for you?

25 Ms. Lively: No, Your Honor, we've got a few

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1 more exhibits if the court reporter wishes to pre-mark some
2 matters but other than that --

3 The Court: That would be wonderful if you could
4 get your exhibits done. You know we still have an
5 outstanding motion on prior bad acts; do we not?

6 Ms. Lively: We do, Your Honor, would you like
7 for me to have Yvette Brown from DSS come first thing in
8 the morning to address that issue? I can get in contact
9 with her and tell her to come mn over.

10 The Court: Yeah, we can do that, I'm sure you
11 need to know how we're going to rule on that.

12 Ms. Grabert-Lowenstein: I think both of us do,
13 probably Mr. Galmore a little bit more than I, but I do
14 think it's important, Your Honor, and I appreciate that if
15 we could do that. Do you want us here at 9:30?

16 The Court: Do you plan on putting her up in
17 camera, I mean outside the presence of the jury?

18 Ms. Lively: Yes, sir.

19 The Court: And let's just see where it goes.

20 Ms. Lively: Yes, sir.

21 The Court: All right, and what is your theory?

22 Ms. Lively: It was a ---

23 The Court: 404 exception?

24 Ms. Lively: That's correct, it's a, it was the
25 fact that we want to try to show absence ---

1 The Court: Plan, scheme, intent?

2 Ms. Lively: Absence of accident or mistake, a
3 common scheme of plan, correct.

4 The Court: All right, so you'll be prepared to
5 meet then the similarity requirement of common scheme and
6 plan?

7 Ms. Lively: Yes, sir, and I've attached that
8 and provided that to the defense so they know what my
9 similarities are. I've actually broken it down.

10 The Court: That was very kind of you, thank
11 you.

12 Ms. Grabert-Lowenstein: She did a brief on
13 that, Your Honor, thank you.

14 The Court: All right, very well, I'll see you
15 in here 9:30. I have no qualms about starting earlier if
16 you get here.

17 Ms. Lively: Okay.

18 The Court: Okay.

19 Ms. Lively: We'll be here, thank you.

20 The Court: Thank you.

21 (Whereupon, State's Exhibits Numbers 14, 15, 16,
22 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
23 32, 33, 34 and 35 marked for identification.)

24 (Whereupon, court was adjourned for the evening;
25 and court resumes at 9:30 a.m. on November 15, 2011.)

Ms. Brown - Dir. Exam. In Camera by Ms. Lively

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1 The Court: Anything before we bring in the
2 jury?

3 Ms. Lively: Yes, sir, Your Honor, what the
4 State is going to proffer this morning is the statement or
5 admission by Defendant Gorman that in the past she had been
6 investigated in California by child protective services
7 regarding injury to an infant. Specifically, Your Honor,
8 Yvette Brown from Horry County DSS interviewed Ms. Gorman
9 on July 15th, the date after [REDACTED] [REDACTED] was taken to
10 Conway ER and so we want to proffer her on what statement
11 she made to DSS caseworker in her investigation so that the
12 Court can determine whether or not this is a statement that
13 would be admissible.

14 The Court: All right.

15 Ms. Lively: So when the Court's ready I'm
16 ready.

17 The Court: I'm ready.

18 Ms. Lively: Thank you, Your Honor, the State
19 would call Yvette ---

20 The Court: Mr. Galmore, you ready?

21 Mr. Galmore: Yes, sir.

22 The Court: Okay.

23 Ms. Lively: Okay, Yvette Brown.

24 The Court: Come around, Ms. Brown.

25 Yvette Brown

Ms. Brown - Dir. Exam. In Camera by Ms. Lively

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1 being first duly sworn, testified in camera as follows:

2 Madam Clerk: State your full name and spell
3 your last name for the Court?

4 The Witness: My full name is Yvette Catherine
5 Brown.

6 Direct Examination

7 By Ms. Lively:

8 Q Yvette, where do you work?

9 A Horry County Department of Social Services.

10 Q And how long have you worked there?

11 A Approximately nine years.

12 Q Now, Yvette, in 2000, in July of 2008 what
13 were your duties with the Horry County DSS?

14 A I was an investigator.

15 Q Okay, and in your job duties as an
16 investigator did you have the opportunity to become
17 involved in a case surrounding the possible abuse of a
18 child by the name of [REDACTED] [REDACTED]?

19 A Yes.

20 Q Okay, and please tell the Judge when you
21 first came in contact with the caretakers for [REDACTED] Brown,
22 I mean [REDACTED] [REDACTED], I'm sorry?

23 A I first came in contact with the defendants
24 at MUST.

25 Q Okay, and what date was that?

Ms. Brown - Dir. Exam. In Camera by Ms. Lively

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1 A On July 15th.

2 Q All right, 2008?

3 A Correct.

4 Q All right, now whenever you got to MUST on
5 that date were you provided information from the medical
6 providers as to the condition of the child?

7 A I was.

8 Q All right, so and based upon the
9 information you received how critical was his situation?

10 A Extremely critical.

11 Q All right, so, Ms. Brown, when you went
12 into the interview with Ms. Gorman you were aware of what
13 prognosis was?

14 A I was.

15 Q All right, now whenever you went in and
16 spoke to, well who did you speak to first?

17 A I spoke with Ms. Gorman first.

18 Q Now at that time was she under arrest?

19 A No, she was not.

20 Q All right, had you talked to law
21 enforcement before meeting with her?

22 A I had.

23 Q All right, and based upon your conversation
24 with law enforcement were they coming to arrest her on that
25 date?

Ms. Brown - Dir. Exam. In Camera by Ms. Lively

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1 A No.

2 Q All right, so when you went in and spoke
3 with Ms. Gorman who all was in the room?

4 A My coworker, Ms. Gorman, a nurse, [REDACTED]
5 and myself.

6 Q Okay, now if you could, please, tell the
7 Court exactly what the circumstances were in regards to how
8 you began to get information from Ms. Gorman?

9 A Well, I just ---

10 Q Did you explain your duties?

11 A I did, I did, and I gave her the mandated
12 state brochures letting her know that she was being
13 investigated by the department for child abuse and neglect.

14 Q Okay, so you made her aware of this right
15 in the very beginning?

16 A Correct.

17 Q Now what information are you required to
18 obtain in this type of interview?

19 A All of her demographics, where she lived
20 previously, date of birth, if she had any other minor
21 children, where were they currently, if she was employed,
22 just basic demographic background stuff.

23 Q Okay, did she provide you with that
24 information?

25 A She did.

Ms. Brown - Dir. Exam. In Camera by Ms. Lively

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1 Q Are there, is there any other information
2 that as a child protective services worker that you are
3 required to ask in these type of interviews?

4 A Yes, had she ever been investigated by
5 Department of Social Services in any other state?

6 Q Okay, and when you asked that question of
7 Ms. Gorman what was her response?

8 A She said she had.

9 Q Okay, and once again she knew who you were?

10 A She did.

11 Q And she understood why you were there?

12 A Yes, ma'am.

13 Q All right, did you threaten her in any way?

14 A No.

15 Q And did you make her feel or did you feel
16 like you presented yourself in a threatening way?

17 A No, ma'am.

18 Q Okay, so, please, tell this Court when you
19 asked that question about prior potential investigations of
20 a child protective services what exactly did she tell you?

21 A She informed me that she was actually
22 investigated twice in Long Beach, California, one, one, one
23 time for running a day care out of her home and also for
24 picking on, the allegations was she picked a neighbor's
25 child up by the neck and threw him in the crib and both

Ms. Brown - Dir. Exam. In Camera by Ms. Lively

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1 allegations were unfounded.

2 Q According to her both allegations ---

3 A According to her, correct.

4 Q --- were unfounded, okay, so in regards to
5 the illegal day care that she mentioned to you were you
6 able to find any records or documentation of that illegal
7 day care?

8 A No, ma'am.

9 Q Okay, and is that standard when there is an
10 unfounded case that these records may not no longer be
11 available?

12 A Correct.

13 Q Okay, is that how it is here in South
14 Carolina?

15 A Yes.

16 Q All right, now how about the statement
17 where she admitted to you that she picked up a neighbor's
18 infant by the neck and threw him in the crib, did you have
19 any information you could locate in regards to that?

20 A Well I attempted to get the information
21 from Long Beach, California DSS, however, they were in a,
22 their records were placed in an archives file and they were
23 not able to get those records for us.

24 Q Okay, so the only information that you had
25 was the admission by Ms. Gorman to you?

Ms. Brown - Cross Examination by Mr. Galmore

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1 A Yes.

2 Ms. Lively: Okay, thank you, answer any
3 questions the defense might have for you.

4 Cross Examination

5 By Mr. Galmore:

6 Q Ms. Brown, when you interviewed Ms. Gorman
7 on the 15th was that interview tape recorded?

8 A No.

9 Q Was it video recorded?

10 A No.

11 Q Did you ask Ms. Gorman to write a written
12 statement?

13 A No, sir.

14 Q You said you attempted to find these
15 records from Long Beach, California; is that correct?

16 A Yes, sir.

17 Q Who did you speak with in California?

18 A The clerical staff there, I don't know the
19 name, just clerical.

20 Q You don't know the name of the person you
21 spoke with?

22 A No, I do not, not at this time.

23 Q Was this person telling you that the file
24 was in archives?

25 A Correct.

Ms. Brown - Cross Examination by Mr. Galmore

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1 Q Did you send a subpoena to California?

2 A We don't send subpoenas, sir, we're DSS.

3 Q Did you ask the police to send a subpoena
4 to California?

5 A No, I did not.

6 Q Now you interviewed Ms. Gorman July 15th,
7 2008; is that correct?

8 A Yes.

9 Q And today is November 15th, 2011?

10 A Yes.

11 Q And according to you these records are in
12 the archives in California?

13 A According to California they're in, yeah.

14 Q Okay, do you have the name of this alleged
15 child that was injured in a crib?

16 A No, I just know that Ms. Gorman stated it
17 was a neighbor's child.

18 Q Do you have the name of the parents of this
19 child?

20 A No, I do not.

21 Q Do you know if this child was black or
22 white?

23 A She said the child was black.

24 Q Did you put that in your report?

25 A No, I did, no, I didn't.

Ms. Brown - Cross Examination by Mr. Galmore

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1 Q Okay, so you're adding information that is
2 not in your written report?

3 A I'm answering the question that you asked
4 me.

5 Q Okay, did you write in your report that the
6 child in the crib was a black child?

7 A No, I did not.

8 Q Did you get Ms. Gorman's address in
9 California?

10 A No, I did not.

11 Q But you had information that it was a
12 neighbor of hers in California?

13 A Correct, that's what she informed me.

14 Q And did you speak to an investigator in
15 California?

16 A No, I did not.

17 Q Did you speak with a caseworker in
18 California?

19 A No, I did not.

20 Q You spoke with clerical staff?

21 A I spoke with clerical in the process for
22 unfounded cases or they would be placed in archives files
23 so I didn't know who to contact after that once I was
24 informed of that, it's the same procedure here.

25 Q Would that apply to the alleged illegal day

Ms. Brown - Cross Ex. by Ms. Grabert-Lowenstein

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1 care claim as well?

2 A All unfounded cases, yes.

3 Q So that one is in the archives, too?

4 A Correct.

5 Mr. Galmore: I don't have any further questions
6 for this witness, Your Honor.

7 The Court: Ms. Grabert-Lowenstein, will you
8 participate in this issue?

9 Ms. Grabert-Lowenstein: Your Honor, I, I don't
10 believe I probably have standing to do so.

11 The Court: But I would allow it.

12 Ms. Grabert-Lowenstein: Okay.

13 Cross Examination

14 By Ms. Grabert-Lowenstein:

15 Q Ma'am, you did not find any information
16 that the information that Ms. Gorman gave you that she had
17 been investigated was false?

18 A I'm sorry?

19 Q Let me rephrase --

20 A Thank you.

21 Q She had made the statement to you
22 concerning being investigated?

23 A Correct.

24 Q You didn't find the fact that she had been
25 investigated to be false?

Ms. Brown - Cross Ex. by Ms. Grabert-Lowenstein

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1 A No.

2 Q And unfounded doesn't necessarily mean that
3 the incident didn't occur?

4 A Correct.

5 Q Would that be accurate --

6 Ms. Grabert-Lowenstein: I have no other
7 questions.

8 The Court: Ms. Brown, let me be very clear
9 about this, there was no admission by Ms. Gorman that this
10 occurred?

11 A She admitted that ---

12 The Court: Other than she admitted that she was
13 investigated ---

14 A Correct.

15 The Court: --- but she did not admit the act
16 and said in fact it was found to be unfounded?

17 A Correct.

18 The Court: Okay, and she never made any
19 admission that she threw a child down by the neck or, or
20 that she was operating an illegal day care?

21 A No, she said she was ---

22 The Court: And the information that you would
23 receive from California would actually be to the contrary,
24 would it not, unfounded?

25 A Yes.

Ms. Brown - Cross Ex. by Ms. Grabert-Lowenstein

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1 The Court: Now unfounded in, I'm familiar with
2 DSS here in South Carolina, unfounded means there was no
3 evidence or basis for the allegations, if you were to enter
4 an unfounded finding after investigating a case that's what
5 it would mean, right?

6 A Well actually there's certain categories of
7 unfounded, a category one is no evidence at all, category
8 two is that it may be evidence but we just can't prove it
9 in court, and, of course, category three is when you're
10 unable to locate the alleged perpetrators.

11 The Court: And so you don't know?

12 A I do not.

13 The Court: And they were unable to give you
14 that information?

15 A Correct.

16 The Court: So all we know is that there was
17 some sort of investigation?

18 A Yes.

19 The Court: And sometimes, isn't it true, that
20 these investigations lead in other directions, you may have
21 an allegation of one thing and it turn into something else?

22 A Yes, sir.

23 The Court: And we don't know what?

24 A No.

25 The Court: Thank you. Ms. Lively?

Ms. Brown - Redirect Exam. In Camera by Ms. Lively 119

1 Ms. Lively: Yes, sir.

2 The Court: Would you like to re-examine?

3 Redirect Examination

4 By Ms. Lively:

5 Q Now, Ms. Brown, you were writing notes
6 whenever you were taking this information down?

7 A Yes.

8 Q Is that correct?

9 A Correct.

10 Q Okay, and whenever she gave you the
11 information about grabbing the other infant did she ever
12 tell you she didn't do it?

13 A No, she just said the case was unfounded.

14 Q Okay, but did she ever tell you I didn't do
15 it, I would never do something like that?

16 A No.

17 Ms. Lively: Okay, thank you.

18 Mr. Galmore: Yes, sir, Your Honor, it is our
19 position that this testimony is not admissible under 404(b)
20 as a prior bad act. Let me just cite from State v. Beck
21 536, S.E.2d, 679, it's a 2000 South Carolina case which
22 lays out the standard ---

23 The Court: Which case are you citing?

24 Mr. Galmore: I'm sorry, State v. Beck.

25 The Court: Okay.

Ms. Brown - Redirect Exam. In Camera by Ms. Lively 120

1 Mr. Galtmore: And it's 536, S.E.2d 679 and the
2 case says evidence of other crimes or bad acts is
3 inadmissible to prove the bad character of the defendant or
4 that he acted in conformity therewith. Such evidence is
5 admissible, however, when it tends to establish motive,
6 identity, common scheme or plan, absence of mistake or
7 accident or intent.

8 In addition the bad act must logically relate to
9 the crime for which the defendant has been charged. If the
10 defendant was not convicted of the prior crime evidence of
11 the prior bad act must be clear and convincing.

12 I would submit that it does not sound like there
13 was conviction for these allegations and, therefore,
14 evidence of these allegations must be clear and convincing
15 before it can be submitted to the jury.

16 Ms. Brown does not have any documentation to
17 verify that any of these claims ever happened.

18 To the contrary the Solicitor's office has
19 completed a document that they turned over as far as
20 discovery from Investigator Tony Collins, and I'll hand it
21 up to the Court so that the Court can review it, but
22 apparently the Solicitor's investigator was asked to
23 contact the different police departments and agencies in
24 California to see if they could find these records and this
25 report indicates that he called several police departments,

Ms. Brown - Redirect Exam. In Camera by Ms. Lively 121
1 the Long Beach Department, Oceanside Police Department,
2 Fullerton Police Department, Alameda County Child
3 Protective Services, and L.A. County Child Protective
4 Services, and did not find any reports involving Ms. Gorman
5 under her maiden name or married name.

6 The Court: Thank you, Mr. Galmore. Ms. Lively,
7 how does this reach the clear and convincing standard?
8 From what I'm hearing the allegations were not admitted;
9 they were denied by Ms., Ms. Gorman and she has only
10 indicated that there was an investigation involving an
11 incident, to what extent we don't know, and there was a
12 finding that it was unfounded. I mean doesn't that fall
13 miserably short of the clear and convincing standard? I
14 don't even have to get to the similarities; doesn't it fall
15 short? The Tuomey case made it very clear that there has
16 to be a finding that it was clear and convincing or the
17 evidence was clear and convincing where there has been no
18 conviction, doesn't it?

19 Ms. Lively: Your Honor, it is, it's a tough
20 slope for the State to climb, absolutely. It's an
21 extremely eye opening statement by this defendant because
22 of the fact that we have two defendants who are claiming
23 that they have no idea what happened to this child and the
24 child's complete injuries other than some bruising on his
25 body were to his head. You know for me this clear and

Ms. Brown - Redirect Exam. In Camera by Ms. Lively 122

1 convincing has to be attached to the similarities simply
2 because of the type of injury that [REDACTED] had was to his
3 skull and his head.

4 The Court: I'm talking about the threshold ---

5 Ms. Lively: The threshold.

6 The Court: --- finding of that, that what was
7 stated is clear and convincing. There is nothing other
8 than a statement by the witness that there had been an
9 investigation, nothing more, and that it was unfounded.
10 The threshold is what I can't get over. I don't even, I'm
11 not even close to making a determination of what the
12 similarities would be yet.

13 Ms. Lively: Yes, sir, and the other basis for
14 the State wanting to put this in would be an admission
15 against the party opponent, obviously that being the
16 defendant in the case that she had been investigated by a
17 child protective services and what those investigations
18 were for, so just based on statements themselves being made
19 by the defendant in this case as being an exception to the
20 hearsay ---

21 The Court: Isn't that a hearsay exception?

22 Ms. Lively: An hearsay exception, correct.

23 The Court: It's merely hearsay exception which,
24 you know, I don't argue that, I don't argue that it would
25 be, that it's not excluded by hearsay but it still has to

Ms. Brown - Redirect Exam. In Camera by Ms. Lively 123

1 meet the 404 test and the analysis of 404 ---

2 Ms. Lively: Are you talking about Lyle?

3 The Court: --- following the case law and, and
4 I think there has to be a threshold finding. If there was
5 no conviction of the prior bad act then there must be clear
6 and convincing evidence that it occurred and then there
7 must be a, a, a, showing of similarities between the prior
8 bad act, something to connect it to the act for which she's
9 accused. I just don't see it, I don't believe that it's
10 admissible and I'm going to find it being admissible.

11 Ms. Lively: Your Honor, may I ask one question
12 in regards to that?

13 The Court: Yes.

14 Ms. Lively: Not as to your ruling but if the
15 defendant were to take the stand and subject herself to
16 cross examination then it's my understanding that any
17 statement that she made against her own interest would be
18 available for me to cross examine her on. It would no
19 longer be an issue of whether or not it comes in through
20 hearsay or as a prior bad act through the DSS caseworker?

21 The Court: What do you say about that, Mr.
22 Galmore? If you put her up, of course, Ms., Ms. Lively,
23 she. you ask the question you're probably going to get the
24 response, it was unfounded.

25 Mr. Galmore: I think she's trying to get by the

Ms. Brown - Redirect Exam. In Camera by Ms. Lively 124

1 back door of the very thing that the Court has just ruled
2 that she can't get through the front door. I would submit
3 to the, to the Court that this issue, this line of
4 questioning if she takes the witness stand is totally
5 incompetent as far as this case is concerned.

6 The Court: And I believe you're right, Mr.
7 Galmore, I'm not going to allow this, okay.

8 Mr. Galmore: Yes, sir.

9 The Court: I think under surely 403 analysis
10 that it is far more prejudicial than it could be probative.
11 It doesn't prove anything; it was an unfounded allegation
12 according to the authorities in California, and that's all
13 we know, that it was an unfounded allegation, so it has no
14 probative value. It certainly has prejudicial value and
15 I'm not going to allow it, thank you, Ms. Brown.

16 The Court: Okay, let's, let's bring our jury
17 in.

18 Mr. Galmore: Your Honor?

19 The Court: Yes, sir?

20 Mr. Galmore: Before we bring the jury in ---

21 The Court: Sorry.

22 Mr. Galmore: --- I do have one concern, just
23 this morning I received from the Solicitor's office three
24 pages of looks like medical records, a cover sheet and two
25 pages of medical records from Dr. Ann Abel down at MUST.

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1 These look like some records that she has generated for
2 [REDACTED] [REDACTED] as a result of this trial. Your Honor, we
3 were concerned about receiving discovery at the last
4 minute; we were concerned about receiving discovery
5 throughout the course of the trial. We began on yesterday
6 and we're in the second day of the trial and we're still
7 receiving paper work. I would ask the, I would ask the
8 Court to rule that the Solicitor's office cannot refer to
9 these documents.

10 The Court: What's Ms. Abel, or Dr. Abel was
11 identified as a witness, and who is Dr. Abel?

12 Ms. Lively: She's the pediatric expert from
13 MUST that's going to come testify. Your Honor, this is
14 just her demonstration.

15 The Court: I'm sure that you, I'm sure that
16 you've heard everything and have had reports from her; have
17 you not?

18 Mr. Galmore: We ---

19 The Court: Is there anything new?

20 Mr. Galmore: We have a written report from Dr.
21 Abel but these are graphs, I guess they did something for
22 demonstrative evidence. It says a growth chart summary for
23 court. This is not in any actual medical records that
24 belong to [REDACTED] [REDACTED]; it's something that Dr. Abel
25 generated on her own in anticipation of trial.

Ms. Brown - Redirect Exam. In Camera by Ms. Lively 126

1 Ms. Lively: I was being nice by giving it to
2 them; it's her demonstration.

3 Mr. Galmore: She can keep it.

4 Ms. Lively: Thank you, that's fine I'm just
5 telling you I gave it to them cause she sent it to me
6 saying I'm going to use this to show the development of the
7 child, that's it. They all know the weight of the child,
8 the size of the child, his head circumference, his length,
9 everything. I gave it to him ---

10 The Court: I'm going to admit that, Mr.
11 Galmore.

12 Mr. Galmore: Yes, sir, we would again just ask
13 the Court to inquire of the Solicitor's office are we going
14 to continue to receive discovery throughout the course of
15 the case. We do have ---

16 The Court: Do you have anything else? You've
17 given him everything you have; is that correct, Ms. Lively?

18 Ms. Lively: And then some, Your Honor.

19 The Court: That's hard to do, and then some,
20 more than what you have, but okay.

21 Ms. Grabert-Lowenstein: Your Honor, I just,
22 just to protect the record want to reflect that I join Mr.
23 Galmore's motion and concerns.

24 The Court: Very well, okay, what else you got,
25 Mr. Galmore?

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1 Mr. Galmore: That's it, thank you, Your Honor.

2 The Court: All right, if you would, Ms. Graham,
3 bring the jury in.

4 (Whereupon, the jury returns to the courtroom at
5 9:52 a.m.)

6 The Court: All right, let the record reflect
7 that we have our jurors and we have our alternates and
8 everybody is ready to go, I hope, and you had a good
9 evening. Ms. Lively?

10 Ms. Lively: Thank you, Your Honor, the State
11 would call Richard Grimes to the stand.

12 Richard Coleman Grimes

13 being first duly sworn, testified as follows:

14 Madam Clerk: Please state your full name and
15 spell your last name for the Court?

16 The Witness: Richard Coleman Grimes, last name
17 g-r-i-m-e-s.

18 Direct Examination

19 By Ms. Lively:

20 Q Richard, where do you live?

21 A Las Vegas, Nevada.

22 Q And how long have you lived there?

23 A Seven months now.

24 Q And, Richard, how do you know Cesalee
25 Grimes or Cesalee Carnaghie?

Mr. Grimes - Direct Examination by Ms. Lively

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1 A She is my wife and we met in high school.

2 Q Now how old are you?

3 A Twenty-two.

4 Q How old were you when you and Cesalee met?

5 A Sixteen.

6 Q How old was she?

7 A Sixteen.

8 Q Now, Richard, where were you living

9 whenever you met Cesalee?

10 A Mohave Valley, Arizona.

11 Q Who was she living with in Arizona at that
12 time?

13 A Her grandmother Judy Morris in Tupac,
14 Arizona.

15 Q Did you know Julia Gorman at that time?

16 A No, ma'am.

17 Q Did you know Robert Palmer at that time?

18 A No, ma'am.

19 Q Now, Richard, when you and Cesalee met in
20 high school were you friends or did it become more?

21 A We were friends at first but then it became
22 more.

23 Q And how long did you date?

24 A Two years.

25 Q During that relationship what happened?

Mr. Grimes - Direct Examination by Ms. Lively

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1 A She was continuing to stay with her
2 grandmother for a while and things were becoming sketchy up
3 there and ended up moving in with me and my mother at our
4 place in Mohave Valley.

5 Q Okay, while she was living with you and
6 your mother did she become pregnant?

7 A Yes, ma'am.

8 Q And ya'll were both what age at that time?

9 A Seventeen.

10 Q What did you do, what did you decide
11 regarding the pregnancy?

12 A What do you mean?

13 Q Was there ever a thought in your mind to
14 not go forward with the pregnancy?

15 A No, ma'am.

16 Q When was your son born?

17 A ██████████, 2007.

18 Q Were you at the hospital when he was born?

19 A Yes, ma'am.

20 Q And when he was born did you see anything
21 wrong with him?

22 A No, ma'am.

23 Q How was he?

24 A Angry.

25 Q Okay, angry, what did you and Cesalee name

Mr. Grimes - Direct Examination by Ms. Lively

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1 him?

2 A [REDACTED] [REDACTED] [REDACTED].

3 Q What was his, what did he weigh, how long
4 was he; do you remember?

5 A He was six pounds twelve ounces and twenty-
6 one inches long.

7 Q Now, Richard, were you working at the time
8 or were you still in school?

9 A I was doing both.

10 Q And did you ever graduate from high school?

11 A Yes, ma'am.

12 Q When was that?

13 A December of 2008, I believe, I'm sorry,
14 2006 or 7.

15 Q Okay, December of 2007, so this, was this
16 after [REDACTED] was born?

17 A Yes, ma'am.

18 Q All right, now, Richard, who was the
19 caretaker for [REDACTED]

20 A Both Cesalee and I were.

21 Q Okay, and were you doing anything other
22 than going to school and working?

23 A Just taking care of our son.

24 Q Now describe to the jury what kind of a
25 child [REDACTED] was?

Mr. Grimes - Direct Examination by Ms. Lively

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1 A My son was a very happy go lucky child. He
2 always had a smile on his face; he never, he never was
3 really fussy. Even when he was sick he, he'd always smile
4 for something.

5 Q Richard, during the time whenever you had
6 [REDACTED] or you and Cesalee had [REDACTED] in your care was
7 there ever a time when he suffered any type of traumatic
8 injuries to his head?

9 A No, ma'am.

10 Q Was there ever a time dropping down the
11 stairs?

12 A No, ma'am.

13 Q How about being in a car accident; were you
14 ever in a car accident with the child in the car?

15 A No, ma'am.

16 Q What type of illnesses did [REDACTED] have
17 while he was a child?

18 A He had the common colds throughout just
19 like any child would ever get. The only thing that he had
20 was thrush that was in his mouth and we went to the doctor
21 and got that taken care of and got the antibiotics for
22 that.

23 Q Okay, and was he okay after that?

24 A Yes, ma'am.

25 Q And was [REDACTED] taken to his well baby

Mr. Grimes - Direct Examination by Ms. Lively

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1 checks like he was supposed to?

2 A Yes, ma'am.

3 Q When did he start walking?

4 A I don't know, ma'am, I wasn't, I was in the
5 military for that. I wasn't able to be there.

6 Q Okay, right, tell this jury when you went
7 into the military, when did you sign?

8 A I enlisted in the military in the middle of
9 2007 and was on the delayed entry program. I didn't ship
10 out until after I graduated. I graduated boot camp January
11 of 2008.

12 Q Okay, and you said that [REDACTED] was born
13 [REDACTED] of 2007, correct?

14 A Yes, ma'am.

15 Q Okay, so you shipped out right before his
16 first birthday?

17 A Yes, ma'am.

18 Q Were you able to make it back for his first
19 birthday?

20 A Yes, ma'am.

21 Q And who was there for his first birthday?

22 A Myself, my wife, [REDACTED] my family, and
23 Cesalee's grandmother, Judy Morris.

24 Q Okay, Richard, at this time the baby's
25 life, he's one year old, had you ever met Julia Gorman?

Mr. Grimes - Direct Examination by Ms. Lively

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1 A No, ma'am, I take that back, yes, ma'am.

2 Q Okay, all right, when?

3 A She had flown out to put Cesalee in foster
4 care and Cesalee had called me upset and distraught because
5 of what was going on and I went up to see what was going on
6 and see if everything was okay and I met her for maybe five
7 minutes.

8 Q Okay, and for the purposes of a
9 chronological order was this before [REDACTED] s birth or after
10 [REDACTED] s birth?

11 A This was before.

12 Q Okay, so at the time of [REDACTED] being born
13 up until his first birthday had Julia Gorman ever been out
14 there to visit you and the child?

15 A No, ma'am.

16 Q Now in February of 2008 when you get home
17 is [REDACTED] walking?

18 A Yes, ma'am.

19 Q What other type of developmental things did
20 you notice that had changed since you were gone?

21 A He was starting to say the common words; he
22 was very advanced. He, he could pick out colors if you'd
23 ask him. He could pick out certain shapes if you'd ask
24 him. You could say certain things to him and he could
25 point out, he could point to it for you, he just --

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1 Q Okay, now, Richard, how long were you in
2 town before you had to ship off again?

3 A Thirty days.

4 Q During that thirty days did anything else
5 occur between you and Cesalee?

6 A As far as?

7 Q As far as your relationship?

8 A We had gotten married.

9 Q Okay, all right, and at that point in time
10 whenever you got married was Ms. Gorman or any other
11 members of Cesalee's family come?

12 A The only people that were there were her
13 grandmother Judy Morris, her grandmother's husband Ron
14 Morris, our adopted sister Shaley Greer, her father Brook,
15 and [REDACTED] and then her I guess it would be her uncle
16 which was her grandfather, Ron Morris', twin brother, and
17 his wife.

18 Q Okay, now, Richard, after you left who took
19 care of [REDACTED]

20 A Cesalee did.

21 Q And when was the next time you saw your
22 son? Well when you left where did you go?

23 A I went to M.C.T. for a month in Camp
24 Pendleton, California, and ---

25 The Court: Could you tell us what M.C.T. is?

Mr. Grimes - Direct Examination by Ms. Lively

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1 The Witness: (Continuing)

2 A Marine Combat Training. At the end of that
3 training Judy Morris, my wife and [REDACTED] came out and saw
4 me and I got to see him for that night before I flew out
5 the following morning for Pensacola, Florida.

6 Q Okay, and when you were at Pensacola,
7 Florida, how long were you there?

8 A About four months.

9 Q Okay, and were you able to visit with
10 [REDACTED] and Cesalee while you were in Pensacola?

11 A For the first couple of months while I was
12 there I couldn't do anything but talk to them over the
13 phone. When I was about to graduate my first school they
14 came out to see me and then that was, that was it.

15 Q Do you remember about when that was?

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

17 Q Was it before Cesalee and [REDACTED] came to
18 South Carolina?

19 A Yes, ma'am.

20 Q All right, now, Richard, was that the last
21 time you saw [REDACTED] before he was injured?

22 A Yes.

23 Ms. Lively: May I approach, Your Honor?

24 The Court: Certainly.

25 Ms. Lively: (Continuing)

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1 Q I'm going to show you what's been marked
2 State's Exhibits, put them in some order, Exhibit 1,
3 Exhibit 7, 11, 12, and 13, okay, I'm going to ask you for
4 each one, if you'll hold it, State's Exhibit 1; do you
5 recognize that?

6 A Yes, ma'am, I do.

7 Q Okay, and is that a picture that you've
8 provided to my office ---

9 A Yes.

10 Q --- regarding your son?

11 A Yes, ma'am.

12 Q Then if you'll look at the next exhibit,
13 please?

14 Ms. Grabert-Lowenstein: Your Honor, I'm sorry I
15 don't mean to interrupt, if we could see the specific
16 exhibit?

17 Ms. Lively: Sure, I'm sorry, I thought that
18 they were aware of it.

19 Ms. Grabert-Lowenstein: We're aware, but we
20 didn't know the specific numbers.

21 The Court: These have been marked for I.D.,
22 have they not?

23 Ms. Lively: They have, Your Honor.

24 Ms. Grabert-Lowenstein: Thank you, Counsel.

25 Ms. Lively: Sure, Your Honor, just so that

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1 you're aware of which ones have been marked, thank you.

2 Ms. Lively: (Continuing)

3 Q Again do you recognize State's Exhibit 1?

4 A Yes, ma'am.

5 Q And State's Exhibit 7; do you recognize
6 this photo as well?

7 A Yes, ma'am.

8 Q State's Exhibit Number 11; do you recognize
9 this photo?

10 A Yes, ma'am.

11 Q State's Number 12; do you recognize this
12 photo?

13 A Yes, ma'am.

14 Q And finally in State's 13; do you recognize
15 this photo?

16 A Yes, ma'am.

17 Q Now are these photos that you had in your
18 care and custody?

19 A Yes, ma'am.

20 Q And you've provided them to my office,
21 correct?

22 A Yes, ma'am.

23 Ms. Lively: Your Honor, the State would move to
24 introduce State's 1, 7, 11, 12, and 13 into evidence at
25 this time?

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1 The Court: Mr. Galmore and Ms. Grabert-
2 Lowenstein?

3 Mr. Galmore: Without objection.

4 Ms. Grabert-Lowenstein: Without objection, Your
5 Honor.

6 The Court: Very well.

7 Ms. Lively: Thank you.

8 (Whereupon, State's Exhibit Number 1, 7, 11, 12,
9 and 13 entered into evidence.)

10 Q (Continuing) I'm going to let you hold
11 these, okay?

12 The Court: They are admitted without objection.

13 Ms. Lively: Thank you, Your Honor.

14 Q (Continuing) Now, Richard, if you could
15 briefly, let me do this, I know this is hard, I'm sorry, in
16 Number 1 it says 01-04-2008; is that the correct date?

17 A I honestly don't know, ma'am. It was a
18 cheap camera that had gotten dropped a couple of times.

19 Q Okay, but obviously in this picture who's
20 that standing there with you?

21 A That's my son.

22 Q ██████████

23 A Yes, ma'am.

24 Q And in picture Number 7, who's represented
25 in this picture?

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1 A Our whole family, my wife, [REDACTED] and I.

2 Q Okay, once again emotionally what kind of
3 baby was he?

4 A A very happy go lucky.

5 Q And in Exhibit Number 11 this is him as
6 well?

7 A Yes, ma'am.

8 Q And in 12 was this taken around the same
9 time?

10 A Yes, ma'am.

11 Q Playing, and finally in State's Exhibit
12 Number 13 which is in evidence; do you remember when that
13 picture was taken?

14 A Yes.

15 Q Yes, could you, please, tell us when that
16 was taken?

17 A On his visit to see me in South, in
18 Pensacola.

19 Q And visit in Pensacola was this the last
20 time you saw him before he was injured?

21 A Yes, ma'am.

22 Q Richard, what did you know about the
23 decision for Cesalee and [REDACTED] to come to South Carolina?

24 The Court: Ms. Lively, are you seeking to
25 publish those?

Mr. Grimes - Direct Examination by Ms. Lively

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1 Ms. Lively: Well, yes, sir, Your Honor, I did
2 hold them up for the jury. I was going to publish them to
3 them whenever I was finished.

4 The Court: All right.

5 Ms. Lively: (Continuing)

6 Q Now, Richard, let me ask you this, you'd
7 never met Ms. Gorman so how did it come to be that Cesalee
8 and your child were going to go and stay with her?

9 A Cesalee had called her mom and they had
10 talked a couple of times when she came out to see me and to
11 my knowledge her mother had stated that she had wanted to
12 meet [REDACTED] and since they were already in Pensacola why
13 didn't they just come up and stay with them for a few weeks
14 while I finished up school before we were assigned to my
15 primary duty station; and Cesalee and I had discussed it
16 and thought that it was only fair that she got to finally
17 meet her grandson that she hadn't gotten an opportunity to
18 prior to that because of everything that was going on.

19 Q Okay, and when Cesalee and [REDACTED] left how
20 did they travel to South Carolina?

21 A I got them a bus ticket to take a bus from
22 Pensacola to South Carolina.

23 Q And when they left do you know how long
24 they would have to travel to get here?

25 A To my knowledge it was just under forty-

Mr. Grimes - Direct Examination by Ms. Lively

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1 eight hours.

2 Q And did you speak to Cesalee when she got
3 here to make sure that they got here okay?

4 A Every day.

5 Q And while she was here in South Carolina
6 were you able to talk to [REDACTED] on the phone?

7 A Yes, any time that I would call to talk to
8 Cesalee I would always get to talk to my son.

9 Q At any time while you were having contact
10 with Cesalee did you have any indication that anything
11 wrong was going on and there were any problems at all?

12 A No, ma'am.

13 Q And the information that you were getting
14 from Cesalee that it lead you to believe that you needed to
15 come to South Carolina for any reason?

16 A No, ma'am.

17 Q So what was your focus at that time
18 regarding your military career?

19 A Finish up with my schooling and get to my
20 primary duty station so that we could finally settle down
21 and have a decent life.

22 Q Okay, and while Cesalee was here in South
23 Carolina did you receive information as to where your
24 destination was going to be?

25 A Yes, ma'am.

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1 Q And where were you going to be stationed?

2 A As soon as I finished up my second school
3 in Oceana, Virginia, my primary duty station was going to
4 be Beaufort, South Carolina.

5 Q Okay, and how did you feel about that?

6 A Happy, Cesalee and I had discussed it prior
7 to that and I had a choice between Miramar, California and
8 Beaufort, South Carolina, and we decided that what would be
9 best for all three of us would be out here on the east
10 coast where most of her family is.

11 Q Okay, now was there a time whenever you
12 were supposed to reunite with Cesalee and [REDACTED]

13 A Yes, ma'am, once I finished up my second
14 school we were supposed to go back to Arizona and pack up
15 all of our things and drive out to South Carolina to
16 Beaufort, move into our house.

17 Q And, Richard, was there a change in those
18 plans?

19 A Yes.

20 Q Well first tell me when the decision was
21 made for [REDACTED] to be left here, tell us about that?

22 A We had discussed, once I found out my
23 primary duty station, we had discussed me taking leave to
24 go back and to pack our stuff and to move it out here and
25 get it ready since my school was going to be so short, and

Mr. Grimes - Direct Examination by Ms. Lively

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1 [REDACTED] had a cold and a fever and was having allergic
2 reaction to the ant bites. My wife and I didn't want to
3 risk taking him on the airplane to risk something happening
4 while they were in the air and nothing being able to be
5 done.

6 Q How long of a flight is that from South
7 Carolina to Arizona; do you know?

8 A No, ma'am, I don't, it's over six hours.

9 Q Okay, so what did you decide after his
10 current condition?

11 A Cesalee had talked to her mother about it
12 and her mother said that she would love to have him for the
13 days that we were going to be gone since we weren't going
14 to be gone that long so that she could get to know him
15 better since she hadn't seen him for so long and hadn't met
16 him yet.

17 Q And what was Cesalee going to do?

18 A Cesalee was going to meet me in Arizona to
19 pack our stuff and get everything ready so that once I
20 graduated all we had to go back and do was load it into a
21 truck and drive out here.

22 Q And when were you planning on graduating;
23 do you remember?

24 A No, ma'am.

25 Q Okay, what time frame were you looking at,

Mr. Grimes - Direct Examination by Ms. Lively

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1 if you recall, that [REDACTED] would be left in Julia's care?

2 A No longer than a week.

3 Q And what, if anything, did you and Cesalee
4 decide to do regarding the care of [REDACTED] while he was with
5 Julie and her boyfriend Robert?

6 A We were informed that in the State of South
7 Carolina in order for a guardian for a grandparent to be
8 able to take a child to a doctor they had to have a written
9 form of guardianship and we were informed that the minimum
10 allowed by law was for a year, whether it lasted a year or
11 not it didn't matter, it just had to be written up for a
12 year.

13 Q Was this a, what was the actual language of
14 the, the document; do you recall?

15 A It stated that both Cesalee and I agreed to
16 give temporary guardianship to Julia Gorman and Robert
17 Palmer for a year while we went and performed the move so
18 that they could take him to any necessary doctors
19 appointments for any emergency room calls that may have
20 come up.

21 Q Now I'm curious why did you add Mr. Palmer
22 into this?

23 A He was there in the same household.

24 Q Did it seem like the right thing to do at
25 the time?

Mr. Grimes - Direct Examination by Ms. Lively

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1 A For what was best for my son, yes.

2 Q And once again you stated that you thought
3 it was going to be for about a week?

4 A It was only Cesalee and I talked about it,
5 it was only going to be for about a week before she was
6 going to be back out there with him.

7 Q But that didn't happen, she was gone for
8 more than week, wasn't she?

9 A Yes, ma'am.

10 Q When did she fly to back to Arizona; do you
11 recall when that was?

12 A I don't recall the exact date.

13 Q That's fine, don't worry about it, now,
14 Richard, you said that you would call when Cesalee and
15 [REDACTED] were there together, how about whenever Cesalee was
16 no longer there did you call to check on [REDACTED]

17 A Yes, ma'am, when she arrived in, when she
18 left and arrived in Arizona I arrived at the same time and
19 every day we would call and talk to him.

20 Q Were you ever given any information from
21 his care givers that there were any problems?

22 A Yes, ma'am.

23 Q Was there ever any complaints about his
24 behavior?

25 A Not to us.

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1 Q Was there ever a time when you were unable
2 to contact Julia and Robert regarding [REDACTED]

3 A There was one day that Cesalee and I had
4 tried all day long to get a hold of either one of them; we
5 couldn't reach either one.

6 Q When was the next time you spoke to them?

7 A Was after I arrived in back in Oceana,
8 Virginia.

9 Q Tell the jury about what happened when you
10 arrived back in Oceana, Virginia?

11 A I received a phone call on the night of
12 Sunday, July 14th.

13 Q It was actually Monday, the 14th?

14 Ms. Grabert-Lowenstein: Objection, leading.

15 Ms. Lively: Okay.

16 The Court: All right, ask him if he recalls the
17 date?

18 Ms. Lively: (Continuing)

19 Q Do you recall the day of July 14th?

20 A I know it was Sunday night.

21 Q Okay, well tell me what happened when you
22 got a call Sunday night?

23 A I had a call from Julie stating that [REDACTED]
24 was on his way to the hospital; they had called the
25 paramedics because he was seizing in the playpen when they

Mr. Grimes - Direct Examination by Ms. Lively

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1 tried to wake him up for dinner.

2 Q What did you do when you got that call?

3 A I told her to keep me informed and let me.
4 know what was going on and that I was going to notify my
5 command that my son was on his way to the hospital and what
6 was going on.

7 Q Richard, when you notified your command
8 what did they do for you?

9 A They were able to calm me down and get me
10 to relax and told me that to be on stand by in case I
11 needed to be out here for anything.

12 Q Were you able to come to South Carolina to
13 be with your son?

14 A After I was called again to be informed
15 that he had the skull fractures and that they were life
16 fighting him to MUSC in Charleston my master gunnery
17 sergeant put me on the next flight out.

18 Q Richard, when you got to South Carolina
19 where did you go?

20 A Straight to MUSC.

21 Q And when you got to MUSC who was there; if
22 you recall?

23 A The only person that was there was [REDACTED]
24 in the room at the time.

25 Q And what was his condition at that time?

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1 A Critical.

2 Q When was Cesalee able to make it to South
3 Carolina; do you recall?

4 A She was there the following day, she was
5 there on Tuesday.

6 Q Had she been in Arizona still?

7 A Yes, ma'am, she was in the process of
8 heading back out to South Carolina to pick [REDACTED] up. She
9 was finishing up a few odds and ends that we still had left
10 to do.

11 Q Now, Richard, at any time when [REDACTED] was
12 in your care did he have to be treated for seizures or any
13 type of neurological problems?

14 A No, ma'am.

15 Q So when you were at the hospital were you
16 able to give any history or information to the doctors to
17 help them treat [REDACTED] regarding the type injuries he had?

18 A No, ma'am, cause I didn't know what was
19 wrong.

20 Q And did you ever talk to Julie or Robert
21 Palmer about what happened with your son?

22 A After I received the phone call stating
23 that he was being life flighted to MUSC that was the last
24 time I heard from Julie. I didn't hear from her again
25 until I ran into her in the hallway at MUSC.

Mr. Grimes - Direct Examination by Ms. Lively

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1 Q Did you talk to her then?

2 A When I had arrived at MUSC I had informed
3 the doctors and nurses that the only two people that were
4 allowed to see [REDACTED] were his mother and me because we
5 were not sure what had happened and until we would figure
6 out what was going on we didn't want anybody to see him
7 without us; and I had informed her of that in the hallway
8 and she, she hugged me and cried and said she wanted to say
9 goodbye because she had to go back home to do something and
10 said that the nurses wouldn't let her back to see him, so I
11 allowed it. I went back with her and she said goodbye.
12 She asked me if Robert could come in and say goodbye as
13 well and I told her no. I told her that he needed to pick
14 her up down the road and that was it. She came in and said
15 goodbye and then she left.

16 Q How much longer after that, or let me back
17 up, because of his condition, Richard, what decision did
18 you and Cesalee have to make?

19 A The doctors told us that his brain had
20 hemorrhaged and because of the bleeding in the brain that
21 it had killed his brain stem and that the only things that
22 were keeping him alive were the machines. Cesalee and I
23 had to make the decision to turn off the machines.

24 Q Richard, before that happened did ya'll do
25 anything for [REDACTED]

Mr. Grimes - Direct Examination by Ms. Lively

150

1 A We had [REDACTED] baptized.

2 Q Did Julie stay for that?

3 A No, ma'am.

4 Q What day did he die?

5 A July 16th is when we had the machines
6 turned off.

7 Q Do you need some water? Richard, have you
8 talked to Julie or Robert since they left MUSC that day
9 whenever Julie said goodbye?

10 A No, ma'am, I refuse to. I couldn't
11 understand how your son or your grandson could be sitting
12 in the hospital in critical condition and you have
13 something more important to go and do than to be there with
14 him.

15 Q Okay --

16 Ms. Lively: One moment.

17 Q (Continuing) At any time, Richard, did you
18 talk to law enforcement about what was going on?

19 A Yes, ma'am, before I left Oceana, Virginia.
20 I had talked to the doctor in Conway Hospital and asked why
21 he was being life flighted and they told me that he had two
22 skull fractures and that he was unconscious and in a coma.
23 At that point I had called, I believe it was the Conway
24 Police Department, and filed a report with the police
25 because I felt something was wrong.

Mr. Grimes - Direct Examination by Ms. Lively

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1 Q All right, so you did contact law
2 enforcement?

3 A Yes, ma'am.

4 Q Now, Richard, what decision did you make
5 regarding, regarding what would happen to [REDACTED] after he
6 had passed away?

7 A We had decided to donate his organs. We
8 didn't feel that it was fair for other people to have to
9 lose their children just because we did when his organs
10 could go to saving their lives.

11 Q Richard, at any time did you have a
12 conversation with Julie about [REDACTED]'s condition other than
13 when she asked to go in and say goodbye to him?

14 A Before I had asked her what had happened
15 then at first she told she didn't know. After I found out
16 about the skull fractures I asked her again and she, first
17 thing she said ---

18 Mr. Galmore: Objection to hearsay, Your Honor.

19 The Court: This is the defendant?

20 Ms. Lively: Yes, sir.

21 The Court: I'll allow it.

22 Mr. Galmore: Yes, sir.

23 Ms. Lively: Thank you.

24 Q (Continuing) You can say what she told you?

25 A After we found out about the skull

Mr. Grimes - Direct Examination by Ms. Lively

152

1 fractures I had called her on my way out here and I had
2 asked her what had happened and she told me that she didn't
3 know. She said the dog possibly knocked him down but she
4 wasn't sure.

5 Q Were you ever given any other explanation
6 from her?

7 A I wasn't.

8 Q Are you and Cesalee still together at this
9 time, Richard?

10 A We are separated at this time.

11 Q And do ya'll have any more children?

12 A No, ma'am.

13 Q And just for clarification, Richard, have
14 you ever witnessed your child having a seizure?

15 A No, ma'am.

16 Q Had he ever fallen down and gone
17 unconscious?

18 A No, ma'am.

19 Q Foamed at the mouth?

20 A No, ma'am.

21 Q Has he ever even spent the night in a
22 hospital other than when he was born?

23 A No, ma'am.

24 Ms. Lively: Thank you, Your Honor, if I may
25 publish these pictures to the jury?

Mr. Grimes - Cross Ex. by Ms. Grabert-Lowenstein

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1 The Court: Yes.

2 Ms. Lively: Richard, please answer any
3 questions the defense may have for you.

4 The Court: Who will go first?

5 Cross Examination

6 By Ms. Grabert-Lowenstein:

7 Q Mr. Grimes, do you need a moment? Very
8 sorry for your loss. I do need to ask you a few questions.

9 A Okay.

10 Q You indicated you met Cesalee when you were
11 both sixteen and she was living with her grandmother, how
12 many years was it before you ever met Ms. Gorman?

13 A Approximately one.

14 Q Okay, and I believe your testimony on
15 direct was you met her for five minutes at that time?

16 A Yes, ma'am.

17 Q Okay, now let me take you back to prior to
18 Cesalee becoming eighteen, was that when you had the
19 telephone call, a conversation with her about being put
20 into foster care?

21 A Yes, ma'am.

22 Q Okay, and that was when you met Ms. Gorman;
23 wasn't it?

24 A Yes, ma'am.

25 Q Okay, and would it be accurate to describe

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 154

1 Cesalee's reaction to that as basically being blindsighted?

2 A Yes, ma'am.

3 Q Okay, pretty accurate, okay, and after you
4 graduated high school in 2007, when did you first join the
5 military? I want to make sure we have a accurate
6 chronological.

7 A In the middle of the year of 2007 is when I
8 first enlisted.

9 Q Okay, so you enlisted and then graduated
10 from high school?

11 A Yes, ma'am.

12 Q Okay, and where did you first go to basic?

13 A MCRD, San Diego.

14 Q Okay, and how long were you there?

15 A Three months.

16 Q Okay, and would it be accurate to say you
17 and Cesalee weren't together at that time?

18 A Yes, ma'am.

19 Q Okay, and would it be accurate to say that
20 to your knowledge Ms. Gorman and Cesalee didn't see each
21 other during that time?

22 A Yes, ma'am.

23 Q Okay, after you finished that training
24 where did you go?

25 A I was on thirty days leave and I came back

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 155

1 home for that period of leave.

2 Q Okay, and when you say home is that in
3 Arizona?

4 A Mohave Valley, yes, ma'am.

5 Q Okay, after that thirty day leave where did
6 you go?

7 A I went back to San Diego to Camp Pendleton
8 for marine combat training.

9 Q And for how long?

10 A One month.

11 Q Okay, and approximately where are we date
12 wise for that point?

13 A About March.

14 Q March of --

15 A I believe it was '08.

16 Q '08, okay, and were you and Cesalee living
17 together at that time?

18 A Yes, ma'am.

19 Q Okay, how much longer as of the first of
20 June did you have at Pensacola?

21 A Not very long, I'm not sure the exact time.

22 Q Month, two months?

23 A It wasn't even that, it was just maybe a
24 week or two. I was already about to graduate my school and
25 transfer to Oceana, Virginia.

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 156

1 Q Okay, when did you expect that transfer to
2 take, to take place?

3 A As soon as I graduated, as soon as I
4 graduated ---

5 Q Okay?

6 A --- is when I flew into Oceana.

7 Q Okay, you flew to Oceana once ---

8 A Yes, ma'am.

9 Q Okay, and was Oceana, how long were you
10 going to be in Oceana?

11 A Two weeks.

12 Q Okay, given the fact you didn't know Ms.
13 Gorman and the incident with the foster care did you have
14 any concern about Cesalee leaving [REDACTED] with Ms. Gorman?

15 A That was her mother and that was his
16 grandmother, should never have any concern.

17 Q Do you recall on July 19th talking to law
18 enforcement here in Horry County?

19 A Briefly.

20 Q And in that conversation did they ask you
21 concerning how long it had been planned that [REDACTED] was
22 going to be in the care of Ms. Gorman?

23 A As far as how long he would be out here?

24 Q Yes?

25 A With her by himself?

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein

157

1 Q Yes?

2 A Yes.

3 Q Do you recall what you told them at that
4 time?

5 A I told them it wasn't supposed to be any
6 longer than a week, as soon as we finished up everything
7 we'd be out to get him.

8 Q You didn't tell them that it was September
9 5th after you graduated you guys got everything moved?

10 A No, ma'am.

11 Ms. Grabert-Lowenstein: Your Honor, if I could,
12 and I'll show counsel what I'm going to show Mr. Grimes,
13 that I'm just going to show him this to refresh his
14 recollection, May I approach, Your Honor?

15 The Court: Certainly.

16 Ms. Grabert-Lowenstein: (Continuing)

17 Q Mr. Grimes, I'm going to hand you a
18 transcript and just to yourself, okay, please don't read it
19 out loud. I'd like you to read this page, which for the
20 record is page nine, and then I'll ask you a question.

21 Sir, does that reflect, excuse me, refresh your
22 recollection as to when you and Cesalee expected to pick
23 [REDACTED] up?

24 A Yes, ma'am.

25 Q And what was that?

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 158

1 A According to that it said September 5th.

2 Q Okay, and were you being accurate at the
3 time that you spoke to the investigative detective?

4 A No, ma'am, I was distraught and upset and I
5 was trying to be as accurate as I could be but because of
6 the circumstances --

7 Q Did you expect Cesalee to come back to
8 South Carolina and for you to pick both of them or how was
9 that going to work?

10 A Yes, ma'am, she was supposed to after we
11 finished doing what we were supposed to do she was going to
12 come back and be with [REDACTED] and we hadn't decided yet
13 whether they were going to stay here or whether they were
14 going to go back to Arizona.

15 Q Okay, isn't it true you told the detectives
16 that Beaufort was on, Beaufort, South Carolina, was on your
17 wish list; did you actually have your orders?

18 A Yes, ma'am.

19 Q Okay, so would I be accurate in saying that
20 you expected Cesalee to have returned to South Carolina in
21 a short time?

22 A Yes, ma'am, once we finished up everything
23 she was coming back.

24 Q And did you also talk to the detectives
25 about the reason that Cesalee, you had flown Cesalee back

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 159

1 to Arizona?

2 A Yes, ma'am.

3 Q And what did you tell the detectives on
4 July 19th of 2008 as to the reason?

5 A That the primary reason was for insurance.

6 Q Okay, and would it be accurate that being
7 the case that [REDACTED] didn't have insurance at the time?

8 A No, ma'am.

9 Q Okay ---

10 A It was just to ---

11 Q Military gives you insurance, right?

12 A It was to upgrade the insurance that he did
13 have to a better one.

14 Q During that time were there any phone calls
15 made to the command about the insurance on [REDACTED]

16 A As far as what do you mean?

17 Q There not being any and, and a concern
18 about that?

19 A No, ma'am, he was never without insurance.

20 Q I direct, you spoke about calling the
21 police; do you recall what you told the detectives about
22 that?

23 A As when I made the 911 call?

24 Q Yes, when you, when you made the call; do
25 you recall what you told the police at that time?

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 160

1 A I had told them that my son was just life
2 flighted to MUSC, that I wasn't sure what was going on, but
3 I had a feeling that something was wrong.

4 Q Did you express concern about a particular
5 individual during that call?

6 A No, ma'am.

7 Ms. Grabert-Lowenstein: For counsels benefit,
8 actually, Your Honor, before I do, let me just, I'll show
9 counsel the specific page. May I approach?

10 The Court: Certainly.

11 Ms. Grabert-Lowenstein: (Continuing)

12 Q Again, Mr. Grimes, I'm going to hand you
13 what is, what I showed to counsel and what's page three and
14 if you could just read the paragraph that ends where it's
15 got some highlighting?

16 Did you express concern about Ms. Gorman in that
17 telephone call?

18 A At that time, yes, ma'am.

19 Q Thank you, Mr. Grimes. You stated that you
20 and Cesalee are separated?

21 A Yes, ma'am.

22 Q Were you present while she was speaking to
23 the detectives?

24 A No, ma'am.

25 Q Were the two of you together being

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 161

1 interviewed in July of 2008; do you recall?

2 A As far as being interviewed I don't recall.

3 Q Let me, I'm going to just ask you to glance
4 through the transcript and see if that recall, refreshes
5 your recollection as to who was present during the
6 interview? Who was present during the interview?

7 A I'm not sure.

8 Q You don't recall you and Cesalee being
9 together?

10 A At the time of the interview I don't, I
11 remember talking to the detectives at the hospital after
12 she had gotten there but I know I had talked to them before
13 that.

14 Q Okay, well the transcript reflects, does it
15 not, that it was you and Judy Morris, the detectives, and
16 Cesalee?

17 A No, ma'am, it says Mr. Grimes, Detective
18 Weaver, there's one that says Ms. Morris and then the other
19 one says female voice.

20 Q Well later on in the transcript does it
21 indicate that Cesalee was present?

22 A Yes, ma'am.

23 Q Were you present when Cesalee made a
24 comment about meeting somebody on, on match something?

25 A No, ma'am, I don't recall that.

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 162

1 Q Okay, you are aware that on July 8th [REDACTED]
2 was taken to Aynor Medical for a cold and an ant bite?

3 A Yes, ma'am.

4 Q He was taken care of, his needs were met?

5 A Yes, ma'am.

6 Q Okay, now counsel asked you about the well
7 baby check and are you aware that when he was seen at
8 Conway Medical Center for vomiting that they indicated his
9 next series of shots were due?

10 A Yes, ma'am.

11 Q Mr. Grimes, when was it that you and
12 Cesalee did the tough task of burying [REDACTED] how long was
13 it after he passed?

14 A I'm not sure, ma'am, because they had to do
15 the autopsy out here and then he had to be flown out to
16 Arizona and I don't know the date that we buried him.

17 Q You don't remember the date?

18 A Not that we buried him.

19 Q You don't remember whether it was thirty
20 days after he passed or not?

21 A No, ma'am.

22 Ms. Grabert-Lowenstein: Mr. Grimes, again I'm
23 sorry for your loss and thank you for answering my
24 questions?

25 The Court: Mr. Galmore?

By Mr. Galmore:

A Something was wrong, my son was in the hospital for an unknown reason with skull fractures and I didn't know why.

Mr. Grimes - Cross Examination by Mr. Galmore

164

1 Q And when did you receive the information,
2 how did you receive the information that your son was in
3 the hospital with skull fractures?

4 A Via telephone.

5 Q From Ms. Gorman?

6 A Yes, sir.

7 Q So she called you and told you that your
8 son was in the hospital?

9 A Yes, sir.

10 Q If you are the responsible party at say a
11 children's sleep over and the kids are over there jumping
12 around and eating pizza and watching movies and stuff and
13 one of the kids falls and injures his arm, as the
14 responsible party for the sleep over what would you do?

15 Ms. Lively: Objection as to speculation and
16 relevance.

17 The Court: I'm going to allow the question.

18 Ms. Lively: Okay, thank you, Your Honor.

19 The Witness: (Continuing)

20

21 A Let the parents know and seek the child
22 help.

23 Q So it would be appropriate to get some
24 medical help for the child?

25 A Yes, sir.

Mr. Grimes - Cross Examination by Mr. Galmore

165

1 Q To call 911 perhaps?

2 A Yes, sir.

3 Q And it would be appropriate to call the
4 child's parents?

5 A Yes, sir.

6 Q And let them know what's going on?

7 A Yes, sir.

8 (Whereupon, Defendant Gorman's Exhibit Number 1
9 marked for identification.)

10 Mr. Galmore: May I approach the witness, Your
11 Honor?

12 The Court: Certainly.

13 Mr. Galmore: (Continuing)

14 Q Mr. Grimes, let me hand you what's been
15 marked for identification purposes as Defense Exhibit
16 Number 1 and ask you if you recognize this document?

17 A Yes, sir, both of them.

18 Q And what does that appear to be, sir.

19 A The one is the drivers license of my wife
20 and the other one is the Tricare card for my son.

21 Q So this card does the Tricare card have a
22 name on it?

23 A Yes, sir.

24 Q And what name is that?

25 A [REDACTED] [REDACTED] [REDACTED].

Mr. Grimes - Cross Examination by Mr. Galmore

166

1 Q And what is Tricare?

2 A Tricare is the insurance that the military
3 has.

4 Q What is the effective date on that
5 insurance card?

6 A The effective date of this one is July 1st,
7 2008.

8 Q Isn't it true that Ms. Gorman had to call
9 your commanding officer in order to get your son insured?

10 A No, sir.

11 Q You deny that Ms. Gorman called your
12 commanding officer about obtaining insurance?

13 A I have no idea if she did or not, sir, that
14 would have to do with him, not me.

15 Q Yes, sir, now you're the person responsible
16 for [REDACTED] doctor visits?

17 A As far as what do you mean, as far as
18 taking him?

19 Q Or was Cesalee the person primarily
20 responsible for taking him to the doctor?

21 A Yes, sir, I wasn't around.

22 Q So Cesalee was the person who had this
23 responsibility?

24 A Yes, sir.

25 Q So if I were to tell you that his shot

Mr. Grimes - Cross Examination by Mr. Galmore

167

1 records was four months behind would you say Cesalee is the
2 person responsible for that?

3 A Yes, sir.

4 Q When was the last time that you went with
5 [REDACTED] to the doctor's appointment, if you can recall?

6 A It was back in Arizona, I believe it was on
7 my thirty days leave he had a checkup.

8 Q Was this a standard wellness checkup, six
9 months ---

10 A Yes.

11 Q --- one year check up kind of thing?

12 A Yes, sir.

13 Q Do you know how many times [REDACTED] went to
14 the hospital, excuse me, to the doctor while he was here in
15 South Carolina?

16 A To my knowledge it was only twice, it was
17 once for the cold and then he was supposed to go back to
18 have his last set of shots and that was, that was it.

19 Q Do you know when the shots were scheduled
20 to be given?

21 A No, sir.

22 Q So as I understand it you completed basic
23 training in San Diego; is that correct?

24 A Yes, sir.

25 Q And then your next duty assignment or

Mr. Grimes - Cross Examination by Mr. Galmore

168

1 training was in Pensacola, Florida?

2 A No, sir.

3 Q No, sir, please explain?

4 A It was Marine Combat Training in San Diego.

5 Q Okay, and then you got, is that when you
6 got the thirty day leave after the Marine Combat Training?

7 A No, sir, after boot camp.

8 Q Okay, so you went to boot camp and then you
9 had a thirty-day leave?

10 A Yes, sir.

11 Q And then you went back to San Diego for
12 M.C.T.?

13 A M.C.T., yes, sir.

14 Q Now after the M.C.T. training where did you
15 go?

16 A Pensacola, Florida.

17 Q Okay, now prior to boot camp where was
18 Cesalee living?

19 A With me.

20 Q Who else was living with you?

21 A My mother, my sister.

22 Q And at that time Cesalee was seventeen; is
23 that correct?

24 A Yes, sir.

25 Q I think you testified at one point that

Mr. Grimes - Cross Examination by Mr. Galmore

169

1 Cesalee lived with her grandmother also?

2 A Before that, yes, sir.

3 Q And I think you testified that Ms. Gorman
4 came out to Arizona with the intention of putting Cesalee
5 in foster care; is that correct?

6 A Yes, sir.

7 Q Was she actually placed in foster care?

8 A Yes, sir.

9 Q So she lived with her grandmother and then
10 she was in foster care and then she left foster care and
11 stayed with you; is that correct?

12 A Just about, yes, sir.

13 Q And then once she moved in with you
14 sometime thereafter ya'll became pregnant?

15 A Yes, sir.

16 Q How long after she became pregnant did
17 ya'll get married?

18 A I'm not sure.

19 Q Well was she showing when ---

20 A [REDACTED] was already born when we got
21 married.

22 Q [REDACTED] was already born, okay, okay, you
23 said you met Cesalee in, in school and you all were sixteen
24 at the time?

25 A Yes, sir.

Mr. Grimes - Cross Examination by Mr. Galmore

170

1 Q How long did she live with her grandmother
2 in Arizona?

3 A I'm not sure.

4 Q Okay, do you know how long she was in
5 foster care in Arizona?

6 A Not very long.

7 Q But after that then she came to stay with
8 you and then she had [REDACTED] and then you all got married?

9 A Yes, sir.

10 Q After your M.C.T. training in San Diego is
11 that when you went to Pensacola?

12 A Yes, sir.

13 Q And what training were you doing in
14 Pensacola?

15 A My A school.

16 Q What does that mean?

17 A It was Avionics.

18 Q Okay, and how long was you're a school
19 training?

20 A I don't remember exactly because I had to
21 go out to Pensacola and I had to wait there for my class to
22 class out and then go through my class, graduate my class,
23 and then go to Oceana, Virginia.

24 Q Okay, but when you first went to Pensacola
25 Cesalee was staying with your mother in Arizona; is that

Mr. Grimes - Cross Examination by Mr. Galmore

171

1 correct?

2 A No, sir.

3 Q No?

4 A She was staying with her grandmother.

5 Q Okay, did Cesalee have the baby by then?

6 A Yes, sir.

7 Q So when she first had the baby was she
8 staying with your mother?

9 A She was staying with me.

10 Q She was staying with you and your mother?

11 A Yes, sir.

12 Q Okay, and then she had the baby and she
13 moved with her grandmother?

14 A After I had left, yes.

15 Q So she and [REDACTED] stayed with her
16 grandmother?

17 A Yes, sir.

18 Q And then she came out to Florida with you?

19 A Yes, sir.

20 Q But she didn't get to stay with you?

21 A No, sir, she wasn't coming out to stay.

22 Q She was coming to be with you because --

23 A She was coming to see me.

24 Q She was coming to see you and she brought
25 [REDACTED] with her?

Mr. Grimes - Cross Examination by Mr. Galmore

172

1 A Yes, sir.

2 Q How long did Cesalee stay in Florida?

3 A Maybe a week and a half.

4 Q And where did she stay in Florida?

5 A At a hotel.

6 Q Do you remember which one?

7 A No, sir.

8 Q But you think she was there for about a
9 week and a half?

10 A Yes, sir, I got to see her twice.

11 Q And she had [REDACTED] with her?

12 A Yes, sir.

13 Q And that's when you sent her on the
14 Greyhound bus to South Carolina?

15 A After I saw her, yes.

16 Q Now at this time you already been familiar
17 with Ms. Gorman because of the foster care incident,
18 correct?

19 A What do you mean was familiar with her?

20 Q I mean you met Ms. Gorman for that five
21 minutes when she was out there putting Cesalee in foster
22 care?

23 A Yes, sir.

24 Q So when Cesalee says I want to go see my
25 mother in South Carolina were you not concerned?

Mr. Grimes - Cross Examination by Mr. Galmore

.173

1 A Why should I be? That's her grandson?

2 Q I agree, I'm not talking about the kid.

3 Did you say, Cesalee, this is the same person that just put
4 you in foster care?

5 A We had discussed it.

6 Q And your decision was to let them go
7 anyway?

8 A Yes, sir.

9 Q Okay, now once Cesalee and [REDACTED] came to
10 South Carolina you said you would speak to them on the
11 phone on a regular basis?

12 A Yes, sir.

13 Q And you testified that [REDACTED] was saying
14 some words?

15 A Yes, sir.

16 Q And identifying colors and shapes and
17 things like that?

18 A Yes, sir.

19 Q Was he communicating with you on the
20 telephone?

21 A That is what he thought was, yes.

22 Q Okay, was he having a coherent conversation
23 to the extent that a toddler can?

24 A Yes, sir.

25 Q Okay?

Mr. Grimes - Cross Examination by Mr. Galmore

174

1 A As far as sitting still, no.

2 Q Was there ever a time that [REDACTED]
3 complained about living in South Carolina?

4 A He was a toddler and he could only say a
5 couple of words, what do you mean by complain?

6 Q I mean did he say, Daddy, I don't want to
7 be here?

8 A No.

9 Q You didn't have an opportunity to visit
10 with [REDACTED] while he was here in South Carolina?

11 A No.

12 Q While he was in your care did you ever drop
13 him?

14 A No.

15 Q Did he suffer any injuries that you were
16 aware of?

17 A No, sir.

18 Q What about when he was staying with
19 Cesalee, did she ever drop him?

20 A No, sir.

21 Q She didn't or you don't know?

22 A I don't know.

23 Q How did you decide upon getting Cesalee a
24 Greyhound bus ticket?

25 A It's what we discussed and agreed on.

Mr. Grimes - Cross Examination by Mr. Galtore

175

1 Q During what, I'm sorry?

2 A When we were talking about her coming to
3 South Carolina.

4 Q You said that's what you discussed and
5 agreed on?

6 A Yes, sir.

7 Q Oh, okay, all right, when Cesalee left on
8 July 1st you gave her a airline ticket; is that correct?

9 A When she was on the Greyhound?

10 Q No, when she left South Carolina to go back
11 to Arizona?

12 A Yes, sir.

13 Q And you didn't purchase a ticket for

14 [REDACTED]

15 A No, sir.

16 Q And that's because he was sick and you
17 didn't want him flying?

18 A Yes, sir.

19 Q Would it have been possible to purchase a
20 bus ticket for Cesalee and [REDACTED] instead of a airline
21 ticket?

22 A Not for that long of a bus ride, that's
23 cruel to do to a toddler.

24 Q So your answer was to leave [REDACTED] here and
25 let Cesalee take a plane back to Arizona?

Mr. Grimes - Cross Examination by Mr. Galmore

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1 A Yes, sir.

2 Q Isn't it true that you were asked to come
3 get your wife?

4 A Not to my knowledge.

5 Q So you don't recall being asked to come get
6 your wife?

7 A No, sir.

8 Q Once you received the call from Ms. Gorman
9 that [REDACTED] was being airlifted you said you contacted your
10 command let them become aware of the problem so that you
11 could be released to come down here?

12 A No, sir, I said when I first got the phone
13 call that he was going to the hospital is when I notified
14 my command.

15 Q Okay, in that phone call you said keep me
16 up to speed or something like that?

17 A Told her to let me know what was going on,
18 that I was going to let my command know so that I could be
19 put on standby in case I needed to come down.

20 Q Okay, and then you received a second
21 telephone call from Ms. Gorman?

22 A Yes, sir.

23 Q And that second telephone call was the same
24 day?

25 A The following morning.

Mr. Grimes - Cross Examination by Mr. Galmore

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1 Q And you said you received the first
2 telephone call on Sunday; is that correct?

3 A Yes, sir.

4 Q And the following morning would be Monday
5 morning?

6 A Yes, sir.

7 Q The second telephone call would have been
8 when she tells you that he's being airlifted to Charleston?

9 A Yes, sir.

10 Q And that is when you contacted, no, that's
11 when you came down here?

12 A Yes, sir, was when he was life flighted.

13 Q Okay, did Ms. Gorman ever tell you that she
14 struck her grandbaby?

15 A No, sir.

16 Q Did she say it was a big accident?

17 A I was told a couple different things.

18 Q Did she tell you it was some kind of
19 mistake, I did it, I'm sorry I did it?

20 A No, sir.

21 (Whereupon, Defendant Gorman's Exhibit Number 2
22 marked for identification.)

23 Mr. Galmore: (Continuing)

24 Q Mr. Grimes, let me hand you what's been

25 marked for identification purposes as Defense Exhibit 2 and

Mr. Grimes - Cross Examination by Mr. Galmore

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1 ask you if you recognize that document?

2 A Yes, sir.

3 Q And what is that document, sir?

4 A This is the temporary guardianship of
5 [REDACTED], a minor child.

6 Q Is that your signature on that temporary
7 guardianship paperwork?

8 A Yes, sir.

9 Q Where did that paperwork come from?

10 A As far as --

11 Q I guess in the military parents have to do
12 this sort of thing on a regular basis; was that a document
13 that you might have gotten from your commanding officer?

14 A I've never known of anybody in the military
15 to have to do this on a regular basis.

16 Q Okay, okay, so do you know where that
17 document came from?

18 A It was typed up and notarized by Gail
19 Palmer which is Robert Palmer's mother.

20 Q That's correct, who else signed this
21 document?

22 A My wife Cesalee.

23 Q You and Cesalee signed this document and it
24 was notarized by Gail Palmer?

25 A Yes, sir.

Mr. Grimes - Redirect Examination by Ms. Lively

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1 Q And that document authorizes Julia Gorman
2 and Robert Palmer to tend to [REDACTED]'s medical needs and
3 other needs?

4 A Yes, sir, we covered all bases with this.

5 Q And that's your signature on it?

6 A Yes, sir.

7 Q When you were calling from Oceana, yeah, I
8 think you were in Oceana at the time, when you were calling
9 speaking to Cesalee and [REDACTED] did they ever complain about
10 the conditions in the home?

11 A No, sir.

12 Q Did they ever say the home was unkept,
13 dirty?

14 A No, sir.

15 Q Did they complain about liquor bottles
16 laying around, anything like that?

17 A Not to my knowledge.

18 Mr. Galmore: That's all the questions I have,
19 thank you.

20 The Court: Redirect?

21 Ms. Lively: Just one question.

22 Redirect Examination

23 By Ms. Lively:

24 Q Richard, when you would call and get [REDACTED]
25 on the phone would you, please, describe to us what the

Mr. Grimes - Recross Exam. by Ms. Grabert-Lowenstein 180

1 conversation was like?

2 A It was always of him getting excited when
3 my wife would ask him if he wants to talk to Dad you could
4 hear him screaming and yelling and laughing in the
5 background and then when she'd give him the phone he'd
6 just, he'd mumble on and on and on and on and he'd laugh at
7 things and you could hear him running around wherever he
8 was at.

9 Q Were any of those conversations in complete
10 sentences?

11 A No, sir, no, ma'am, sorry.

12 Q Okay, that's okay, thank you --

13 Ms. Grabert-Lowenstein: Thank you, Your Honor,
14 just a couple of questions.

15 Recross Examination

16 By Ms. Grabert-Lowenstein:

17 Q Mr. Grimes, prior to receiving a telephone.
18 call concerning [REDACTED] being air lifted, when was the last
19 time you had communication with Ms. Gorman?

20 Ms. Lively: Your Honor, I'm just going to
21 object to that being outside the scope of redirect.

22 The Court: Well I think that it's in response
23 to Mr. Galmore.

24 Ms. Grabert-Lowenstein: Yes, it is, Your Honor.

25 Ms. Lively: Okay, thank you.

Mr. Grimes - Recross Exam. by Ms. Grabert-Lowenstein 181

1 The Witness: (Continuing)

2 A The night before when he first was being
3 transported by paramedics.

4 Q From that date how many days had it been
5 since you talked to Ms. Gorman?

6 A Just a couple.

7 Q Could it have been four?

8 A I don't know.

9 Q Did you tell the detectives that it was the
10 10th?

11 A I don't remember if I did or not.

12 Q Was your memory better then?

13 A It was three years ago.

14 Q Okay, okay, you indicated that Cesalee was
15 living in a motel and did she have a car?

16 A She was staying in one and, no.

17 Q Okay, counsel asked you about speaking on
18 the phone with [REDACTED] did he seem happy to be speaking to
19 his mom?

20 A What do you mean speaking to his mom?

21 Q Well I mean the kind of reaction that a
22 toddler would have, you know, mom and dad are gone and you
23 get to hear the voice, was it that kind of a situation?

24 A As far as him being happy he got to talk to
25 her?

Mr. Grimes - Recross Exam. by Ms. Grabert-Lowenstein 182

1 Q Yes?

2 A Yes.

3 Q Yes, okay, and was the same way when he
4 talked to you?

5 A Yes, ma'am.

6 Q Okay, there were periods of time would he
7 have that same kind of reaction when you had not seen him
8 for a while and then he got to see you?

9 A There was a lot more physical, yes, ma'am.

10 Q Okay, because you were face to face?

11 A Yes, ma'am.

12 Q Okay, would you, would you then say that
13 that bubbling up that counsel asked you about was partially
14 because there had been a separation between [REDACTED] and one
15 of his parents?

16 A As far as being happier?

17 Q Uh-huh?

18 A Yes, ma'am.

19 Ms. Grabert-Lowenstein: Thank you, Mr. Grimes,
20 I have no further questions.

21 The Court: All right, it's been, is that it,
22 counsel?

23 Ms. Lively: Oh, yes, sir, with this witness it
24 is.

25 The Court: Okay, all right, we've been an hour

Ms. Carnaghie - Direct Examination by Ms. Lively 183

1 and a half or just a little over, let's take a break. If
2 you would take the jury back, let them refresh themselves,
3 take the morning break.

4 (Whereupon, the jury retired to the jury room at
5 11:16 a.m.)

6 The Court: We'll be at ease until about 11:30.

7 (Whereupon, a recess was taken and the following
8 takes place on the record after the recess.)

9 The Court: Mr. Ropp, if you would, thank you,
10 bring in the jury.

11 (Whereupon, the jury returns to the courtroom at
12 11:32 a.m.)

13 The Court: All right, we have our jury back in.
14 Ms. Lively?

15 Ms. Lively: Yes, sir.

16 The Court: If you would call your next witness?

17 Ms. Lively: Thank you, the State would call
18 Cesalee Carnaghie to the stand.

19 Cesalee Ann Carnaghie

20 being first duly sworn, testified as follows:

21 Madam Clerk: Please state your full name and
22 spell your last for the Court?

23 The Witness: My full name is Cesalee Ann
24 Carnaghie, it's c-a-r-n-a-g-h-i-e.

25 Direct Examination

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 By Ms. Lively:

2 Q How old are you now, Cesalee?

3 A Twenty-two.

4 Q And what's your date of birth?

5 A [REDACTED].

6 Q And are you married?

7 A Yes, ma'am.

8 Q And Mr. Grimes is your husband?

9 A Yes, ma'am.

10 Q What's the status of your marriage right
11 now?

12 A We're separated.

13 Q And do you have any children?

14 A No, ma'am.

15 Q Who is [REDACTED] [REDACTED]?

16 A My son.

17 Q Cesalee, how do you know the defendant

18 Julia Gorman?

19 A She's my mother.

20 Q How do you know the defendant Robert

21 Palmer?

22 A He's her boyfriend.

23 Q Now, Cesalee, where did you grow up?

24 A With my grandparents for the most part.

25 Q What kind of relationship did you have with

Ms. Carnaghie - Direct Examination by Ms. Lively

185

1 your mother growing up?

2 A Not much of one.

3 Q And where do your grandparents live or
4 where were they living when you were little?

5 A I have the ones that were in North
6 Carolina, also the ones that are in California.

7 Q Okay, well tell me which ones had
8 guardianship over you?

9 A My grandmother in Arizona.

10 Q And what's her name?

11 A Judith Morris.

12 Q And she's your grandmother on your mom's
13 side?

14 A Yes, ma'am.

15 Q So that's the defendant Julia Gorman's
16 mother?

17 A Yes, ma'am.

18 Q Okay, now there was some questions earlier
19 and I want to ask you, was there ever a time when you were
20 placed in foster care?

21 A Yes, ma'am.

22 Q Would you tell the jury about that?

23 A I was being a rebellious teenager, my
24 grandmother couldn't handle that. She called my mother; my
25 mother called me angry and threatened to make me a ward of

Ms. Carnaghie - Direct Examination by Ms. Lively 186

1 the court. Basically I told her, I dare you, she came down
2 the next day with CPS.

3 Q So you were admittedly difficult?

4 A Yes, ma'am.

5 Q Okay, now, Cesalee, at that time how old
6 were you?

7 A I believe I was fifteen or sixteen.

8 Q Okay, how old were you when you met
9 Richard?

10 A Fifteen.

11 Q Okay, and when did the two of you become a
12 couple, how old were you when ya'll became a couple?

13 A Sixteen.

14 Q How old were you when you became pregnant?

15 A Sixteen.

16 Q How did your mother, the defendant, feel
17 about you becoming pregnant?

18 A She was angry.

19 Q When was [REDACTED] born?

20 A [REDACTED], 2007.

21 Q Who was with you at the hospital when he
22 was born?

23 A Richard, his mother, his sisters, I believe
24 that was it.

25 Q Where was your mom?

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 A South Carolina.

2 Q Had the two of you made up, reconciled your
3 relationship by that time?

4 A Yes, ma'am.

5 Q Okay, now, Cesalee, when [REDACTED] was born
6 how much did he weigh?

7 A Six pounds, twelve ounces.

8 Q Were, were there any problems with him
9 whenever he was born?

10 A No, ma'am.

11 Q What type of illnesses did he have as a
12 child or as a baby?

13 A Common cold, thrush, that's about it.

14 Q Who was the primary caretaker for [REDACTED] as
15 a baby?

16 A Both Richard and I.

17 Q Now was Richard in the military whenever he
18 was born?

19 A No, not yet.

20 Q Okay, when, well let me ask you this, did
21 you ever graduate high school?

22 A Yes, ma'am.

23 Q Okay, and do you remember when that was?

24 A I completed high school November 2006 and
25 had my graduation date May of 2007.

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 Q All right, now, Cesalee, how were things
2 whenever you were having to care for [REDACTED] being as young
3 as you were?

4 A It was difficult, I had absolutely no idea
5 what I was doing.

6 Q And when you had [REDACTED] where were you
7 living?

8 A At Richard's mother's house.

9 Q And did you always live with his mother up
10 until the time you actually left to come to South Carolina?

11 A No, ma'am.

12 Q Okay, where were the different places that
13 you and [REDACTED] stayed before you ended up coming here to
14 South Carolina, don't include the Pensacola trip, but just
15 when you were in Arizona?

16 A With Judy Morris and also in the apartment
17 that we had started to rent.

18 Q Who's we?

19 A Richard and I.

20 Q Okay, so ya'll had started renting an
21 apartment?

22 A Uh-huh.

23 Q Okay, now, Cesalee, what was your
24 relationship like with your, I guess, was he your husband
25 at that time or your boyfriend?

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 A Husband at that time.

2 Q Okay, and what was your relationship like?

3 A Pretty good.

4 Q And who was the one who would take care of
5 [REDACTED] when Richard wasn't around?

6 A I did.

7 Q Okay, now whenever, when did Richard
8 actually go into the military? Do you remember about when
9 that was or how old [REDACTED] was when it happened?

10 A When he enlisted or when he actually left?

11 Q When he had to actually physically leave
12 you when was that?

13 A That was after [REDACTED] was born.

14 Q Okay, and whenever he left to do his duties
15 in the military who would take care of [REDACTED]

16 A I did.

17 Q Okay, now, Cesalee, when you were caring
18 for [REDACTED] did you ever have any problems with him
19 physically?

20 A No.

21 Q Was there ever a time when you had him that
22 he had to be taken to the hospital overnight?

23 A No.

24 Q All right, was there ever a time as a new
25 mother you took him to the E.R. for any reason?

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 A Yes, ma'am.

2 Q Okay, tell the jury why you would do that
3 or when that happened?

4 A He had a really high fever, I couldn't get
5 it to come down. So I immediately took him to the
6 emergency room after he had had that fever for about an
7 hour and it escalated to even higher and I took him there
8 and they basically gave him a cold compress on his forehead
9 and he was fine to go home.

10 Q Now were you ever in a motor vehicle
11 accident with him in the car?

12 A No.

13 Q Were there stairs in the apartment complex
14 where you lived?

15 A Not inside of my apartment.

16 Q Had you ever fallen down any stairs with
17 him in your arms?

18 A No.

19 Q At any time that he was with you did he
20 have any type of head injuries or concussions?

21 A No.

22 Q Now, Cesalee, when he had that high fever
23 did he suffer from seizures or did he lose consciousness?

24 A No.

25 Q Now, Cesalee, when did [REDACTED] start

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 walking?

2 A He was about ten months.

3 Q And who, were you taking him to the well
4 baby checks?

5 A Yes, ma'am.

6 Q All right, and based upon taking him to
7 those well baby checks did you have any concerns about his
8 development?

9 A I would ask the doctor if he was supposed
10 to doing things that he was doing yet but other than that,
11 no.

12 Q Okay, so you were just, you would talk to
13 the doctor if there were any problems?

14 A Yes, ma'am.

15 Q Okay, were there any problems?

16 A No.

17 Q All right, and whenever Richard came back
18 from, well let me back up, was there a time when he was
19 gone for about a month right before [REDACTED] turned or right
20 around the time [REDACTED] turned one?

21 A I believe so.

22 Q Okay, and when he came back into town for
23 about a month what did you and Richard end up doing
24 regarding your relationship?

25 A We got married.

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 Q And when you got married did your mother
2 come?

3 A No.

4 Q Did you tell her you were getting married?

5 A I think so.

6 Q Okay, how often did you talk to your mom at
7 that time, on a daily basis or --

8 A It wasn't on a daily basis, maybe once or
9 twice a week.

10 Q Did she ever tell you how she felt about
11 Richard?

12 A No.

13 Q So when you and Richard got married what
14 were the plans after that point?

15 A A few days later he had to go to one of his
16 schools, [REDACTED] and I were going to continue to stay in the
17 apartment.

18 Q All right?

19 A And then we were going to move once he
20 finished all of his schooling.

21 Q Okay, now when was the next time you saw
22 Richard after he had left, after ya'll had gotten married
23 and [REDACTED] had turned one?

24 A I think it was when we went to Pensacola.

25 Q Okay, now --

Ms. Carnaghie - Direct Examination by Ms. Lively 193

1 Ms. Lively: Your Honor, if I may approach?

2 The Court: Certainly.

3 Ms. Lively: (Continuing)

4 Q I'm going to show you some pictures that
5 are already in evidence, State's Exhibit 7, 11, 12,
6 actually 1, and then 13, and ask you if you recognize all
7 of these photos?

8 A Yes.

9 Q Okay, now, Cesalee, are those photos an
10 accurate portrayal of you and your small family?

11 A Yes.

12 Q And in those photos that you have, well let
13 me ask you this, when you would take a picture of [REDACTED]
14 what kind of toddler was he when you were trying to take
15 pictures of him or do anything like that?

16 A He would pose for that camera.

17 Q He would what?

18 A He would pose for the camera.

19 Q Well was he ever a problem in any way for
20 you?

21 A When he was first born he had colic, he was
22 really fussy a lot, sometimes it got frustrating, so I
23 would have somebody to come and watch him for five or ten
24 minutes while I would step away to regain my calm and then
25 come back.

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 Q And would you ever complain to anybody
2 about him being fussy or difficult?

3 A No.

4 Q Now, Cesalee, by the time he, did he
5 outgrow the colic?

6 A Yes.

7 Q Okay, so by the time let's say he was one
8 year old were there any, well did he have any type of
9 behaviors or problems that, that you noticed as a parent?

10 A No.

11 Q And let me ask you this, before you came
12 here to South Carolina with [REDACTED] how, what was the
13 longest amount of time he had ever been away from you, his
14 mother?

15 A Three or four days.

16 Q So three or four days, and do you remember
17 when that would have been?

18 A Before Richard went to, I believe, boot
19 camp ---

20 Q Okay?

21 A --- we were split up at that point and on
22 the days that he didn't have to work he would have [REDACTED]

23 Q Okay, all right, so in any of those times
24 whenever you didn't, he wasn't with you overnight he was
25 with his father?

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 A Yes, ma'am.

2 Q Was there ever a span of time other than
3 when you left him here in South Carolina that [REDACTED] was
4 not with you and/or Richard, his father?

5 A There was a couple when we would have his
6 mother or my grandmother, Judy Morris, babysit him.

7 Q Okay, and what kind of span of time are you
8 talking about that you would be away from him?

9 A About a day.

10 Q Now that one picture that I showed you,
11 first of all let me ask you, the camera that you used was
12 that your camera for these pictures?.

13 A Yes, ma'am.

14 Q Okay, and there are some yellow dates on
15 the bottom of the pictures, can you tell me whether these
16 dates are accurate?

17 A They're not going to be accurate.

18 Q Okay, all right, the one that's stating
19 that it was May 17th of 2008, do you remember when this
20 photo was taken?

21 A That was either when we were going to
22 Pensacola or when we were going to Ohio for Christmas.

23 Q Okay, all right. About how old was [REDACTED]
24 at that point?

25 A Going to Ohio he was almost a year and then

Ms. Carnaghie - Direct Examination by Ms. Lively

196

1 going to Pensacola he was just over a year.

2 Q Just over a year, okay, so a toddler, now
3 how long were you in Pensacola?

4 A About a week and a half or two weeks.

5 Q Okay, and just tell the jury who was with
6 you?

7 A It was Richard, myself, and [REDACTED]

8 Q Okay, and where did you stay when you went
9 to Pensacola?

10 A In a hotel.

11 Q And how much time were you able to spend
12 with your husband while you were there?

13 A He was able to stay on the weekends maybe
14 about two days at a time.

15 Q And did you know that when you went there
16 that he was going to be busy?

17 A I knew he was going to be busy, I just
18 didn't know how busy.

19 Q Okay, and so while you were there with
20 [REDACTED] were there any discussions between yourself and your
21 husband about taking a visit somewhere?

22 A Yes.

23 Q Okay, tell the jury about that
24 conversation?

25 A I wanted to visit my mother so that she

Ms. Carnaghie - Direct Examination by Ms. Lively 197

1 could see [REDACTED] for the first time. We were already on
2 the east coast so it was a little bit easier instead of
3 trying to make another three thousand flight.

4 Q And so how did you end up getting to South
5 Carolina?

6 A We took a Greyhound.

7 Q How long did it take you to get here on
8 Greyhound?

9 A About a day and a half.

10 Q And how was [REDACTED] on that bus ride?

11 A Perfectly fine.

12 Q All right, and do you remember when it was
13 that you actually got here to South Carolina?

14 A No.

15 Q Okay, that's fine, now, Cesalee, before you
16 left to come here to South Carolina what, if any, concerns
17 did you have about coming here with your child to visit
18 your mother?

19 A I had absolutely none.

20 Q Okay, well you talked about how ya'll had a
21 rocky relationship, at the time you came here to South
22 Carolina how was that relationship?

23 A Much better, we were talking, we were being
24 civil to each other every chance that we did speak.

25 Q Were you aware of what her, her living

1 arrangements were before you got here?

2 A What do you mean?

3 Q Who was she living with?

4 A I knew that she was living with her
5 boyfriend.

6 Q Okay, and were you aware how long they had
7 lived together?

8 A No.

9 Q Okay, had you ever met her boyfriend?

10 A No.

11 Q Did you know anything about him at all?

12 A Uh-uh, just his name.

13 Q Just his name, what's his name?

14 A Robert Palmer.

15 Q So when you get here with [REDACTED] tell the
16 jury what Julie's reaction was to your son?

17 A She was happy to see him. She immediately
18 held out her arms to hold him and then he started to get a
19 little fussy so she handed him back.

20 Q And how was [REDACTED] in regards to meeting
21 somebody knew or a stranger?

22 A He wasn't too thrilled about meeting
23 strangers.

24 Q Cesalee, where did ya'll go when you first
25 got here to South Carolina?

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 A We went to Bass Pro to the restaurant.

2 Q Okay?

3 A And then we went to the beach.

4 Q Okay, and when you went to the beach who
5 went with you?

6 A Two of my mom's friends and, of course, my
7 mother and I and [REDACTED]

8 Q All right, and when you went to the beach
9 did you actually go out on the beach?

10 A Yes, ma'am.

11 Q And did [REDACTED] go on the beach with you?

12 A Yes, ma'am.

13 Ms. Lively: Your Honor, if I may approach
14 again?

15 The Court: Certainly.

16 Ms. Lively: (Continuing)

17 Q I'm going to show you some more photos.
18 I'm going to show you State's Exhibit Number 2 and ask you
19 if you recognize those photos?

20 A Yes, ma'am.

21 Q State's Exhibit Number 3 and ask you if you
22 recognize this one?

23 A Yes, ma'am.

24 Ms. Grabert-Lowenstein: Your Honor, I'm sorry?

25 Ms. Lively: I'm going to bring them all over to

Ms. Carnaghie - Direct Examination by Ms. Lively . 200

1 you once she's done that if that's okay.

2 Ms. Grabert-Lowenstein: I appreciate it, thank
3 you.

4 Ms. Lively: (Continuing)

5 Q State's Number 5?

6 A Yes, ma'am.

7 Q Number 6?

8 A Yes, ma'am.

9 Q Number 8?

10 A Yes, ma'am.

11 Q Number 9?

12 A Yes, ma'am.

13 Q And then 10?

14 A Yes.

15 Q So you recognize all of these?

16 Ms. Lively: Your Honor, the State would move to
17 introduce Exhibits, let me clear for the record, 2, 3, 5,
18 6, 8, 9, and 10 into evidence at this time?

19 The Court: Counsel?

20 Ms. Grabert-Lowenstein: No objection on behalf
21 of Mr. Palmer.

22 Mr. Galtmore: No objection, Your Honor.

23 The Court: Without objection.

24 Ms. Lively: Thank you, Your Honor.

25 (Whereupon, State's Exhibits Numbers 2, 3, 5, 6,

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 8, 9, and 10 entered into evidence.)

2 Ms. Lively: (Continuing)

3 Q Now, Cesalee, I'm going to pull out just a
4 couple of them, first of all State's Exhibit Number 10,
5 okay, when was this picture taken?

6 A The day we arrived.

7 Q The day you arrived?

8 A Yes, ma'am.

9 Q Okay, and where were you on that day in
10 this picture?

11 A That's at the wading pool at the beach.

12 Q At the beach, okay, how did [REDACTED] react to
13 the beach?

14 A Fearless.

15 Q Fearless, I'm going to show you State's
16 Number 8, who is in this photo?

17 A Myself and my son.

18 The Court: Ms. Lively, could I see your
19 photographs before we go further?

20 Ms. Lively: Yes, sir.

21 Q (Continuing) Now State's Number 8 you
22 stated was you and [REDACTED]

23 A Yes.

24 Q On the beach?

25 A Yes.

Ms. Carnaghie - Direct Examination by Ms. Lively

202

1 Q Okay, and was this the same day or a
2 different day?

3 A It's the same day.

4 Q Well in one he's got on a blue bathing suit
5 and in the other one he's got on a yellow?

6 A All right, I'm mistaken, that is definitely
7 not the same day.

8 Q Okay, how many times did ya'll go to the
9 beach?

10 A I don't remember to be honest.

11 Q That's fine, that's fine, but obviously
12 from what you're saying is you went and you took your child
13 to the beach?

14 A Yes.

15 Q Okay, how were things going with your
16 mother and [REDACTED] and Palmer at this time?

17 A Really good.

18 Q Really good?

19 A They sat down and they played with him. My
20 mom would actually sit down and have him sit in the other
21 chair at the table and feed him dinner, feed him breakfast.

22 Q And how were you doing in regards to things
23 going on between you and your mother?

24 A I was amazed, we didn't fight, we didn't
25 argue, everything that had happened in the past between us

Ms. Carnaghie - Direct Examination by Ms. Lively

203

1 was as if it just didn't happen.

2 Q Okay, and how was she towards your son?

3 A Really good.

4 Q How was Mr. Palmer towards to your son?

5 A Just as good.

6 Q Just as good, okay?

7 Ms. Grabert-Lowenstein: I'm sorry, Your Honor,
8 could she repeat both of those answers, I didn't hear?

9 The Court: Just as good.

10 Ms. Grabert-Lowenstein: Just as good, okay.

11 Ms. Lively: (Continuing)

12 Q Now there's a picture here State's Number 5
13 of you in a pool with [REDACTED] was that taken here?

14 A No, ma'am.

15 Q All right, so this was before you got to
16 South Carolina?

17 A Yes.

18 Q Okay, and once again this one doesn't have
19 a date on it, does it?

20 A No.

21 Q All right, well let me show you 9, I'm
22 sorry, 2, 3, 6, and 9, are all these from when you were
23 here at your mother's, just flip through them real quick?

24 A Yes.

25 Q Will you tell the jury which one of these

Ms. Carnaghie - Direct Examination by Ms. Lively 204

1 photos was the last one you took of [REDACTED] before you left?

2 A The top one.

3 Q The top one, and what is that exhibit
4 number?

5 A Six.

6 Q Okay, so this was the last photo that you
7 took of [REDACTED] correct?

8 A Yes.

9 Q And how was he feeling?

10 A He was groggy, he just wanted to be with
11 his mom.

12 Q Cesalee, when did he get sick?

13 A Not too long after we arrived in South
14 Carolina.

15 Q And what kind of symptoms was he having?

16 A At first I thought that it was just his
17 allergies bothering him because of all the different
18 climate changes ---

19 Q Okay?

20 A --- but then it progressed to coughing so I
21 scheduled him a doctor's appointment.

22 Q All right, and did you see a doctor with
23 your son?

24 A Yes.

25 Q All right, and was it at the E.R. or was it

Ms. Carnaghie - Direct Examination by Ms. Lively

205

1 at a doctor's office?

2 A It was at a doctor's office.

3 Q Do you remember the name of that doctor?

4 A No.

5 Q All right, and when you went to the doctor
6 did you have information in regards to any insurance or
7 care for your child?

8 A What do you mean?

9 Q Was he insured?

10 A Yes.

11 Q Okay, and I'm going to show you what's
12 already in evidence as Defense Exhibit Number 1; do you
13 recall providing this information to the doctor who saw

14 [REDACTED]

15 A Yes.

16 Q Okay, now, Cesalee, when you took [REDACTED] to
17 the doctor the first time do you remember about when that
18 was?

19 A No.

20 Q All right, what, why did you take him to
21 the doctor that first time?

22 A He was playing outside and set on an ant
23 hill ---

24 Q All right?

25 A --- and got bit by ants.

Ms. Carnaghie - Direct Examination by Ms. Lively

206

1 Q All right, and was this the same time when
2 he, was he still having the allergy issues?

3 A Yes.

4 Q Okay, so when you went to the doctor that
5 time how far ahead of the time was that before you actually
6 left?

7 A To go back home?

8 Q Exactly, do you remember how close in time
9 it was that you went to the doctor and then you left?

10 A No.

11 Q Okay, all right, when you went to the
12 doctor what ended up happening with the doctor at that
13 visit?

14 A He had a hard time getting [REDACTED] to sit
15 still.

16 Q Okay?

17 A He prescribed him I believe it was a
18 steroid cream to make the ant bites go away and the
19 allergic reaction from it, and also a cough syrup to make
20 the cold go away.

21 Q When you left there did he still have a
22 fever or was he better or what was the circumstance at that
23 time?

24 A He still had a fever.

25 Q And after that visit what, if anything, did

Ms. Carnaghie - Direct Examination by Ms. Lively 207

1 you decide in regard to going back to Arizona in regards to
2 your son?

3 A I didn't want to take him on the plane and
4 risk that fever getting any higher.

5 Q How long of a plane ride was it whenever
6 you actually ended up going back to Arizona?

7 A It was about a six hour flight.

8 Q So who, who began the discussion about
9 [REDACTED] possibly not going on that flight?

10 A I did.

11 Q How did it come up -- I'm sorry?

12 A I had talked to my mom about it and she had
13 mentioned to me that because it's a higher elevation that
14 his fever can go up and possibly sky rocket and have
15 nothing to do so then we further discussed leaving her
16 temporary guardianship as well as Robert.

17 Q Okay, and at that time who in the household
18 at your mom's was working?

19 A I believe it was just my mother.

20 Q Okay, and Mr. Palmer what was he doing
21 during the day; do you recall?

22 A Looking for jobs.

23 Q Looking for jobs, okay. So whenever you
24 made the decision, or you discussed the decision, to leave
25 [REDACTED] what did you do in order to make sure that he could

Ms. Carnaghie - Direct Examination by Ms. Lively

208

1 be cared for while you were gone?

2 A The plan was to send my mom, I left my mom
3 with some money.

4 Q Okay?

5 A I think I did, and then the plan was if it
6 took longer than we expected we were going to continue to
7 send money so that way she could pay for diapers and food
8 for him.

9 Q Okay, and what kind of documents did you
10 leave with your mom so that she could care for him or
11 Robert if he did?

12 A Temporary guardianship.

13 Q Okay, who prepared that document for you?

14 A Gail Palmer.

15 Q And how old were you at this time, Cesalee,
16 when all this was going on, it would have been July of '08?

17 A 18.

18 Q Okay, and had you ever signed a temporary
19 guardianship before?

20 A No.

21 Q Did you know what one was?

22 A Yes.

23 Q Okay, and why did you sign this temporary
24 guardianship?

25 A So they could seek [REDACTED] medical

Ms. Carnaghie - Direct Examination by Ms. Lively 209

1 attention, continue to take him to the doctors if he needed
2 to go.

3 Q Okay, I'm going to show you what's already
4 in evidence as Defense Number 2 and is this the temporary
5 guardianship for [REDACTED]

6 A Yes.

7 Q Okay, is that the one that you signed back
8 in July of 2008?

9 A Yes.

10 Q All right, and is your signature, you said
11 you signed, it's actually on this document, correct?

12 A Yes.

13 Q All right, now if you could, please, tell
14 me what does it tell you about traveling, the ability for
15 them to travel with your son? What did it authorize them
16 to do in regards to travel with your son; can you read that
17 and tell me?

18 A Out loud?

19 Q Yes, ma'am?

20 A "The power to travel with Richard during
21 the period of guardianship including foreign travels."

22 Q Okay, and what about the sentence above
23 that?

24 A "The power to travel with Richard to visit
25 them in South Carolina and to rejoin me at my home."

Ms. Carnaghie - Direct Examination by Ms. Lively

210

1 Q And to rejoin you at your home, and who is
2 Richard in that particular document?

3 A [REDACTED]

4 Q That's [REDACTED] okay, so [REDACTED]'s legal name
5 is what?

6 A [REDACTED].

7 Q [REDACTED] [REDACTED] [REDACTED]?

8 A Yes.

9 Q Okay, so that authorization even gave your
10 mother or Robert the ability to bring him back to you in
11 Arizona?

12 A Yes.

13 Q Okay, now how long is this guardianship
14 for; how long was it to be valid?

15 A One year.

16 Q One year, okay, why were you going to leave
17 your son for one whole year, Cesalee?

18 A That wasn't the plan.

19 Q What was the plan?

20 A To pack everything up so we could move and
21 then as soon as we arrived at the duty station, unloaded
22 the house, I'm sorry, unloaded all of the furniture and
23 everything we were going to go and get him so that way
24 everything was all set up for him when he got there.

25 Q Okay, and the duty station was going to be,

Ms. Carnaghie - Direct Examination by Ms. Lively

211

1 is where?

2 A Beaufort, South Carolina.

3 Q So you were going to be back in South
4 Carolina and get your child then?

5 A Yes.

6 Q Did you give your mother or Robert any idea
7 as to when that might be?

8 A I said hopefully no longer than two weeks.

9 Q Were you able to give them an exact time?

10 A No, ma'am.

11 Q When you left how did you actually leave;
12 was it by bus, car, or plane?

13 A Airplane.

14 Q And at that time --

15 Ms. Lively: If I may approach, Your Honor?

16 The Court: Yes.

17

18 Ms. Lively: (Continuing)

19 Q Who purchased your ticket?

20 A Richard.

21 Q I'm going to show you State's Exhibit
22 Number 15 and ask you if you recognize this document?

23 A Yes, ma'am.

24 Q Okay, and what is that?

25 A That's my plane ticket?

Ms. Carnaghie - Direct Examination by Ms. Lively 212

1 A All right, and when were you going to fly
2 out of South Carolina, Cesalee?

3 A July 2nd.

4 Ms. Lively: Your Honor, the State would move to
5 introduce State's Number 15 into evidence at this time?

6 Ms. Grabert-Lowenstein: No objection on behalf
7 of Mr. Palmer.

8 Mr. Galmore: No objection.

9 The Court: Without objection.

10 Ms. Lively: Thank you.

11 (Whereupon, State's Exhibit Number 15 entered
12 into evidence.)

13 Ms. Lively: (Continuing)

14 Q Now, Cesalee, when was this ticket
15 purchased; do you remember?

16 A It was either just days before, if not from
17 the day before.

18 Q Okay, and if you were going to take [REDACTED]
19 with you was it going to cost you the same amount as it
20 would for your adult ticket?

21 A No, there wouldn't have been a charge
22 because he was going to be sitting on my lap.

23 Q At that time how old was he?

24 A Fifteen months.

25 Q All right, now, Cesalee, after you left how

Ms. Carnaghie - Direct Examination by Ms. Lively

213

1 often would you call your mother to check on your son?

2 A Daily.

3 Q Daily, at any time in those conversations
4 did you have any concerns about the care of your son?

5 A No.

6 Q At any time were you told of any accidental
7 injuries or anything at all in regards to [REDACTED]

8 A No.

9 Q Before you left had he been involved in any
10 type of an accident, falls, or any type of injuries?

11 A There was one but he wasn't injured.

12 Q Okay, tell the jury what that was?.

13 A He was in his stroller.

14 Q Okay?

15 A We were going down the stairs ---

16 Q All right?

17 A --- the front wheel decided to do some odd
18 twist number, [REDACTED] had a hold of the side of the stroller

19 ---

20 Q Okay?

21 A --- held on really, really tight and when
22 it tipped over. He didn't, his head didn't even touch the
23 ground.

24 Q Okay, was he ejected from the stroller?

25 A No.

Ms. Carnaghie - Direct Examination by Ms. Lively 214

1 Q Did you have to seek medical attention for
2 him?

3 A No, I watched him to make sure he wasn't
4 acting lethargic or anything.

5 Q Okay, and whenever you, did you ever see
6 their pet, Julie and Robert's pet while you were there?

7 A Yes.

8 Q Okay, what kind of pet did they have?

9 A I think it's an English Bulldog.

10 Q All right, and how did [REDACTED] react to the
11 English Bulldog?

12 A He loved that dog.

13 Q Were you ever concerned about the dog being
14 around your child?

15 A No.

16 Q What kind of a home did Julie and Robert
17 live in?

18 A What do you mean?

19 Q Was it an apartment, a house, trailer, what
20 was it?

21 A Single wide trailer.

22 Q A single wide trailer, and how big was that
23 trailer, how many rooms did it have?

24 A Two bedrooms, one bathroom.

25 Q Okay, and where did you and [REDACTED] stay

Ms. Carnaghie - Direct Examination by Ms. Lively

215

1 whenever you were there?

2 A In the spare bedroom closest to the living
3 room.

4 Q The spare room closest to the living room,
5 okay. Do you remember the details of that home; could you
6 recall what it looked like and everything like that?

7 A Yes.

8 Q All right, and was it a nice ---

9 A Yes.

10 Q --- home, okay, it was nice; and was there
11 anything, like for instance like baby fix the house so that
12 there aren't sharp corners and things like that, were you
13 concerned about anything in that house that could be
14 dangerous to your child?

15 A No.

16 Q All right, were there toys there?

17 A Yes.

18 Q Where did he sleep when he stayed there?

19 A He slept in the playpen in the spare
20 bedroom and when he wasn't feeling good and I couldn't get
21 him to go to sleep he slept with me.

22 Q Okay, and what kind of a playpen was it?

23 A A foldable one.

24 Q A what?

25 A A foldable one.

Ms. Carnaghie - Direct Examination by Ms. Lively

216

1 Q A fold one, kind of like a pack and play?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes.

5 Q Okay, now, Cesalee, when you were in that
6 home how difficult was it for you to know who was there and
7 be able to get somebody's attention if you needed it?

8 A It wasn't difficult at all.

9 Q Explain that to me.

10 A You could hear practically everything in
11 that house, anything that went on, if somebody was walking,
12 if somebody was talking.

13 Q When [REDACTED] was playing in the house could
14 you hear him?

15 A Yes.

16 Ms. Lively: Your Honor, if I may?

17 The Court: Certainly.

18 Ms. Lively: (Continuing)

19 Q Now, Cesalee, I've, have you seen this
20 before?

21 A No.

22 Q Okay, have you, do you recall the
23 dimensions or I should say how the lay out of the home was?

24 A Yes.

25 Q All right, and in regards to the dimensions

Ms. Carnaghie - Direct Examination by Ms. Lively 217

1 and the layout of the home do you recall where everybody's
2 room was and where you and [REDACTED] were staying?

3 A Yes.

4 Q Okay, and does this look a fair and
5 accurate representation of the layout of the mobile home
6 that your mother and Robert Palmer were living?

7 A Yes.

8 Q Okay, is there in, on this, this document
9 that looks like it changed since the time that you were
10 there?

11 A No.

12 Q Do you believe it to be a fair and accurate
13 representation of their home?

14 A Yes.

15 Q Okay --

16 Ms. Lively: Your Honor, the State would move to
17 introduce number 16 into evidence at this time.

18 The Court: Ms. Grabert-Lowenstein?

19 Ms. Grabert-Lowenstein: Your Honor, I believe
20 that we're not going to have any objection. I would ask if
21 we could put on the record who prepared it and how the
22 dimensions came about.

23 Ms. Lively: Well, Your Honor, if I need to do
24 that I'll have to have a different witness to actually
25 provide that information.

Ms. Carnaghie - Direct Examination by Ms. Lively 218

1 The Court: I think she's saying she would not
2 have any objection by simply telling us -

3 Ms. Grabert-Lowenstein: That is what I'm
4 saying.

5 The Court: --- by whom it was prepared.

6 Ms. Lively: Oh, okay, that's fine.

7 Ms. Grabert-Lowenstein: I just need to proffer.

8 Ms. Lively: Yes, one of the investigators in my
9 office did it.

10 The Court: And is it to scale?

11 Ms. Lively: Yes.

12 The Court: Do you have any objection?

13 Ms. Grabert-Lowenstein: I don't with that
14 information, thank you, Your Honor.

15 The Court: Mr. Galmore?

16 Mr. Galmore: Your Honor, no objection.

17 The Court: All right, thank you very much,
18 without objection.

19 Ms. Lively: Thank you.

20 (Whereupon, State's Exhibit Number 16 entered
21 into evidence.)

22 Ms. Lively: (Continuing)

23 Q Okay, and I'm not going to ask you about
24 the specific measurements. I just want to show for the
25 jury, if you would, Cesalee, and I'll try to point for you,

Ms. Carnaghie - Direct Examination by Ms. Lively 219

1 okay, all right, now which bedroom, and they're labeled,
2 which bedroom was the one that you were staying in with

3 [REDACTED]

4 A Bedroom two.

5 Q Bedroom number two, okay, so right here?

6 A Yes, ma'am.

7 Q Whose was the master bedroom?

8 A My mom and Robert's.

9 Q Okay, and this big area right here the
10 living room area, where did ya'll spend most of your time?

11 A In the living room in the middle of the
12 floor.

13 Q Okay, when you were talking a minute ago
14 about the stroller and the stairs, which stairs are you
15 referring to that the stroller went down?

16 A The front stairs.

17 Q The front stairs so right here?

18 A Yes.

19 Q Okay, once again [REDACTED] never came out of
20 that stroller; was that your testimony?

21 A Yes, ma'am.

22 Q Okay, now, Cesalee, after you left, after
23 you left and went to Arizona you said you talked, you
24 called every day. What was [REDACTED]'s reaction to you when
25 you would call?

Ms. Carnaghie - Direct Examination by Ms. Lively 220

1 A He'd just keep talking his toddler talk.

2 Q Okay, and what kind of talking was he
3 doing, was it in full conversation or sentences; what kind
4 of talking are we, are you trying to describe to us?

5 A The distinctive words then, but it wasn't
6 full sentences, all the rest of it was just basically baby
7 babble.

8 Q Baby babble. Now, Cesalee, at any time
9 were you given information that [REDACTED] had been to the
10 doctor or there were any problems with his health?

11 A No.

12 Q When, if ever, did you learn that he had
13 been taken to the E.R. while here in South Carolina before
14 the 14th?

15 A I have just recently found out.

16 Q And when you would call your mom would you
17 ask how he was feeling?

18 A Yes.

19 Q And what was her response whenever you
20 would ask this question?

21 A He was doing just fine.

22 Q When, if ever, did your mom complain about
23 his behavior?

24 A I don't recall her ever complaining to me
25 about it.

Ms. Carnaghie - Direct Examination by Ms. Lively

221

1 Q Now, Cesalee, was there ever a time right
2 before the 14th, I know, the weekend before we've heard
3 about what was going on with [REDACTED] had you talked to your
4 mom?

5 A No, I couldn't get a hold of her.

6 Q Would you say that louder, please?

7 A No, I couldn't get a hold of her.

8 Q You couldn't get a hold of her. How about
9 Richard, were ya'll together or were ya'll both trying to
10 get in contact with her?

11 A Yes.

12 Q So what did you do?

13 A I kept calling.

14 Q That weekend before the 14th when was the
15 first time that you actually got a hold of your mom and
16 able to talk to her?

17 A I don't know.

18 Q Who called you or did anybody call you to
19 tell you what had happened to [REDACTED] on the 14th?

20 A Richard called me after he found out.

21 Q When, if ever, did your mom or Robert call
22 you to tell you what had happened?

23 A Never.

24 Q After Richard told you what happened to
25 [REDACTED] what did you do?

Ms. Carnaghie - Direct Examination by Ms. Lively

222

1 A I got angry.

2 Q Did you know, how much information did you
3 have at that point?

4 A At that point all I knew was that he had
5 skull fractures and we don't know how he got them.

6 Q When, if ever, did you talk to your mom
7 after the 14th?

8 A When I arrived at MUSC.

9 Q At MUSC, how many times did she call you
10 before you saw her at MUSC about what had happened to

11 [REDACTED]

12 A None.

13 Q Did Mr. Palmer call you?

14 A No.

15 Q Who called you other than Richard to tell
16 you your son was in critical condition?

17 A Just Richard and when Julie would contact
18 Judy, Judy would relay the memo to me.

19 Q Who's Judy?

20 A Judy Morris.

21 Q Where was Judy Morris?

22 A In Arizona with me.

23 Q Okay, did you try to call your mom?

24 A Yeah.

25 Q And what happened?

Ms. Carnaghie - Direct Examination by Ms. Lively 223

1 A She'd either ignore the call or she'd push
2 the end button and never even answer the call.

3 Q Now, Cesalee, when you got to, when were
4 you able to actually get to your son's bedside?

5 A The day after he arrived at MUSC.

6 Q Okay, and why was there a delay there?

7 A I didn't have the money to buy a plane
8 ticket and I was trying to figure out how I was going to
9 get there.

10 Q Okay, and at that time who, if anybody, was
11 already there with [REDACTED] do you know?

12 A Just Richard and my mother as far as I
13 knew.

14 Q All right, so when you got to MUSC tell the
15 jury what you observed?

16 A I arrived there, I asked Richard where my
17 mom was. She refused to come down until I called her and
18 told her to come down here and then we talked. She
19 mentioned something about between all of the animosity
20 that's been created this isn't about us, this is about
21 [REDACTED] I don't remember the rest of that conversation.

22 We went upstairs, I saw [REDACTED] hooked up to his tubes and
23 the life support. The first words out of my mouth was
24 that's not my kid and I turned around to regain my
25 composure.

Ms. Carnaghie - Direct Examination by Ms. Lively

224

1 Q Why did you think it wasn't your kid?

2 A My kid is not a lifeless body.

3 Q Cesalee, what were you thinking in regards
4 to how this happened to your child?

5 A I don't want to think my mom did it.

6 Q Were you given any type of explanation as
7 to how this had happened to your child?

8 A No.

9 Q Who, if anyone, did you ask what could have
10 happened to your son?

11 A I spoke to the doctor.

12 Q Why didn't you ask your mom?

13 A I couldn't bring myself to really talk to
14 her at that point.

15 Q I thought you said that your relationship
16 with her was good when you were in South Carolina?

17 A It was but at that point I didn't know who
18 did anything and I didn't want to get lied to if it was
19 her.

20 Q Now, Cesalee, I'm going to back up for a
21 minute and ask you if you remember anything at all that
22 happened while you were in South Carolina before [REDACTED]
23 went to the hospital any time that you and your mom fought
24 or had a disagreement?

25 Mr. Galmore: Objection, relevance.

Ms. Carnaghie - Direct Examination by Ms. Lively 225

1 Ms. Lively: It goes to their state of mind,
2 Your Honor.

3 The Court: I'm going to allow it.

4 Mr. Galmore: Your Honor, she's talking about
5 any time previously we have, what, a month and a half?

6 Ms. Lively: You want me to narrow it?

7 Mr. Galmore: I've stated my objection, Your
8 Honor.

9 The Court: Okay, all right, I'm going to allow
10 it.

11 Ms. Lively: Thank you, Your Honor.

12 Ms. Lively: (Continuing)

13 Q Did you understand my question?

14 A No, do you mind repeating it?

15 Q Any time before [REDACTED] before you left
16 when you were staying with your mom did ya'll even have a
17 disagreement or anything at all, an argument?

18 A I don't think so.

19 Q So when you now back at MUSC you said there
20 was a statement about animosity; can you explain that
21 statement to me about what animosity there might be?

22 A I have absolutely no idea; I didn't
23 understand why she was saying that to begin with.

24 Q Okay, now, Cesalee, I have to ask you, what
25 decision did you and Richard come to after the consultation

Ms. Carnaghie - Direct Examination by Ms. Lively

226

1 with the doctors?

2 A To donate his organs to other children and
3 to pull the plug.

4 Q When did he die, Cesalee?

5 A July 16th.

6 Q What did you do for him before he died?

7 A I had him baptized.

8 Q Where was your mother when this took place?

9 A She had already left.

10 Q Why didn't you invite her?

11 A I did invite her, I begged her.

12 Q Well tell us about that, what happened?

13 A I told her what we were doing, told her I'd
14 like for her to be there. She said that she had other
15 things ---

16 Mr. Galmore: Objection, hearsay, Your Honor.

17 The Court: This is a statement by the
18 defendant.

19 Ms. Lively: By the defendant, Your Honor.

20 The Court: I'm going to allow it.

21 Ms. Lively: Thank you.

22 Q (Continuing) Go on, Cesalee, what did she
23 say?

24 A She said that she had other things that she
25 had to do. I told her what's more important the other

Ms. Carnaghie - Direct Examination by Ms. Lively

227

1 things or your dead grandson. She apologized, said she
2 would stay, she left anyway.

3 Q Now, Cesalee, after she left have you had
4 any contact with your mother since that time?

5 A No.

6 Q Whenever after the baptism when did you
7 actually have [REDACTED] funeral; do you recall?

8 A I don't remember the exact date.

9 Q Why did you have to wait?

10 A We had to wait on the autopsy.

11 Q At that time were you involved with law
12 enforcement?

13 A I think so.

14 Q Okay, I know there was a lot going on, but
15 do you remember being interviewed by law enforcement at any
16 time after [REDACTED] died?

17 A I honestly don't remember if I was or
18 wasn't.

19 Q Cesalee, did you do anything at all to hurt
20 your child?

21 A No.

22 Q Did you love your child?

23 A Yes.

24 Q Did you leave him with your mother because
25 you didn't want him?

Ms: Carnaghie - Direct Examination by Ms. Lively

228

1 A No.

2 Q Was there any time when [REDACTED] would
3 intentionally hurt himself?

4 A No.

5 Q Had you ever seen him pinch himself?

6 A No.

7 Q How about, when you said that he was a
8 typical toddler and he runs around and everything, was
9 there ever a time when he would either hit you or bite you?

10 A When he was teething.

11 Q Okay, now when you first ran into your mom
12 at MUSC and Richard was there, did you have a conversation
13 with your mom about what was going to happen if anybody
14 were to get in trouble for what happened to [REDACTED]

15 A Yes.

16 Q What kind of conversation, what brought up
17 that conversation and who was there?

18 A I don't remember who was there, except for
19 my mom and I. I had made the comment of basically getting
20 the death sentence would be too easy, yes, jail is a luxury
21 but at least they get somewhere to rot.

22 Q You said that to your mom?

23 A Yes.

24 Q How did she respond?

25 A I don't remember her response.

Ms. Carnaghie - Direct Examination by Ms. Lively

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1 Q Cesalee, I think there's one more photo
2 that I forgot to show you and then I'll let the defense ask
3 you some questions. I'm going to show you State's Number
4 4; do you recognize that?

5 A Yes.

6 Ms. Lively: Your Honor, we'd move to introduce
7 State's Number 4 into evidence?

8 The Court: May I see it, please?

9 Ms. Lively: Oh, yes, sir.

10 The Court: All right, have you shown it to
11 counsel?

12 Ms. Lively: Yes, sir, I have.

13 Ms. Grabert-Lowenstein: Number is that,
14 counsel?

15 Ms. Lively: This is number 4.

16 Ms. Grabert-Lowenstein: Thank you.

17 Ms. Lively: And the last of that set.

18 The Court: Any objection, Ms. Grabert-
19 Lowenstein?

20 Ms. Grabert-Lowenstein: Not on behalf of Mr.
21 Palmer, Your Honor.

22 The Court: Mr. Galmore?

23 Mr. Galmore: No, sir, no objection.

24 (Whereupon, State's Exhibit Number 4 entered into
25 evidence.)

Ms. Carnaghie - Cross Ex. by Ms. Grabert-Lowenstein 230

1 Ms. Lively: (Continuing)

2 Q Cesalee, how would you describe you and
3 [REDACTED] in that picture?

4 A It's his first carousel ride, he absolutely
5 loved it.

6 Q What kind of things did you do with your
7 son as a mother?

8 A Take him to the park, take him swimming,
9 get him out of the house, that way he had something to do
10 instead of being cooped up inside all day.

11 Ms. Lively: One moment -- Cesalee, thank you,
12 please answer any questions the defense has for you, okay.

13 The Court: Ms. Grabert-Lowenstein?

14 Ms. Grabert-Lowenstein: Thank you, Your Honor.

15 Cross Examination

16 By Ms. Grabert-Lowenstein:

17 Q Cesalee, we're sorry for your loss. I need
18 to ask you a few questions. Now when you first met Richard
19 you were living with your grandmother?

20 A Yes.

21 Q How long, from what age to what age did you
22 live with your grandmother?

23 A Fifteen off and off on until I was about
24 eighteen.

25 Q Okay, and that would be Judy Morris?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 231

1 A Yes, ma'am.

2 Q Okay, you came by bus and did something
3 happen to your luggage?

4 A Yes, it got lost.

5 Q Okay, and did the Palmer family gather up
6 some things for both you and [REDACTED]

7 A Yes.

8 Q They were warm, they were welcoming to the
9 two of you?

10 A Very.

11 Q And that included Robert, correct?

12 A Yes.

13 Q Okay, and during the time that you were in
14 the house there was no concerns about Robert taking care of
15 [REDACTED] you said on direct he was as good as your mother
16 with taking care of him?

17 A Yes.

18 Q Okay, did you ever meet [REDACTED], Robert's
19 son?

20 A I think once.

21 Q Okay, did you ever see [REDACTED] and [REDACTED]
22 interact, ever had that occasion?

23 A I don't remember to be honest.

24 Q Okay, he was five at the time?

25 A I think so.

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 232

1 Q Okay, you also discussed that you had been
2 placed in foster care or at least the threat was done by
3 your mom Julia Gorman; would it be accurate to say that you
4 were blind sided by that decision?

5 A Yes and no, I guess I brought it on to
6 myself for that by daring her to do it..

7 Q Okay, did, did that cause some pretty hard
8 feelings between the two of you?

9 A Yes.

10 Q Okay, would it be accurate to say that the
11 relationship you had with your mother did not teach you to
12 be a mom? You said it was difficult; you didn't know what
13 you were doing?

14 A It didn't necessarily teach me to be a mom
15 but it taught me to be independent.

16 Q Okay, but I guess what I'm asking is did it
17 help instill maternal instincts and help you to deal with
18 things? You said sometimes it was frustrating, you know,
19 you were young; would that, would that be accurate?

20 A Yes.

21 Q How long before you left Pensacola had it
22 been the longest since you had spoken to your mom before
23 the decision was made to come to visit?

24 A Maybe a day or two.

25 Q Okay, and you, you came, you arrived, and

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein .233

1 when you left you thought everybody was going to be fine
2 with [REDACTED]

3 A Yes.

4 Q Okay, now why did you leave?

5 A I had to go home to pack so we could move
6 back to, so that Richard and I could move to South
7 Carolina.

8 Q Okay, and do you remember being interviewed
9 by the police on July 19th of 2008?

10 A I don't remember the police but I remember
11 DSS.

12 Q Okay, was there a time that a Detective
13 Weaver with Judy Morris, Richard, and you being present
14 spoke to all of you?

15 A I think so.

16 Q Okay, do you recall making any comment
17 about meeting somebody on Match?

18 A What is Match?

19 Ms. Grabert-Lowenstein: May I approach, Your
20 Honor?

21 The Court: Yes.

22 Ms. Grabert-Lowenstein: And this is for counsel
23 verification page six, that I'm going to be showing the
24 witness.

25 Q (Continuing) To yourself, Cesalee, I'd like

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 234

1 you to read the highlighted portion?

2 A I don't know what Match is, I might have
3 mistyped something.

4 Q Could it be like Match.com?

5 A I've never even been on Match.com.

6 Q While you were here did you meet someone
7 and that caused an issue between you and, and Robert?

8 A I'm sorry, if I had gone on there?

9 Q No, did you meet someone while you were
10 here, specifically a male, and did that cause an issue
11 between you and Robert?

12 A Yes.

13 Q In fact you described it here as a bru-ha-
14 ha; would that kind of be an accurate description of it?

15 A More so of a conniption fit.

16 Q Well I mean it was your, it was, I'm sorry,
17 excuse me, conniption fit that was your words, correct?

18 A Yes.

19 Q Okay, now you mentioned that when [REDACTED]
20 got fussy on an occasion your mother gave him back to you?

21 A Yes.

22 Q Okay, and is it accurate that there were,
23 there were times while you were here, there was the cold,
24 he didn't feel good?

25 A Yes.

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 235

1 Q Okay, the first time that he saw the doctor
2 the day before you left, if you recall?

3 A I don't remember what day his --

4 Q Okay, just the records from Aynor Family
5 Medical --

6 Ms. Grabert-Lowenstein: If I could approach,
7 Your Honor?

8 The Court: Yes.

9 Ms. Grabert-Lowenstein: (Continuing)

10 Q Just, Cesalee, if you could just take a
11 look through these and tell us if that reflects your
12 recollection?

13 A Yes.

14 Q The first appointment that's reflected in
15 there was July 1st and you took him to that appointment,
16 correct?

17 A Yes.

18 Q How did you know to go to Aynor Family
19 Practice?

20 A I had called the insurance company and
21 asked them which designated practioners we had in the area.

22 Q If I could approach and show you what
23 counsel has shown you before is Defense 1, can you tell
24 what the effective date is on that insurance card?

25 A July 1st.

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 236

1 Q Okay, that's when [REDACTED] become, became
2 covered by insurance, correct?

3 A When the new insurance began.

4 Q Okay, so he was covered before you left?

5 A He was covered before I left.

6 Q Was [REDACTED] typical of a toddler when it
7 would not feel good get a little fussy?

8 A Yes.

9 Q Okay, now do you know where he got the ant
10 bite?

11 A In the back yard.

12 Q Okay, now this trailer was not in a trailer
13 park, correct?

14 A No.

15 Q It was out in the country?

16 A Yes.

17 Q It was on a big piece of land, correct?

18 A Yeah.

19 Q Okay, and did you ever, ever go outside
20 there with [REDACTED]

21 A Yes.

22 Q Did he enjoy playing out there?

23 A Yes.

24 Q Was there a trampoline?

25 A I don't remember if there was a trampoline.

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 237

1 Q Okay --

2 Ms. Grabert-Lowenstein: If I could have just a
3 moment, Your Honor, the State has the picture? May I
4 approach?

5 The Court: Certainly.

6 Ms. Grabert-Lowenstein: (Continuing)

7 Q Cesalee, do you recognize what is depicted
8 in the State's Exhibit 30 that's been marked?

9 A It looks like a trampoline.

10 Q Okay, do you recognize the rest of the
11 landscape?

12 A I recognize this part right here.

13 Q You recognize that part?

14 A Uh-huh.

15 Q Okay, this is about a quarter of an acre
16 type of thing, it's a big piece, isn't it? You need to
17 give an audible response.

18 A Yes.

19 Q Okay, thank you --

20 Ms. Grabert-Lowenstein: Just if I could --

21 Ms. Lively: Your Honor, it's not in evidence.

22 Ms. Grabert-Lowenstein: I'd ask for its
23 admission, Your Honor.

24 Ms. Lively: And that's fine, I actually had it
25 marked for State's exhibit so I guess we'll have to have, I

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 238

1 don't know how you would handle that.

2 The Court: All right, it's Defense Gorman, I
3 mean Defense Palmer 1?

4 Ms. Grabert-Lowenstein: That's fine, Your
5 Honor.

6 Ms. Lively: That's fine.

7 The Court: Okay, any objection?

8 Mr. Galmore: No, sir.

9 Ms. Lively: No, Your Honor.

10 (Whereupon, State's Exhibit Number 30 remarked as
11 Defendant Palmer Exhibit Number 1 and entered into
12 evidence.)

13 Ms. Grabert-Lowenstein: (Continuing)

14 Q Cesalee, would you describe the trailer as
15 being clean?

16 A Yes.

17 Q Okay, and your mom she tries to keep
18 everything clean, doesn't she?

19 A Yes.

20 Q Okay, you said that pretty emphatically,
21 would you describe her as a neat freak?

22 A She's pretty o.c.d. when it comes to
23 cleaning.

24 Q I'm sorry?

25 A She's pretty o.c.d. when it comes to

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 239

1 cleaning.

2 Q Okay, counsel showed you, and it's now been
3 admitted, I believe you said this was the last picture you
4 had taken of [REDACTED]

5 A Yes.

6 Q Okay, and you described him as being
7 groggy?

8 A Yes.

9 Q Okay, and you also described him as wanting
10 his mom?

11 A Yes.

12 Q Would you describe that you, the two of you
13 had a close relationship?

14 A My son and I?

15 Q I mean would you and, would you describe
16 your relationship with [REDACTED] as being close?

17 A Yes.

18 Q Okay, and you mentioned that there were a
19 couple of times that you had been away from him and Richard
20 wasn't with him, it was a time when both of you were away
21 from him, when you would be then again around him how would
22 he react?

23 A Extra excited that I was home.

24 Q Extra excited, okay, would he hold out his
25 hand?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 240

1 A Both of them.

2 Q Okay, and would he want to be picked up?

3 A Uh-huh.

4 Q Okay, would he, would he make little
5 sounds?

6 A He'd yell at me until I picked him up.

7 Q How good were his lungs?

8 A A little too good.

9 Q Okay, he would let you know if he wanted
10 that cuddling ---

11 A Yes.

12 Q --- that type of situation, okay, you
13 decided to leave [REDACTED] and Robert did not object to that,
14 correct?

15 A Correct.

16 Q And in fact he wanted you to leave him with
17 them?

18 A I believe so.

19 Q Okay, now you mentioned that [REDACTED] didn't
20 have any developmental issues?

21 A Correct.

22 Q Do you recall any time where a
23 developmental issue was brought up or would be reflected in
24 his medical records?

25 A There was a couple of times where I had

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 241

1 asked his doctor in Arizona why he was still so tiny.

2 Q I'm sorry, why he was still so tiny?

3 A Uh-huh.

4 Q Kind of a little shaver, wasn't he?

5 A Yeah.

6 Q Okay, and was there a specific time, if
7 you, if you recall, when there was concern about that the
8 fact he didn't wave bye-bye and he had had trouble changing
9 positions from laying on his, on his tummy?

10 A Uh-uh.

11 Q You don't recall that, okay --

12 Ms. Grabert-Lowenstein: If I could approach,
13 Your Honor?

14 Madam Court Reporter: Please say yes or no.

15 Ms. Grabert-Lowenstein: And for the record I'm
16 showing the summary of well baby checks that was supplied
17 by the State.

18 Q (Continuing) Again, Cesalee, if you could
19 just look at this and start there where it says nine
20 months; does that reflect your recollection as to --

21 A Yes.

22 Q Okay, was there concern about those
23 developmental issues?

24 A I had spoken to the doctor about that.

25 Q Okay, sure?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 242

1 A The doctor said that it was fine.

2 Q But you, you were, you were concerned, you
3 were trying to find out?

4 A Yeah.

5 Q Okay, did you take [REDACTED] up until the time
6 that he passed away to every well baby check that he was
7 supposed to go to?

8 A If I wasn't the one doing it it was Richard
9 or my mother that was supposed to take him to the one.

10 Q Okay, and there was never a time when you
11 didn't take him back?

12 A What do you mean?

13 Q There was never a time where they
14 recommended taking him back and you didn't?

15 A No.

16 Ms. Grabert-Lowenstein: And again if I may
17 approach, Your Honor?

18 The Court: Yes.

19 Ms. Grabert-Lowenstein: (Continuing)

20 Q And just ask you to, well just read the
21 entire page to yourself; does that reflect your
22 recollection?

23 A Yes.

24 Q Did you take him for that three week follow
25 up?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 243

1 A I wasn't there for that three week follow

2 up.

3 Q I'm sorry?

4 A I wasn't there for this three week follow

5 up.

6 Q Okay, was he treated for thrush?

7 A Yes.

8 Q How old was he?

9 A Maybe a few months.

10 Q I'm sorry?

11 A Maybe a few months.

12 Q A few months, okay, and did anyone explain
13 to you what thrush is?

14 A Yes.

15 Q What is it?

16 A A yeast infection in the mouth.

17 Q Okay, kind of referred to as hoof and
18 mouth?

19 A I've never heard it referred to as that.

20 Q Okay, and did anybody explain to you how a
21 child comes to get that?

22 A The doctor said it's very common, can come
23 from the formula:

24 Q Okay, dirty bottles, that type of thing?

25 A He had said that, too, but I told him that

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 244

1 I made sure that every bottle that he ever used was always
2 clean.

3 Q Now let's go back to when you left when was
4 the first time, you got back to Arizona on August 2nd,
5 correct? I'm sorry, July 2nd, excuse me?

6 A Yes.

7 Q Okay, when was the first time you talked to
8 your mom after you arrived back in Arizona?

9 A I think I called her that day that I
10 arrived to let her know that I landed.

11 Q And how long, let me rephrase, how often
12 would you speak to her?

13 A Daily.

14 Q Daily --

15 Ms. Grabert-Lowenstein: If I could have just a
16 moment, Your Honor?

17 Q (Continuing) Were there times when you
18 didn't talk to her daily?

19 A There was one, Richard and I were packing.

20 Q Okay?

21 A I lost track of the time and by the time I
22 realized what time it was it was too late to call cause
23 everybody would have been asleep.

24 Q Okay, so and, and prior to the 14th when
25 was the last time you had spoken to your mom?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 245

1 A It was a day or two prior.

2 Q Okay, could it have been as much as four
3 days?

4 A I would say three at the most. I would say
5 three at the most.

6 Ms. Grabert-Lowenstein: May I approach, Your
7 Honor?

8 The Court: Certainly.

9 Ms. Grabert-Lowenstein: (Continuing)

10 Q If you could just read the highlighted
11 areas and tell me if that refreshes your recollection? How
12 long before the 14th?

13 A Looks like four.

14 Q Four days?

15 A Yeah.

16 Q Okay, did that concern you?

17 A Yes.

18 Q Okay, and would it be accurate that neither
19 you nor Richard were able to get a hold of her?

20 A Yes.

21 Q Okay, and you did not, you did not leave at
22 the same time as Richard did when you learned that [REDACTED]
23 had been flown to MUSC?

24 A No.

25 Q Was the reason that there was a delay in

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 246

1 [REDACTED] burial was because of having to finish up the
2 autopsy?

3 A Yes.

4 Q Okay, and that was the only thing you were
5 waiting on?

6 A Yes.

7 Q Do you recall how many days it was from
8 when you had to make that very tough tragic decision before
9 you buried him?

10 A It was between a month and two months.

11 Q Okay, were you concerned that having [REDACTED]
12 in the household would add financial stress on your mom?

13 A I did, that's why I offered to leave her
14 money that I had and also to send money.

15 Q So that was a concern?

16 A Yes.

17 Q How does your mother handle stress?

18 A Not very well.

19 Q Okay, keep things bottled up, from your
20 experience?

21 A Yes.

22 Q From your experience does sometimes that
23 bottle get uncorked?

24 A Yes.

25 Q What happens when it becomes uncorked?

MMS. Carnaghie - Cross Examination by Mr. Galmore

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1 A She's gone into a fit of rage, storming
2 around. She had slammed the door before, she'd go outside
3 but she never really, she never really had her fits of rage
4 in front of me.

5 Q I'm sorry?

6 A She never really had her fits of rage in
7 front of me; she would walk out and do it basically behind
8 closed doors.

9 Q But you knew they were happening?

10 A Yes.

11 Ms. Grabert-Lowenstein: If I could have just
12 one moment, Your Honor?

13 Cesalee, again very sorry for your loss and thank
14 you for answering my questions.

15 The Court: Mr. Galmore?

16 Cross Examination

17 By Mr. Galmore:

18 Q Now, Cesalee, you said that you were living
19 with your grandmother in Arizona when you were fifteen; is
20 that correct?

21 A I believe so, yes.

22 Q Okay, and prior to that where were you
23 living?

24 A With my other grandparents in California.

25 Q And prior to that where were you living?

Mrs. Carnaghie - Cross Examination by Mr. Galtore

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1 A With my mother.

2 Q And where was that?

3 A North Carolina.

4 Q Did your mother send you to live with your
5 grandparents in California?

6 A Yes.

7 Q Was that because you had run away from home
8 in North Carolina?

9 A I don't know the exact reason.

10 Q Did you run away from home in North
11 Carolina?

12 A Yes.

13 Q So you stayed with your grandmother in
14 California then you stayed with your grandmother in
15 Arizona, that would be your maternal grandmother?

16 A Yes.

17 Q Okay, and after staying with your maternal
18 grandmother in California is that when you moved in with
19 Mr. Grimes family?

20 A My paternal grandparents live in
21 California.

22 Q I'm sorry, after you stayed with your
23 maternal grandmother in Arizona, Ms. Morris, after you
24 stayed with her then you moved in with Mr. Grimes family?

25 A Yes.

MMS. Carnaghie - Cross Examination by Mr. Galmore

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1 Q Did the foster care come before you moved
2 with Mr. Grimes family or after?

3 A Before.

4 Q Okay, so you stayed with your mother in
5 North Carolina, then you stayed with your paternal
6 grandparents in California; is that right?

7 A Uh-huh.

8 Q Then you stayed with your maternal
9 grandmother in Arizona and then you were in the foster
10 care; is that correct?

11 A Uh-huh.

12 Q And how old were you when you were in the
13 foster care?

14 A Sixteen.

15 Q And how long did you stay in foster care?

16 A I want to say about three or four months.

17 Q And after foster care you stayed with Mr.
18 Grimes mother?

19 A I moved back to my grandmother's house
20 first and then I moved in with them.

21 Q Okay, so how did you get released from
22 foster care?

23 A They said that my temporary being in foster
24 care was up and it was time for me to go back home.

25 Q Okay, so you went home with your maternal

MMs. Carnaghie - Cross Examination by Mr. Galmore

250

1 grandmother?

2 A Yes.

3 Q And then you moved in with Mr. Grimes?

4 A Yes.

5 Q And that's when you became pregnant?

6 A Yes.

7 Q And how old was [REDACTED] when you got married

8 to Mr. Grimes?

9 A Just over a year.

10 Q And were you staying with Mr. Grimes family
11 that entire time during the pregnancy up to one year before
12 you got married?

13 A Yes.

14 Q You didn't move in with anybody else during
15 that period?

16 A No.

17 Q When [REDACTED] was first born before you got
18 married you didn't move in with any other person?

19 A When he was first born I was living at
20 Richard's parents.

21 Q So in July 1st, 2008, you took [REDACTED] to
22 Aynor Family Practice; is that correct?

23 A Yes.

24 Q And that was for ant bites?

25 A Yes.

MMs. Carnaghie - Cross Examination by Mr. Galmore 251

1 Q Okay, were there any other complaints that
2 were made to the doctor?

3 A He had a cold.

4 Q He had a cold, was there a complaint about
5 he didn't like it when you touched his head?

6 A Yes.

7 Q That complaint was made to the doctor?

8 A Yes, by my mother.

9 Q So your mother told the doctor on July 1st
10 that [REDACTED] didn't like having his head touched; is that
11 correct?

12 A Yes.

13 Q Did the doctor prescribe any type of
14 treatment for his head?

15 A Just the cold medicine he said that since
16 it was a cold it's all the mucous all through the face.

17 Q So the doctor heard the complaint about the
18 child's head and said it was a cold?

19 A Yes.

20 Q And you left town on the 2nd; is that
21 right?

22 A Yes.

23 Q When you went to the doctor's office on the
24 1st did you know you were leaving town the next day?

25 A I think we had made that plan to leave that

MMs. Carnaghie - Cross Examination by Mr. Galmore

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1 night.

2 Q You made that plan that night after the
3 doctor's?

4 A I think so, I'm not quite sure to be
5 honest.

6 Mr. Galmore: May I approach the witness, Your
7 Honor?

8 The Court: Yes..

9 Mr. Galmore: (Continuing)

10 Q Let me hand you what's been marked for
11 identification purposes as State's Exhibit Number 14 and
12 ask you if you recognize this document?

13 A Yes.

14 Q And what is that document?

15 A The temporary guardianship.

16 Q Okay, well let's do it another way, let me
17 hand you the same document which has been marked Defense
18 Exhibit 2 for identification and for Defendant Gorman, what
19 is that document?

20 A It's the same thing.

21 Q It would be the same as State's Exhibit
22 Number 14?

23 A Yes.

24 Q Okay, and that's the temporary guardianship
25 form?

MMS. Carnaghie - Cross Examination by Mr. Galtore

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1 A Yes.

2 Q What date is that form signed?

3 A July 1st.

4 Q And whose signature is on that form?

5 A Richard's, mine, and Gail Palmer.

6 Q Does that form appear to have been altered
7 in any way from when you initially signed it on July 1st,
8 2008?

9 A No.

10 Mr. Galtore: Your Honor, at this time I would
11 move for State's Exhibit Number 2 for identification
12 purposes Defense Gorman to be admitted as Defense Exhibit
13 Number 1?

14 Ms. Lively: No objection.

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: I'm sorry, Your Honor,
17 no objection on behalf of Mr. Palmer.

18 (Whereupon, Defendant Gorman's Exhibit Number 2
19 entered into evidence.)

20

21 Mr. Galtore: (Continuing)

22 Q Now, Ms. Carnaghie, you said your signature
23 is on this form; is that correct?

24 A Yes.

25 Mr. Galtore: Permission to publish, Your Honor?

MMS. Carnaghie - Cross Examination by Mr. Galtore 254

1 The Court: Yes.

2 Mr. Galtore: Thank you.

3 Q (Continuing) Now that form is notarized,
4 correct?

5 A Yes.

6 Q And it's notarized by who?

7 A Gail Palmer.

8 Q Gail Palmer, who is Gail Palmer?

9 A Robert Palmer's mother.

10 Q Mr. Palmer's mother?

11 A Yes.

12 Q Was Ms. Palmer present when you signed your
13 name to this form?

14 A Yes.

15 Q Was she present when Richard signed his
16 name to it?

17 A Richard was out of state.

18 Q Did she go out of state to obtain his
19 signature on that?

20 Ms. Grabert-Lowenstein: Objection, relevance.

21 Mr. Galtore: It seems to be a notarized
22 document where one of the signatories may not have been in
23 the notary's presence.

24 The Court: What's the relevance of it?

25 Mr. Galtore: I'll move on, sir.

MMS. Carnaghie - Cross Examination by Mr. Galmore

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1 The Court: All right.

2 Mr. Galmore: (Continuing)

3 Q Now this form was signed on July 1st; is
4 that correct?

5 A Yes.

6 Q And that's the same day that you went to
7 the doctor's office with [REDACTED]

8 A Yes.

9 Q Let me hand you what's been marked for
10 identification purposes as Defense Exhibit Number 1 for
11 Defendant Gorman and ask you if you recognize this
12 document?

13 A Yes.

14 Q And what is that document?

15 A My drivers license, [REDACTED]s insurance
16 card.

17 Q Would that insurance card have been in your
18 possession?

19 A Yes, it should have been.

20 Q I mean it would not have been in [REDACTED]s
21 possession?

22 A No, it would have been mine.

23 Q And what is the effective date on the
24 insurance card?

25 A July 1st, 2008.

MMs. Carnaghie - Cross Examination by Mr. Galmore

256

1 Q Is it true that your mother had to contact
2 Mr. Grimes commanding officer in order to get the insurance
3 on [REDACTED]

4 A I honestly have no idea.

5 Q So you go to the doctor's office on the 1st
6 and you leave town on the 2nd; is that correct?

7 A Yes.

8 Q Why did you leave town again?

9 A I had to pack so that way we could move to
10 South Carolina.

11 Q Were you asked to leave town?

12 A I wasn't asked.

13 Q Was it suggested that your husband come get
14 you?

15 A I don't think so.

16 Q Did you feel that it was safe to leave your
17 son while he had a cold?

18 A Yes.

19 Q You didn't say to your husband maybe we can
20 change my ticket a couple of days later until he's over
21 this cold and these ant bites?

22 A We had talked about it.

23 Q And you decided against it?

24 A Yes, since it was just a cold we didn't
25 feel the harm.

MMs. Carnaghie - Cross Examination by Mr. Galtmore

257

1 Q All right, well let's talk about how you
2 came to town, isn't it true that you came to town on a
3 Greyhound bus?

4 A Yes.

5 Q And you came from Pensacola, Florida?

6 A Yes.

7 Q How long were you living in Florida?

8 A I was visiting Florida for two weeks.

9 Q Two weeks?

10 A At the most, it was a week and a half to
11 two weeks.

12 Q Okay, did you have an apartment in Florida?

13 A No, it was a hotel room.

14 Q A hotel room, do you remember what hotel it
15 was?

16 A No.

17 Q Was it a Comfort Inn maybe?

18 A No, it was a really long name.

19 Q Really long name, was it one of these long
20 term stay hotels, extended stay hotel?

21 A Yes.

22 Q So did you pay by the day or by the week?

23 A I don't know, Richard was doing that.

24 Q Richard was making it, okay, did it have a
25 kitchen in the hotel room?

Mrs. Carnaghie - Cross Examination by Mr. Galmore

258

1 A Yes.

2 Q Did you use the kitchen in the hotel room?

3 A Yes.

4 Q So you cooked for you and your son while
5 you were in Florida?

6 A Yes.

7 Q All right, what date did you come to South
8 Carolina?

9 A I don't remember.

10 Q Does June 1st sound about right?

11 A Maybe.

12 Q Maybe, okay, what date did Richard graduate
13 from this A class down in Pensacola?

14 A That much I don't remember.

15 Q Okay, well why not go back to Arizona from
16 Florida if you had to pack and move?

17 A Because at the time he didn't know when,
18 where his duty station was going to be. He was still
19 waiting on the wish list.

20 Q He still had another class to complete in
21 Virginia?

22 A Yes.

23 Q You didn't go to Virginia and get a hotel
24 room?

25 A No, because he was only going to be there

MMS. Carnaghie - Cross Examination by Mr. Galmore 259

1 for a short period of time.

2 Q Well how long were you in Florida again?

3 A Two weeks.

4 Q Two weeks, okay, now how much when you
5 dropped the baby in the stroller while you were staying at
6 your mother's house in Aynor?

7 A Yes.

8 Q And let me hand you what's been marked for
9 identification purposes as State's Exhibit Number 22 for
10 I.D., and ask you is that the stroller that's in question?

11 A Yes.

12 Q Yes?

13 A Yes.

14 Q Let me hand you what's been marked for
15 identification purposes as State's Exhibit 29 and ask you
16 are those the steps that we're referring to?

17 A Yes.

18 Q Let me hand you what's been marked for
19 identification purposes as State's Exhibit Number 19 and
20 ask you if this is a close up of the steps that we are
21 referring to?

22 A Yes.

23 Ms. Lively: Your Honor, I just object to him
24 publishing until they're actually into evidence.

25 The Court: Correct. Mr. Galmore, those are not

MMs. Carnaghie - Cross Examination by Mr. Galmore

260

1 in evidence yet.

2 Mr. Galmore: Yes, sir.

3 Q (Continuing) When did this fall in the
4 stroller occur?

5 A I don't remember the exact date.

6 Q Was it the day before you left town?

7 A No.

8 Q Could it have been perhaps a week before
9 you left town?

10 A Could be a week.

11 Q When this fall occurred you said you did
12 not seek medical attention; is that correct?

13 A Correct, because he didn't hit his head at
14 all.

15 Q You didn't feel like he needed medical
16 attention?

17 A No.

18 Q Okay, let me hand you what's been marked
19 for identification purposes as State's Exhibit Number 26
20 and ask you what this picture reflects?

21 A The living room.

22 Q The dog in that picture also?

23 A Yes.

24 Q And what kind of dog is that?

25 A English Bulldog.

MMS. Carnaghie - Cross Examination by Mr. Galmore

261

1 Q Did that dog live in the house with Mr.
2 Palmer and Ms. Gorman?

3 A Yes.

4 Q Did the dog live in the house when you came
5 and stayed for that month or so?

6 A Yes.

7 Q Was the dog staying in the house when you
8 left and went back to Arizona?

9 A I would assume so.

10 Q So to the best of your knowledge when you
11 jumped on that plane on the 2nd that dog was still in that
12 house?

13 A Yes.

14 Q You lived with the dog for about a month,
15 could you tell us approximately how much you think that dog
16 might have weighed?

17 A Thirty, thirty-five pounds.

18 Q Okay, and did the dog play with your son?

19 A Yes.

20 Q The dog was not aggressive towards your
21 son?

22 A No.

23 Q But they played together?

24 A Yes.

25 Q Okay, just so that I'm clear I think would

MMs. Carnaghie - Cross Examination by Mr. Galmore

262

1 it be fair to say that you stayed in Aynor for
2 approximately one month from maybe June 1st to July 2nd?

3 A Yes.

4 Q Okay, and thereafter [REDACTED] continued to
5 stay in Aynor while you went back to Arizona; that's
6 correct?

7 A Yes.

8 Q During this one month period that you were
9 there did you witness your mother strike your child?

10 A No.

11 Q Did your mother feed your child?

12 A Yes.

13 Q Did she play with him?

14 A Yes.

15 Q Did she help clean him and clothe him?

16 A Yes.

17 Q She take ya'll to the beach?

18 A Yes.

19 Q Did she tell you you had to go out and find
20 a job?

21 A Her and I both decided on that.

22 Q So it was decided, what, that you would go
23 for a job or you wouldn't go for a job?

24 A That I would.

25 Q So you looked for a job while you were here

MMS. Carnaghie - Cross Examination by Mr. Galtmore

263

1 for that one month?

2 A Yes, because at the time I didn't know
3 exactly how long Richard's schooling was going to take.

4 Q Okay, did she watch your son while you went
5 out on occasions?

6 A Yes.

7 Q Did she take you to the Aynor Family
8 Practice on July 1st?

9 A Yes.

10 Q Now you were not living in South Carolina
11 on July 14th, were you?

12 A No.

13 Q And you didn't see anybody strike [REDACTED]
14 did you?

15 A No.

16 Q Didn't see your mom put her hands on your
17 son?

18 A No.

19 Q Did you see Mr. Palmer put his hands on
20 your son?

21 A No, I was three thousand miles away.

22 Q Now you made a concern, issue, about [REDACTED]
23 having to go to the emergency room on the 7th, I think you
24 said that you weren't made aware of that visit; was that
25 your testimony?

Ms. Carnaghie - Redirect Examination by Ms. Lively 264

1 A Yes.

2 Q Did you ask your mother why your son was in
3 the hospital on the 7th?

4 A I didn't even know that he went.

5 Q Okay, do you know if [REDACTED] went for any
6 follow up treatment after the hospital visit on the 7th?

7 A I was recently informed.

8 Q Okay, and the next time you were in South
9 Carolina was when you flew into Charleston on the 17th?

10 A Yes.

11 Mr. Galmore: The Court's indulgence?

12 Q (Continuing) Now you said that you lived in
13 this house for about a month with [REDACTED] and Mr. Palmer and
14 Ms. Gorman; is that correct?

15 A Yes.

16 Q During that time was the house appear to be
17 in a safe condition?

18 A Yes.

19 Q Did you observe any liquor bottles laying
20 around?

21 A No.

22 Q Did you observe any cleaning products or
23 poisonous solutions that were within [REDACTED]'s reach?

24 A No.

25 Q Would it be fair to say that the house was

Ms. Carnaghie - Redirect Examination by Ms. Lively 265

1 baby proofed for him being there?

2 A Yes.

3 Mr. Galmore: That's all the questions I have,
4 Your Honor.

5 The Court: Ms. Lively?

6 Ms. Lively: Yes, sir.

7 Redirect Examination

8 By Ms. Lively:

9 Q Cesalee, in regards to the stroller
10 incident when that happened how did [REDACTED] react?

11 A He bounced around and smiling and gave me a
12 look and sound of let's do it again.

13 Q No crying?

14 A None at all.

15 Ms. Lively: Okay, thank you. Cesalee.

16 Ms. Grabert-Lowenstein: If I may?

17 Recross Examination

18 By Ms. Grabert-Lowenstein:

19 Q Cesalee, counsel Mr. Galmore asked you
20 about your mom feeding [REDACTED] did she ever get frustrated
21 when she was taking care of him?

22 A Not to my knowledge.

23 Q Did you and she ever have a discussion
24 about habits that she wanted you to break, things that,
25 that she didn't like that you were letting him do?

Ms. Carnaghie - Recross Ex. by Ms. Garbert-Lowenstein 266

1 A There was a couple.

2 Q And what were those?

3 A Having to be held all the time, breaking
4 that to maybe holding your hand instead.

5 Q Okay, biting one of them?

6 A No, he only bit when he was teething.

7 Q I --

8 A He only bit when he was teething.

9 Q Okay, ever discussion about head butting?

10 A No.

11 Ms. Grabert-Lowenstein: Thank you, I have no
12 other questions.

13 Mr. Galmore: Very briefly, Your Honor.

14 The Court: Keep it to proper cross exam.

15 Mr. Galmore: Yes, sir.

16 Recross Examination

17 By Mr. Galmore:

18 Q During the stroller incident when [REDACTED]
19 fell down the steps did you observe any bleeding?

20 A I checked him to make sure that he wasn't
21 bleeding or grazed or hurt in anyway.

22 Q Did you see any blood?

23 A No.

24 Q Did you see any bruising?

25 A No.

Ms. Carnaghie - Recross Examination by Mr. Galmore 267

1 Mr. Galmore: Thank you very much, ma'am, no
2 further questions.

3 The Court: All right, ladies and gentlemen of
4 the jury, it is about 1:30 now. Let's take our lunch, an
5 hour until, let's come back at 2:45, okay. That will give
6 us an hour and twenty minutes, thank you.

7 (Whereupon, the jury was excused for lunch at
8 1:23 p.m.)

9 The Court: All right, we're at ease until
10 quarter to three.

11 (Whereupon, court was recessed for lunch and the
12 following takes place after the record the lunch break.)

13 The Court: Ms. Lively, are we ready?

14 Ms. Lively: We are, Your Honor.

15 The Court: Bring in the jury.

16 (Whereupon, the jury returns to the courtroom at
17 2:44 p.m.)

18 The Court: All right, Ms. Lively, call your
19 witness.

20 Ms. Lively: Yes, sir, thank you.

21 The Court: Check and make sure these mikes are
22 on. Bobby, check these microphones and make sure they're
23 working. If you have any difficulty hearing now, please,
24 just raise your hand and let me know, okay, and we'll
25 address it. Okay?

Dr. Hutson - Direct Examination by Ms. Lively

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1 Ms. Lively: Ready, Your Honor?

2 The Court: Yes, we are.

3 Ms. Lively: Okay, the State would call Dr. Jody
4 Hutson to the stand.

5 Dr. Jody Wade Hutson

6 being first duly sworn, testified as follows:

7 Madam Clerk: Please state your full name and
8 spell your last for the Court?

9 The Witness: Full name is, excuse me, Jody Wade
10 Hutson, h-u-t-s-o-n.

11 Direct Examination

12 By Ms. Lively:

13 Q Dr. Hutson, where are you currently
14 employed?

15 A I'm employed for Conway Physicians Group.
16 I'm a family physician and I work at Aynor Family Medicine.

17 Q And Aynor Family Medicine, where is that
18 located?

19 A In Aynor, South Carolina.

20 Q All right, and how many doctors are working
21 in that particular facility?

22 A Just myself and the nurse practitioner.

23 Q All right, and how long have you been in
24 that location?

25 A I've been in Aynor for eight years; we had

Dr. Hutson - Direct Examination by Ms. Lively

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1 a new office built two years ago.

2 Q All right, and, Dr. Hutson, what are your
3 areas of primary care for the patients that come to see
4 you?

5 A I'm a family physician, I see all age
6 groups from newborns through nursing home.

7 Q Okay, and how many days a week do you work?

8 A Five.

9 Q Dr. Hutson, were you working in your
10 capacity as a family practitioner back in July of 2008?

11 A Yes.

12 Q All right, did you have an opportunity to
13 come into contact with a toddler by the name of [REDACTED]
14 [REDACTED]?

15 A Yes.

16 Q All right, will you, please, tell this jury
17 what you recall when you first met this toddler?

18 A He was brought into me by his mother and
19 his grandmother for a fairly quick visit, acute care visit.
20 He had some ant bites on his legs and his feet. Excuse me,
21 I have a cold, occupational hazard, and he seemed like a
22 normal young boy, toddler, and I remember him with a sippy
23 cup, you know, passing it from hand the hand, calling mama
24 in the room and he had, I believe my note says six ant
25 bites on his feet, feet and his legs, and they also had a

Dr. Hutson - Direct Examination by Ms. Lively

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1 complaint of him having some congestion, pulling at his
2 ears, and I felt he had some degree of allergies, seasonal
3 allergies.

4 Q Okay, and whenever you, when you saw these
5 things what all do you do when you first see a child in
6 checking them and what are you looking for?

7 A Well with those complaints, and that again
8 was an acute care visit so it wasn't a full fledged
9 physical at that point in time but, you know, they had
10 complaints of him pulling at his ears and that he was
11 congested and so I, you know, I would examine his ears, his
12 nose, his throat, his, his mouth, his neck, and certainly
13 with the ant bites his skin and that's what was done.

14 Q Okay, were there anything else in regards
15 to the appearance of this child that gave you any concern?

16 A No.

17 Q All right, so from the outside appearances
18 of the toddler based upon, you know, you dealing with
19 children and child development did he look like he was in
20 the right age group?

21 A He appeared small but he didn't look
22 malnourished, no, he just looked like a small boy.

23 Q Okay, he was small?

24 A Uh-huh.

25 Q All right, now, Dr. Hutson, while you were

Dr. Hutson - Direct Examination by Ms. Lively

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1 there did at any time were there other complaints regarding
2 the child other than the cold and the ant bites?

3 A None that I recall.

4 Q All right, and, and you said the mother and
5 the grandmother were there?

6 A Yes.

7 Q Is that correct?

8 A Correct.

9 Q Could you, you identify who the mother is;
10 do you recall?

11 A She's sitting right there.

12 Q Sitting right there, how about the
13 grandmother?

14 A Back there, I believe.

15 Q That would be the reporter?

16 A Okay, I don't --

17 Q Let me give you a little help here?

18 A I don't see her.

19 Q Okay, first of all the electronics are
20 probably in your way, see anybody you recognize?

21 A Not at the present time, no.

22 Q Okay, do you recall what her name was?

23 A Ms. Julia, I believe it was.

24 Q Okay, that's fine, all right, so Ms. Julia?

25 A Uh-huh.

Dr. Hutson - Direct Examination by Ms. Lively

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1 Q Now, Dr. Hutson, did you notice anything
2 about the interaction between the biological mother and the
3 grandmother that you recall?

4 A Nothing that I could for sure testify on at
5 the present time, no.

6 Q Okay, now whenever you treated the child
7 you said it was an acute visit, is this one that you kind
8 of work in?

9 A Yes.

10 Q Is that how that happens?

11 A Yes.

12 Q Okay, so what did you do to treat [REDACTED]
13 actual ant bites? Did you make any prescriptions or any
14 suggestions to the parent and the grandmother?

15 A I wrote a prescription for a steroid cream
16 to put on the ant bites. They're, you know, they're very
17 inflammatory and usually I'm sure with us living in South
18 Carolina most everybody has had an ant bite, it kind of
19 sting, burning and itches, so I gave him a steroid cream to
20 rub on that, excuse me again, and then I gave him a
21 prescription for an antihistamine to take for what I
22 thought were allergies and that would also help with some
23 of the itching of the ant bites.

24 Q Okay, and just a moment, do you recall
25 whether he had a fever whenever they brought him in to you?

Dr. Hutson - Direct Examination by Ms. Lively

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1 A No, I don't believe so.

2 Q All right, and actually I have your records
3 just in case if you need anything to refresh your
4 recollection you can, you can request to look at the
5 records, okay?

6 A Okay.

7 Q Now at that time was there any indication
8 of a follow up visit with you?

9 A Yes, we, we, they came with shot record
10 from the military and since he was sixteen months old he
11 was behind on immunizations so we advised them after he was
12 well from his ant bites and, and to bring him back and we
13 would catch him up on his immunizations, you know, fairly
14 quickly; and I believe an appointment was made about a week
15 after that to do that and then after we got him caught up
16 we would start him off on the normal routine of when we
17 normally see children.

18 Q Okay, was he in any danger at that time by
19 not having the immunizations in place?

20 A No, he would be susceptible to the two
21 immunizations, he had not either one of those not even the
22 original shots. They wouldn't have been boosters. They
23 were going to be original immunizations so he was at a risk
24 for catching any, that would be the measles, mump rubella,
25 and chicken pox shot, the varicella shot.

Dr. Hutson - Direct Examination by Ms. Lively

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1 Q Okay, all right, and you were going to
2 catch those up in about a week?

3 A Correct.

4 Q All right, now, Dr. Hutson, did you know or
5 were you aware of what the mother's plans were at that
6 point in regards to staying in South Carolina?

7 A I believe she was leaving town. I don't
8 recall where but she brought in a, she wrote up a health
9 care proxy that we could treat little Richard, her mother
10 and the other gentleman's name was on there that they had
11 the right to bring him in for treatment with us.

12 Q Okay, all right, now, Dr. Hutson, whenever,
13 what was the prescrip -- the other prescription you wrote
14 for the stuffy head?

15 A It's called Clarinex, it is a, and it's
16 similar to Claritin that everybody is probably familiar
17 with. It's a non sedating antihistamine; it's to treat
18 allergies and hives and other allergic responses.

19 Ms. Lively: If I may approach, Your Honor?

20 The Court: Certainly.

21 Ms. Lively: (Continuing)

22 Q I'm going to show you the visit from July
23 1st, '08, and where it says plan, okay, you said Clarinex,
24 what, what was the prescription that you actually wrote?

25 A That's my error, I'm sorry, it's Xyzal,

Dr. Hutson - Direct Examination by Ms. Lively

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1 yeah, they're very similar antihistamines. It was Xyzal
2 which is similar to Zyrtec, I'm sorry.

3 Q Okay, and so Xyzal which is similar to
4 Zyrtec?

5 A Correct, yeah, yeah.

6 Q All right, and in a child his age and his
7 weight what kind of dosage would be required to help with
8 his symptoms?

9 A We only want to give him the milligram
10 .1.25 milligrams a day which is what I wrote, I wrote
11 Xyzal, it's 2.5 milligrams per teaspoon, I wrote that he
12 should take a half a teaspoon a day.

13 Q Okay, half a teaspoon a day?

14 A Uh-huh.

15 Q Is there a preferred time in which to give
16 the child?

17 A It wouldn't matter.

18 Q It wouldn't matter, okay, and, and what are
19 if there are any side effects that could be associated with
20 this medication?

21 A Number one would be sedation as with any
22 antihistamine, certainly it's much less sedating than
23 Benadryl, we all know from over the counter, but it would
24 be sedation, dry mouth, dry eyes, headache, that sort of
25 stuff.

Dr. Hutson - Direct Examination by Ms. Lively

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1 Q Okay, and once again that was for his
2 sinuses?

3 A Exactly, and I wrote that his nose was
4 stuffy and boggy and felt he had some, cause their
5 complaint was he was pulling at his ears in addition and
6 congested and I felt that it was more allergies than
7 anything else.

8 Q Okay, all right, now, Dr. Hutson, when was
9 the next time that you saw [REDACTED]; do you recall
10 when that was?

11 A I believe it was approximately one week
12 later and that was to do that catch up of immunizations.

13 Q All right, I'm going to show you this just
14 to refresh your recollection as to the exact date whenever
15 he would have come in to see you?

16 A The note says 7-8-08.

17 Q Okay, now, Dr. Hutson, when he came in on
18 7-8 of '08 tell me who brought the child into you at that
19 time?

20 A His grandmother.

21 Q All right, and was anyone else with the two
22 of them?

23 A Not that I recall.

24 Q And whenever the child was brought to you
25 on the 8th what symptoms did he have, if any, from what you

Dr. Hutson - Direct Examination by Ms. Lively

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1 were treating him for on July the 1st?

2 A The nurse's note says that he had nausea
3 and vomiting on 7-7-08, so the day before, and he had an
4 emergency room visit the evening before we saw him because
5 of that.

6 Q Okay, what about the ant rash or the bite
7 what were the condition of those at that time?

8 A As far as my memory is they were gone and
9 my note says that the skin exam there were no rashes.

10 Q No rashes, okay, that's July the 8th,
11 correct?

12 A Correct, correct.

13 Q Now in regards to the treatment for his
14 allergies on July the 8th of '08 ---

15 A Yes.

16 Q --- do you have any record in there that he
17 was continuing to need care for that?

18 A I do, I do not have anything written to
19 that.

20 Q Okay, all right, and whenever he came in
21 for this particular visit since it was a scheduled visit
22 would it have been a little bit more detailed than the
23 acute visit from the first?

24 A No, it was scheduled but again it was just
25 to catch him up on his immunizations and make sure he was

Dr. Hutson - Direct Examination by Ms. Lively

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1 well since he had the emergency room visit the night
2 before. We didn't want to give immunizations to a child
3 who would be, you know, acutely ill.

4 Q Okay, and so in your opinion from what you
5 were looking at was he acutely ill?

6 A No, he seemed very well.

7 Q All right, and was he feverish?

8 A No.

9 Q When he was there did you look at his, did
10 you look at his head and his extremities?

11 A Yes.

12 Q All right.

13 A I would have examined him fairly fully
14 because we were going to give him immunizations and I
15 didn't, if he would have had been starting with a viral
16 illness I wouldn't want, those two vaccinations are live
17 vaccines so we wouldn't give them to someone who had an
18 acute illness.

19 Q Okay, and so what did you actually use to
20 look at the child?

21 A I would have used an otoscope to look in
22 his ears, make sure he didn't have any ear infection, my
23 flashlight to look in his throat, make sure he didn't have
24 strep throat or anything in that nature making him vomit,
25 feel of his neck. I would have been holding his head while

Dr. Hutson - Direct Examination by Ms. Lively

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1 I was looking into his ears, listen to his heart, listen to
2 his lungs, lay him back, listen to his belly, and look at
3 his skin to make sure there's no rash, no viral infection.

4 Q Okay, and was he cooperative during this
5 process?

6 A From my recollection he was, yes.

7 Q And, and whenever you were, you know,
8 looking in his ears and looking in his throat and you said
9 you had to touch his head was there, did he react or was
10 there any concerns that you had there was something else
11 wrong with him?

12 A I, I, no, nothing, excuse me, I had no
13 concerns, no, I don't remember him how he reacted. Most
14 children will pull away while I'm trying to look in their
15 ears and so forth but nothing stands out in my memory that
16 anything was unusual.

17 Q Is there anything in your records from July
18 the 8th, 2008, where you asked, where you recommended
19 continued use of Xyzal?

20 A Nothing there is in my record, no, and I
21 don't recall.

22 Q You don't recall, okay, but if the child
23 was still with a foggy nose and sinus issues would you have
24 put that in your records?

25 A Yes.

Dr. Hutson - Direct Examination by Ms. Lively

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1 Q And based upon the information you have
2 from July the 8th, 2008, was that information in your
3 record?

4 A No.

5 Q All right, and again the ant bites they
6 were, the rash was resolved?

7 A Correct.

8 Q Okay, now, Dr. Hutson, did you have an
9 opportunity, well was another visit scheduled for [REDACTED]

10 A Yes, I have written there to follow up in
11 two months, that's, he would have been eighteen months and
12 that is a normal routine where we would have done a full
13 developmental assessment. We usually do those at two,
14 four, six, twelve months and then eighteen months so he
15 would have been, we were trying to get him back on schedule
16 for normal health care for a toddler.

17 Q When he was in your care, well let me ask
18 you this, Dr. Hutson, are you a mandated reporter if you
19 believe there's child abuse?

20 A Yes.

21 Q And will you just tell the jury why that
22 is?

23 A I have a legal and moral obligation if I, I
24 mean especially a child who can't protect themselves it's
25 my job to protect them if I even have an inkling that

Dr. Hutson - Direct Examination by Ms. Lively

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1 something is wrong.

2 Q And on July the 1st, 2008, let's be clear
3 did you ever call law enforcement or DSS about this child?

4 A No.

5 Q All right, so up through the two times that
6 you saw him are you telling us that you had no concerns
7 regarding abuse?

8 A No concerns, no.

9 Q Now, Dr. Hutson, on July the 8th, 2008, was
10 that the last time you saw this child?

11 A Yes.

12 Q Okay, and whenever you saw him on July the
13 8th what would you have done in regards to his clothes?
14 Would he have kept all of his clothes on, would he have
15 been in a diaper, tell us what you normally do in regards
16 to that?

17 A He would have been in a diaper. He may
18 have had a shirt on that I would have lifted up because I
19 examined his skin. I wrote there was no rashes. I would
20 opened his diaper and made sure everything was normal
21 underneath, no rashes.

22 Q And how about the legs, where would you put
23 the actual vaccination shot?

24 A Vaccination shots always go in the outside
25 of the thigh, called the lateral thigh about mid thigh.

Dr. Hutson - Direct Examination by Ms. Lively

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1 Q And was that where he received his?

2 A Yes, he would have, he would have received
3 one in each side, yes.

4 Q Okay, and what are the normal reactions and
5 possible reactions that could occur after a child receives
6 this type of vaccination?

7 A Well the most common is just discomfort at
8 the site of the immunization for potentially a couple of
9 hours afterwards and you can get a fibril response; you're
10 injecting a protein into the body which is going to make an
11 immune reaction so may feel ache and feverish like when
12 you're getting sick for a couple of hours afterwards,
13 usually no more than four to six hours.

14 Q Okay, would it cause a child that age to
15 become possibly whiney or fussy or uncomfortable?

16 A Sure.

17 Q Okay, so that wouldn't be unusual?

18 A No, not at all.

19 Q Would it cause skull fractures?

20 A No.

21 Q How about bruising?

22 A If there were, they're both subcutaneous
23 immunizations, that means they're given under the skin, not
24 into the muscle so the likelihood of bruising is very low,
25 certainly the needle could go through a vein, probably one

Dr. Hutson - Direct Examination by Ms. Lively

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1 or two percent of the time you might get a little dime size
2 bruise at the site, be very superficial bruise, would be
3 resolved within a couple of days probably.

4 Q Within a couple of days, okay. Now were
5 there before, I know you said that there was this two month
6 out visit scheduled, did you ever receive any calls that
7 you know of or any concerns after that July 8th visit from
8 the grandmother regarding this child?

9 A No.

10 Q So July 8th, 2008, was the last contact you
11 had whatsoever?

12 A Yes.

13 Q Now, Dr. Hutson, since that time or even
14 not too far out from July the 8th did you become aware of
15 what occurred to this child?

16 A Yes.

17 Q Okay, and what was your reaction?

18 Ms. Grabert-Lowenstein: Objection, relevance.

19 Ms. Lively: Your Honor, it's relevant because
20 it goes to the fact that he had just treated the child and
21 then six days later he shows up in the hospital with
22 seizures and then dead two days later.

23 The Court: You're asking him what was his
24 reaction when he had heard the child had a problem?

25 Ms. Lively: Yes, sir.

Dr. Hutson - Cross Exam. by Ms. Grabert-Lowenstein 284

1 The Court: I'll let him answer that.

2 Ms. Lively: (Continuing)

3 Q Based on your observations of the child
4 less than a week before what was your reaction when you
5 learned what had happened to him?

6 A I was shocked and heart sick for the little
7 boy.

8 Ms. Lively: That's all I have, thank you so
9 much, Dr. Hutson, please answer any questions of the
10 defense.

11 The Court: Ms. Grabert-Lowenstein?

12 Ms. Grabert-Lowenstein: Thank you, Your Honor.

13 Cross Examination

14 By Ms. Grabert-Lowenstein:

15 Q Good Afternoon, Dr. Hutson.

16 A Good afternoon.

17 Q When you saw [REDACTED] on July 1st of 2008 you
18 would have examined his entire body?

19 A Yes, think so.

20 Q You noted no cuts on him?

21 A Uh-uh.

22 Q And you noted no bruises?

23 A No.

24 Q And as already been really talked about by
25 the prosecutor you would have noted that in the chart?

Dr. Hutson - Cross Exam. by Ms. Grabert-Lowenstein

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1 A Yes.

2 Q And you would have reported that?

3 A Yes.

4 Q Okay, now on July 8th when he came back do
5 you recall whether my client was with the grandmother?

6 A July 8th he was with the grandmother, yes.

7 Q Okay, now on July 8th as she brought him in
8 you would have looked at all of his body?

9 A Yes.

10 Q Okay, note any cuts?

11 A No.

12 Q Bruises?

13 A No.

14 Q And were the ant bites healing?

15 A Yes.

16 Q Would the allergy symptoms that you noted
17 on July 1st make him cranking, whiny?

18 A Could potentially.

19 Q Okay, and you've already indicated the
20 medication would have made him maybe a little drowsy?

21 A Uh-huh.

22 Q Okay, and when children get immunizations
23 do they sometimes, sometimes have a reaction to them that
24 makes them cranky?

25 A Yes.

Dr. Hutson - Cross Examination by Mr. Galtmore

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1 Ms. Grabert-Lowenstein: No further questions.

2 The Court: Mr. Galtmore?

3 Cross Examination

4 By Mr. Galtmore:

5 Q Dr. Hutson, when Richard came to your
6 office on July 1st his complaint was for ant bites; is that
7 correct?

8 A Correct.

9 Q Okay, now would it have been necessary to
10 bring him in to the doctor's office for ant bites?

11 A Not necessarily but he's a young boy and
12 they weren't from area so they may not have experienced ant
13 bites before. They also had the complaint that he was
14 pulling at the ears, I believe so ---

15 Q Yes, sir, yes, sir?

16 A So he had more than one complaint.

17 Q I guess what I'm saying is if a, if a child
18 has ant bites could a parent just give that child some
19 benadryl maybe?

20 A Sure, if they're familiar with treating
21 them.

22 Q Yes, sir, okay, but if you're not familiar
23 with treating them then the appropriate thing would be to
24 bring the child to a physician?

25 A If you're concerned, yes.

Dr. Hutson - Cross Examination by Mr. Galtore

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1 Q And you said they also complained about
2 pulling at the ears and a stuffy nose?

3 A I believe the notes says, yes, number two,
4 pulling at the ears, stuffy nose.

5 Q Yes, sir, was a specific complaint made
6 about the squishiness of [REDACTED] s head?

7 A I don't recall anything like that, no.

8 Q You don't recall that the mother or
9 grandmother said that the child's head seemed to be soft?

10 A No.

11 Q Now when they came in on the first I think
12 you indicated that you weren't able to give them the
13 immunizations at that time?

14 A We're cautious, certainly we could have but
15 he had ant bites on his feet and legs and had the stuffy
16 nose so if there's any chance that would be an infection
17 we'd want to wait on that so that's why we waited.

18 Q Just out of an abundance of caution you
19 waited a week until the 8th; is that correct?

20 A Correct.

21 (Whereupon, Defendant Gorman's Exhibit Number 3
22 marked for identification.)

23 Mr. Galtore: May I approach, Your Honor?

24 The Court: Certainly.

25 Mr. Galtore: (Continuing)

Dr. Hutson - Cross Examination by Mr. Galmore

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1 Q Dr. Hutson, let me hand you what's been
2 marked as Defense Exhibit Number 3?

3 A Yes, sir.

4 Q And ask you if you recognize that document?

5 A Yes, that's the shot record from his chart
6 that was brought to us.

7 Q Okay, so the parents had to bring that in
8 to you?

9 A Correct.

10 Q Okay, so when [REDACTED] came to your office on
11 July 1st his mother and his grandmother brought that shot
12 record along with them?

13 A Correct.

14 Q And I think you indicated that he was
15 behind on his shots?

16 A Yes, those two that we ended up giving we
17 usually give them at twelve months of age so he would be
18 four months behind by our, but there are some physicians
19 who won't give that till fifteen months of age.

20 Q But it's your office practice to give those
21 chicken pox and what was the other one?

22 A Measles, mump rubella, the M.M.R. shot

23 Q It's your practice to give those two shots
24 at twelve months?

25 A Twelve months of age, yes.

Dr. Hutson - Cross Examination by Mr. Galmore

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1 Q Okay, so it's not a bad thing that these
2 shots were four months behind?

3 A No, no, again we see that all the time, we
4 see immunization delay.

5 Q Now this would have been your first time
6 examining [REDACTED] is that correct?

7 A That's correct.

8 Q Did you do a physical examination looking
9 at his body?

10 A Yes, I did a pointed exam of the head and
11 neck and chest and the skin, certainly.

12 Q All right, so you, you laid eyes on his
13 head, his neck, and his chest?

14 A Yes.

15 Q Okay, and his legs, those where the ant
16 bites were?

17 A Uh-huh, yes.

18 Q Did you see any signs of physical abuse?

19 A No.

20 Q And I think you testified that you didn't
21 see any unusual interactions between the mother and the
22 grandmother?

23 A None that I recall.

24 Q None that you recall, if something stood
25 out you would have recalled it?

Dr. Hutson - Cross Examination by Mr. Galmore

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1 A I believe so, yes.

2 Q If they were fighting or arguing in the
3 lobby or in the waiting room that's something you probably
4 would recall?

5 A Yes.

6 Q Okay, now the next time you saw [REDACTED] was
7 July 8th; is that correct?

8 A Yes.

9 Q Okay, now when they came into the office on
10 July 8th what was the principal complaint at that time?

11 A Well the appointment was scheduled again to
12 give him those two shots and catch him up but the nurse's
13 note says he had nausea and vomiting the day prior, 7-7-08,
14 and had a E.R. visit because of that.

15 Q Okay, so this appointment was already
16 scheduled?

17 A I believe so, yes.

18 Q On the first they scheduled a follow up
19 appointment for the 8th so that he could have the shots?

20 A I don't know if it was done on the first
21 but he had had an appointment already.

22 Q Okay, now I understand that your office is
23 part of the Conway Medical Center; is that correct?

24 A That is correct.

25 Q And even though you're out there in Aynor

Dr. Hutson - Cross Examination by Mr. Galtore

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1 you're connected to the hospital here on 501?

2 A That is correct.

3 Q And you can actually pull up on your
4 computer in Aynor the hospital records from Conway?

5 A Yes, I saw that E.R. record, it's not a
6 part of our chart but I saw it in the computer screen, yes.

7 Q Okay, so you're able to go into the
8 computer on the 8th check the hospital records down here
9 from Conway for the 7th to see what that emergency room
10 visit was about?

11 A As long as it's my patient, yes.

12 Q Yes, sir, yes, sir, now when you looked at
13 the Conway emergency room records from the 7th did those
14 records indicate or suggest any signs of physical abuse?

15 A Not that I recall, no.

16 Q What was [REDACTED] taken to the hospital for
17 on the 7th?

18 A That he vomited.

19 Q And what was the treatment plan for that?

20 A They, I believe, gave him a popsicle and
21 sent him home.

22 Q One of those pedialyte popsicles?

23 A Yes.

24 Q Is it absolutely necessary to take a child
25 to the emergency room if that child vomits?

Dr. Hutson - Cross Examination by Mr. Galtmore

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1 A Not really, no.

2 Q Now if you're not familiar with this child
3 would it be appropriate if you didn't know that child very,
4 that child's physical history to take the child to the
5 emergency room under those circumstances?

6 A I see new parents or grandparents who are
7 thrust in a child care situation are nervous all the time
8 and if anything is wrong with the child they'll come
9 running to our office or go to the emergency room, that's
10 why the wait lines in the emergency rooms are so long.

11 Q Yes, sir, yes, sir, so [REDACTED] was taken to
12 the emergency room on the 7th and then he was brought to
13 your office on the 8th?

14 A Yes.

15 Q When he came to you on the 8th you gave him
16 the follow up, excuse me, you gave him the shots; was there
17 anything that you did to treat the vomiting?

18 A No.

19 Q Did you feel like the hospital had treated
20 it appropriately on the 7th?

21 A Yes.

22 Q Now when you examined [REDACTED] on the 8th did
23 you get an opportunity to look at his body?

24 A Yes.

25 Q Okay, and I think you testified that his

Dr. Hutson - Cross Examination by Mr. Galtmore

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1 shirt would have been up and you would have had to look in
2 his diaper also?

3 A Correct.

4 Q Did you see any signs of physical abuse
5 when you looked at [REDACTED] body?

6 A No.

7 Q Let me ask you one more question, if
8 someone wants to schedule an appointment with Aynor Family
9 Practice do they call you for that?

10 A They call the office number, yes.

11 Q They call the office?

12 A Uh-huh.

13 Q So say I wanted to schedule an appointment
14 I would end up more than likely talking to a receptionist
15 or secretary?

16 A Correct.

17 Q Probably not talking to the physician?

18 A Unless it was after hours.

19 Mr. Galtmore: Yes, sir, thank you, Dr. Hutson,
20 no further questions.

21 The Court: Ms. Lively?

22 Ms. Lively: No more redirect, Your Honor.

23 The Court: All right, Doctor, you may step
24 down, thank you.

25 Do we have further need for the doctor?

Ms. Carmichel - Direct Examination by Ms. Lively 294

1 Ms. Lively: No, Your Honor, may he be excused
2 from his subpoena?

3 The Court: Mr. Galmore?

4 Mr. Galmore: No objection.

5 The Court: Ms. Grabert-Lowenstein?

6 Ms. Grabert-Lowenstein: No objection, Your
7 Honor.

8 The Court: Doctor, you're excused and released
9 from your subpoena. Witness?

10 Ms. Lively: Thank you, Your Honor, the State
11 calls Martha Carmichael.

12 Martha G. Carmichael

13 being first duly sworn, testified as follows:

14 Madam Clerk: Please state your full name and
15 spell your last for the Court?

16 The Witness: Martha Geneva Carmichael,
17 Carmichael, c-a-r-m-i-c-h-a-e-l.

18 Direct Examination

19 By Ms. Lively:

20 Q Ms. Carmichael, where are you employed?

21 A Horry County 911 dispatch.

22 Q What's your job there?

23 A I'm the training officer and records
24 custodian.

25 Q As a records custodian could you talk a

Ms. Carmichel - Direct Examination by Ms. Lively 295

1 little bit to the jury about how 911, excuse me, 911
2 records are maintained and kept?

3 A Yes, every phone call that comes in on the
4 911 floor and all our radio transmissions are recorded and
5 it's archived on a DVD and by law we're required to
6 maintain it for sixty days.

7 Q Are they kept in what's known as the
8 regular ordinary course of business?

9 A Yes.

10 Q I'm going to show you what's been marked
11 for identification purposes -- if I may approach -- as
12 State's Exhibit Number 36; do you recognize that?

13 A Yes.

14 Q Did you listen to that prior to coming to
15 court today?

16 A Yes.

17 Q Did it appear to be an accurate reflection
18 of a call made on July 14th, 2008, from [REDACTED]?

19 A Yes.

20 Ms. Lively: Your Honor, at this time the State
21 would move seek to introduce this exhibit into evidence.

22 The Court: Objection?

23 Ms. Grabert-Lowenstein: No objection on behalf
24 of Mr. Palmer, Your Honor.

25 Mr. Galmore: No objection, Your Honor.

Ms. Carmichel - Cross Examination by Mr. Galmore

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1 The Court: Admitted without objection.

2 (Whereupon, State's Exhibit Number 35 entered
3 into evidence.)

4 Ms. Lively: Thank you, Your Honor, may I
5 publish to the jury at this time?

6 The Court: Yes, you may.

7 Ms. Lively: Thank you.

8 (Whereupon, State's Exhibit Number 35 played in
9 open Court.)

10 Ms. Lively: Thank you, Ms. Carmichael. Your
11 Honor, I have no further questions at this time.

12 The Court: Mr. Galmore and Ms. Grabert-
13 Lowenstein?

14 Ms. Grabert-Lowenstein: I have no questions,
15 Your Honor.

16 The Court: Mr. Galmore?

17 Cross Examination

18 By Mr. Galmore:

19 Q Ms. Carmichael, how long have you been
20 working with the county 911 system?

21 A Nineteen years.

22 Q And I suspect you've taken a lot of 911
23 calls in that time?

24 A Yes.

25 Q Do you generally ask people to provide you

Ms. Carmichel - Cross Examination by Mr. Galtmore

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1 with information on those phone calls?

2 A Yes.

3 Q You ask for medical information when you
4 need it?

5 A Yes.

6 Q Sometimes you have to ask for directions if
7 you don't know where the house is at?

8 A Yes.

9 Q And you asked questions of Ms. Gorman on
10 that tape; is that correct?

11 A I'm the records custodian, I didn't
12 actually take the call.

13 Q Oh, that's not you talking on that tape?

14 A No.

15 Q Oh, okay.

16 The Court: I was wondering when you were going
17 to realize that, Mr. Galtmore.

18 Mr. Galtmore: Not a problem, not a problem, not
19 a problem.

20 Q (Continuing) Do you know the distance from
21 the nearest fire house to the trailer on Highway 129?

22 A No.

23 Q Did it appear that the questions that were
24 asked were answered appropriately?

25 A To the best of the ability, yes, due to the

Lieutenant Rainbolt - Direct Examination by Ms. Lively 298
1 circumstances.

2 Mr. Galtmore: Yes, ma'am, thank you very much,
3 Ms. Carmichael.

4 A You're welcome.

5 Ms. Lively: Your Honor, we would ask that Ms.
6 Carmichael be excused.

7 The Court: Any objection?

8 Mr. Galtmore: No, sir.

9 Ms. Grabert-Lowenstein: None, Your Honor.

10 The Court: Thank you, Ms. Carmichael, you're
11 excused.

12 Ms. Lively: Lieutenant Timothy Rainbolt.

13 Lieutenant Timothy Russell Rainbolt

14 being first duly sworn, testified as follows:

15 Madam Clerk: Please state your full name and
16 spell your last name for the Court?

17 The Witness: Timothy Russell Rainbolt, r-a-i-n-
18 b-o-l-t.

19 Direct Examination

20 By Ms. Lively:

21 Q Mr. Rainbolt, what is your, your title and
22 occupation?

23 A I'm a lieutenant for Horry County Fire and
24 Rescue.

25 Q How long have you worked for Horry County

Lieutenant Rainbolt - Direct Examination by Ms. Lively 299

1 Fire and Rescue?

2 A Fourteen years.

3 Q And what does the lieutenant position
4 require extra of you?

5 A I'm the shift supervisor and basically
6 tasked with training, paper work of the station to make
7 sure that projects are getting done, mapping, pre, pre fire
8 surveys, things like that.

9 Q Where, what station do you actually, I
10 guess, get calls out of?

11 A I work out of Station 27 right now.

12 Q Where is that?

13 A That's on Highway 310 and Highway 22, the
14 brand new station there in the corn field, two-acre corn
15 field, it's right there on the corner.

16 Q Okay, and is that in Aynor?

17 A Actually it does have an Aynor, it's [REDACTED]
18 [REDACTED] Aynor address.

19 Q And how long has been new station been
20 there?

21 A We've been there for almost two years,
22 February will be two years.

23 Q In July of 2008 what station or where was
24 the station you were working at?

25 A I was working at Station 24 which is in the

Lieutenant Rainbolt - Direct Examination by Ms. Lively 300

1 Town of Aynor.

2 Q In the town of Aynor, all right, and I
3 guess that leads up to my next question, were you actually
4 working on the day of July 14th, 2008?

5 A Yes, ma'am.

6 Q And when you were working on that date did
7 you have an opportunity to respond to a 911 call?

8 A Yes.

9 Q Will you, please, tell this jury what
10 information you had in regards to what kind of scene that
11 you were driving in to?

12 A We were, we were dispatched to a medical
13 call at the time and pretty much the, the, can I refer to
14 my notes, if that's okay?

15 Q Anything to refresh your memory will be
16 fine?

17 A Usually when they tone it out they'll tone
18 it out as a, I believe it was toned out as a shortness of
19 breath, I believe, or a seizure, I can't quite recall what
20 it was, but it's respond for a back up as a first responder
21 for the medic unit which has Medic 8 which was coming from
22 their station which is away.

23 Q Okay, so you weren't the medic unit?

24 A No, we were an engine company.

25 Q Okay, and who was on a part of the medic

Lieutenant Rainbolt - Direct Examination by Ms. Lively 301
1 unit?

2 A The medic unit that came was Medic 8 was
3 Erica Rosenthal and Brian Bussa.

4 Q Okay, and who would have been in your, who
5 would have been with you for your first responder?

6 A My engine company that day was Travis Rabon
7 and Ken Norton was riding along, so there was three of us
8 on the engine, and then the tone went out, how our tones
9 drop Engine 9 is a volunteer station, they initially, that
10 area they didn't get out so they tone as well so you will
11 get that first responder response and so we went and then
12 some of their volunteers came by P.O.V., which is their own
13 vehicles. The engine itself did not respond, Engine 9
14 itself did not respond.

15 Q Okay, so after you got the tone about how
16 long was it before you actually arrived on scene?

17 A We were dispatched at 18:07 which is 6
18 p.m., 6:07 p.m., and we arrived on location at 6:13 so
19 that's just about six minutes.

20 Q Who was the first person to go into the
21 home?

22 A That would be me.

23 Q Tell the jury at that time was it, it was
24 July around 6:00 so was it still daylight?

25 A Yes, it was.

Lieutenant Rainbolt - Direct Examination by Ms. Lively 302

1 Q All right, and did you observe any people
2 in the front yard; do you recall?

3 A The only thing I really recall right now
4 for certain was when I made entry into the house a
5 gentleman, who I thought was the father, was holding the
6 patient sitting down on the couch and on the right hand
7 side of the couch and it was a single wide trailer.

8 Q Okay, okay, and whenever you, so whenever
9 you observed this what was the first thing that you, that
10 you're trained to do?

11 A Well as you walk in you're sizing up the
12 scene of what you have and then you're planning accordingly
13 to what your intervention is going to be so you get a
14 little bit of a heads up with the 911 call. It is a
15 medical call so we bring in our medical equipment to, you
16 know, have it with us in case we have to render aid and
17 then as you're walking in you're sizing up what do I have.
18 I initially saw the gentleman setting there holding a young
19 child and the child had a diaper on and so you go up to the
20 gentleman, you go, hey, what's going on, and then they
21 relay to you well this, this is what I have, and then you
22 start asking your questions and then you begin your
23 interventions to help the child or the patient.

24 Q Okay, and so it was a medical call so were
25 you aware as soon as you went into that home who was the

Lieutenant Rainbolt - Direct Examination by Ms. Lively 303

1 person that the call had been made on behalf of? Was it
2 obvious?

3 A Oh, yes, it was obvious that the child was
4 the patient, that's why, why we had to be there was to
5 treat the child, that there was ---

6 Q What did you observe regarding his
7 condition?

8 A He was in a pretty grave condition; he
9 appeared to be having a seizure at the time and it was a
10 priority patient. We, we started rendering aid
11 automatically and while we were giving aid to the patient
12 we started with oxygen and sizing up, you're asking the
13 gentleman questions, hopefully trying to maybe find allude
14 to what, what's triggering the, at that time it appeared to
15 be apparent seizure activity.

16 Q And why do you ask those kind of questions
17 about what possible or is it like cause or mechanism, what
18 you were asking?

19 A Well what you're doing is acronyms or like
20 sample history which is signs and symptoms, allergies,
21 medicines, past, past history, last oral intake, events
22 leaning up and, so there's different acronyms and you
23 basically go like my questions to, to the gentleman was
24 like has the child been sick because in my, my experience
25 kids of that age if they get a spike in fever that fever

Lieutenant Rainbolt - Direct Examination by Ms. Lively 304

1 will seizure so the majority of calls you go to if you have
2 a fever spiked and a seizure presenting you're thinking I
3 probably have this so, of course, you know the questions
4 has the child been ill, has, has he been sick, has he had a
5 fever which the man said, no, no, then what was he doing
6 and they had said that he was at a nap and he had just
7 risen from his nap and this is how they found him in this
8 condition.

9 Q Were any other explanation or information
10 regarding the child's medical history provided to you
11 whatsoever?

12 A Just that, can I refer again?

13 Q Absolutely.

14 A They said he had not been sick and was put
15 down for a nap at 3:30. They found him in the condition we
16 witnessed upon our arrival which was the seizure-like
17 activity, and that's we began placing the child on high
18 fluid oxygen and beginning to set up for an I.V. and that's
19 when Medic 8 arrived and I made the call to Medic 8 we will
20 meet you outside because this child needs to be transported
21 asap to the hospital and obviously the fire engine can't
22 transport to the hospital.

23 Q Okay, and who was in the Medic 8, the
24 actual transport vehicle that came?

25 A That was Erica Rosenthal and Brian Bussa,

Lieutenant Rainbolt - Direct Examination by Ms. Lively 305

1 they were the medic crew from Medic 8.

2 Q And who carried [REDACTED] out of the home?

3 A I did.

4 Q And when you carried him out of the home
5 who did you hand him to?

6 A Erica Rosenthal.

7 Q Were his eyes open at that time?

8 A Yes, and they were open to, to me, yes, he
9 was just, just kind of a, I don't know if ya'll have viewed
10 seizures before but you kind of get the kind of a snoring
11 type respirations. You're just kind of making motions like
12 a, it's called tonic-clonic and basically at that time our,
13 our experience is the child needs to get some Valium to
14 take him out of the seizure activity and our engine company
15 doesn't carry that. The medic company does, so it was
16 we'll meet you out there, we'll get him in there and get
17 the I.V. established so we can get that medicine on board
18 which as Erica comes in later will tell you was what
19 happened.

20 Q Okay, and so was that the conclusion of
21 what your job duties were that day?

22 A Yes, once, once we transferred care to, to
23 the Medic Unit I supplied one of my men and I believe it
24 was Ken Norton to drive the Medic Unit so she could have
25 Brian Bussa in the back to help her do patient care so they

Lieutenant Rainbolt-Cross Ex. by Ms. Grabert-Lowenstein 306

1 could have two and I thought was the mother she rode in on
2 Medic 8 sitting up front and we made sure she was situated
3 in the front of the ambulance.

4 Q Okay, all right, so who you believed to be
5 the mother got in the ambulance?

6 A Yes, yes, she actually rode to the hospital
7 with the medic crew in the front seat with the seat belt on
8 per our protocols.

9 Q Okay, all right, and so was that the last
10 thing that you did?

11 A That was it for me and we went back in
12 service.

13 Ms. Lively: Okay, thank you, Lieutenant
14 Rainbolt, answer any questions the defense may have.

15 Ms. Grabert-Lowenstein: Just a couple of
16 questions, Lieutenant.

17 Cross Examination

18 By Ms. Grabert-Lowenstein:

19 Q Who did you get most of the information
20 from that you were telling us you received?

21 A I was, I was asking basically the gentleman
22 who was holding the child cause he was holding the child
23 when I got there so that's who I was addressing my
24 questions to.

25 Q Did you address any questions to Ms.

Lieutenant Rainbolt - Cross Examination by Mr. Galmore 307
1 Gorman?

2 A I may have, I don't recall. I believe she
3 may have been in the kitchen or not where I was cause when
4 we, where the child was holding we start treating him right
5 there on the floor.

6 Q And when you say the gentleman holding him
7 do you see that person in the courtroom?

8 A I believe it's going to be that gentleman
9 next to your left, I believe, it's hard to tell.

10 Q Do you recall his demeanor, how he was
11 acting?

12 A Kind of calm.

13 Q Was he concerned about what was going on?

14 A Yeah, I would imagine, I mean I don't, not,
15 not like in a panic or frantic or teary eyed or like oh, my
16 gosh, you know, this is something grave going on but just
17 kind of like, yeah, we found him like this when he got up
18 from his nap.

19 Q Trying to keep it together?

20 A Yes, you could say that.

21 Ms. Grabert-Lowenstein: Okay, all right, thank
22 you.

23 A Yes.

24 Cross Examination

25 By Mr. Galmore:

Lieutenant Rainbolt - Cross Examination by Mr. Galmore 308

1 Q Lieutenant Rainbolt, I believe you
2 testified that it took about six minutes for your engine to
3 get to the house?

4 A Yes, sir.

5 Q Okay, and do you know how long it took for
6 Medic 8 to get over there?

7 A I briefly looked at the times and I believe
8 it was the same dispatch time as us and I think that they
9 arrived at 18:20, 6:20, I believe.

10 Q Okay.

11 A They were coming from their station, I
12 believe.

13 Q So they're not stations with, they're not
14 stationed with ---

15 A No, we have Medic 24 that runs our station
16 and I believe they were on another call that's why Medic 8
17 was toned, but in my, in my report, if I can refer to it?

18 Q Yes, sir?

19 A It actual shows Medic 24 being dispatched
20 at 18:20 and getting there at 18:23 and Medic 8 toned at
21 18, 6:07 p.m. and getting there at 6:20, so the second
22 medic unit was toned at 6:20 once Medic 8 went on location.

23 Q Okay.

24 A But they weren't, they weren't utilized
25 cause they, they went back in service at 6:32.

Lieutenant Rainbolt - Cross Examination by Mr. Galtore 309

1 Q Medic 24?

2 A Medic 24 did, yes, sir, Medic 8 once they
3 transported medic unit.

4 Q Now you said you entered into the house and
5 you spoke with the gentleman that was holding the baby?

6 A Yes, sir.

7 Q Did any of your other five men enter the
8 house with you?

9 A Yes, sir.

10 Q Did you see anything out of the ordinary
11 when you entered the house?

12 A Not that, not that I can recall. I just
13 remember walking into the house seeing him set on the right
14 end of the couch. If you know the layouts of most single
15 wides are pretty similar. It's like you have the living
16 room area and then you go to a hallway that's kind of
17 narrow at the end of the living room area so the couch was
18 kind of along that, like if you walked in along that back
19 wall he was on the right side.

20 Q Well let me hand you what's been marked as
21 State's Exhibit 16 for identification and can you point out
22 to the jury what you're talking about?

23 A It would have been right here where the
24 couch was.

25 Q Okay, so you entered in from?

Lieutenant Rainbolt - Cross Examination by Mr. Galmore 310

1 A Front door, yes, sir.

2 Q Front door section?

3 The Court: Be sure the jury can see now.

4 Mr. Galmore: Yes, sir.

5 A (Continuing) Were ya'll able to see it?

6 Q When you said you were referring to where
7 the couch was, can you point to it?

8 A I believe it would have been right here on
9 the wall.

10 Q All right, did the house appear to be in
11 some kind of disrepair?

12 A Not that I could recall.

13 Q Okay, did you see blood on the floor or
14 blood on the walls or anything like that?

15 A No, sir.

16 Q Did you see any object that had any blood
17 or hair or skin on it?

18 A No, sir.

19 Q Was there anything such, I guess, vomit or
20 any bodily fluids of any kind that were in the living room
21 area?

22 A Not that I saw.

23 Q Do you recall if there were any broken
24 objects, broken windows, broken plates, dishes, anything on
25 the floor that seemed unusual?

Lieutenant Rainbolt - Cross Examination by Mr. Galtore 311

1 A No, sir.

2 Q Your immediate course of treatment was to
3 give the patient oxygen?

4 A High flow oxygen, yes, sir.

5 Q And to give him an I.V.?

6 A Yes, we started establishing the I.V. and
7 that's when the medic unit arrived and that's when we
8 transferred him to the medic unit for immediate transport,
9 we made that decision.

10 Q Did you see any bruises on the body?

11 A Not that I can recall, when I was sizing
12 him up basically what was standing out to me was the
13 seizure activity and so with the years of experience you're
14 thinking well did she, did the child have a fever, a fever
15 spike and that's where I had asked had he been sick and
16 stuff and he said, no, he had not been sick.

17 Q Yes, but if there, if there were something
18 unusual such as bruising on the body such that it caught
19 your eye you would have written that in a report?

20 A I can't write it on my file report but in
21 the transfer of care it would have been noted to the Erica
22 Rosenthal and it would have been marked on that.

23 Q All right.

24 A These, these reports the different reports
25 are public records so anybody can go to them so for HIPAA

Lieutenant Rainbolt - Cross Examination by Mr. Galtore 312

1 violations I can't write but only pretty generic comments.

2 Q Yes, sir, yes, sir, did, did the child
3 appear to have any broken bones when you, when you went
4 into the house?

5 A Like an obvious deformity?

6 Q Yes?

7 A No, sir.

8 Q Why did you say you addressed the gentleman
9 that, that was holding the child?

10 A Because he was holding the child and that
11 was the patient so with him holding the child he was the
12 one that was there so that's who I spoke with.

13 Q Well it makes sense to talk to that person?

14 A Yeah, he's holding the child so as I even
15 wrote in here I assumed that was the father and I said,
16 hey, you know, and the questions directed what have you
17 got, what's going on with the child, and we went from
18 there.

19 Q And you, you weren't out there at the house
20 to conduct any type of police or DSS investigation, were
21 you?

22 A No, sir, we were actually just toned there
23 for a medical call.

24 Q So you didn't do a walk through of the
25 house or anything like that?

Lieutenant Rainbolt - Cross Examination by Mr. Galtore 313

1 A No, sir, we went in there, we addressed the
2 patient, treated the patient and got him transported to the
3 hospital as quickly as possible.

4 Q Got him on the Medic 8 as possible?

5 A Yes, sir.

6 Q I think you commented that the child was
7 making some kind of noises during the ---

8 A Yeah, usually when there's seizure activity
9 you will get a possible either some respiratory issues
10 going on and he was making kind of those sounds, obviously
11 that's where we were with the oxygen, getting the oxygen on
12 board and a lot of times with the seizure activities you
13 will get a little bit of oxygen deficiency so you want to
14 get oxygen to them.

15 Q Okay, when you looked at this child and
16 gave him an I.V. and gave him some oxygen did you see any
17 apparent injuries to the child's head?

18 A No, nothing that, nothing that stood up
19 like if you're asking like for a deformity, battle signs,
20 bruises, anything like that I did not see at that time.
21 The intervention, like I said I did, is I put a mask on him
22 and we set up an I.V. as we actually prepare an I.V. The
23 I.V. stick was made in the medic unit cause they got there
24 right when we were getting ready to do that so instead of
25 delay transport time we went ahead and began the I.V. in

Lieutenant Rainbolt-Recro. Ex. by Ms. Grabert-Lowenstein314

1 the back because what he needed at that time with what he
2 was presenting was the Valium to take the seizure activity
3 out because that's what we figured at the time he was
4 presenting with.

5 Q Do you know if Medic 8 administered the
6 Valium?

7 A Yes, they did.

8 Q But you weren't riding on Medic 8?

9 A No, sir.

10 Q You were back on your engine?

11 A No, sir.

12 Q And you felt that it was significant enough
13 to assign one of your fireman to drive the ambulance?

14 A Yes, we do that, when we have a significant
15 patient where they need more hands in the back and we have
16 the manpower we definitely give them a hand. We had three
17 riding the engine that day so I gave them one of my mine to
18 drive, yes, sir.

19 Q And is it unusual for a family member to
20 ride in an ambulance also?

21 A No, it's not unusual, it's all in the
22 nature of the call. If, if, you know, it's something that
23 they might be there especially with children, parents are
24 usually going to ride with children.

25 Mr. Galmore: Yes, sir, all right, thank you,

Lieutenant Rainbolt-Recro. Ex. by Ms. Grabert-Lowenstein315

1 Lieutenant, no further questions.

2 A Yes, sir.

3 Ms. Lively: No further questions, Your Honor,
4 may he be excused from his subpoena?

5 The Court: Yes, any objection?

6 Ms. Grabert-Lowenstein: Your Honor, I just have
7 one follow up question if I may?

8 The Court: Yes.

9 Recross Examination

10 By Ms. Grabert-Lowenstein:

11 Q Sir, you indicated you put the oxygen mask
12 on. That was to assist the breathing, that wasn't because
13 he wasn't breathing when you got there, correct?

14 A Yeah, he was breathing, it was to assist
15 the breathing.

16 Ms. Grabert-Lowenstein: No further questions,
17 Your Honor.

18 The Court: All right, you're excused from your
19 subpoena.

20 A Thank you, sir.

21 Ms. Lively: Erica Rosenthal.

22 Erica Rosenthal.

23 being first duly sworn, testified as follows:

24 Madam Clerk: Please state your full name and
25 spell your last name for the Court?

Ms. Rosenthal - Direct Examination by Ms. Cote

316

1 The Witness: Okay, full name is Erica Lee
2 Rosenthal, last name is spelled r-o-s-e-n-t-h-a-l.

3 Direct Examination

4 By Ms. Cote:

5 Q Ms. Rosenthal, where are you employed?

6 A Horry County Fire and Rescue.

7 Q And what's your job there?

8 A A firefighter paramedic.

9 Q Can you discuss for the jury a little bit
10 of your background and training as a firefighter paramedic?

11 A I've been practicing as a paramedic for the
12 last four and a half years, roughly, and approximately five
13 years before that was an EMT basic on the national registry
14 level. I've got an associates degree in para medicine.

15 Q Were you working as a firefighter paramedic
16 back on July 14th, 2008?

17 A Yes.

18 Q Did you have reason to respond to [REDACTED]
19 [REDACTED] on that day?

20 A Yes.

21 Q Did you have any information about what
22 type of call you were responding to?

23 A The initial dispatch was for a shortness of
24 breath of a pediatric patient.

25 Q And what time were you dispatched?

Ms. Rosenthal - Direct Examination by Ms. Cote \ 317

1 Would it help you to refer to your notes for refreshing
2 your memory?

3 A At approximately 6:00.

4 Q Okay, and what time did you arrive at that
5 location?

6 A About 6:20.

7 Q Who else was with you in the, was it Medic
8 8?

9 A Medic 8.

10 Q Is that right?

11 A Yes.

12 Q Who else was with you?

13 A Brian Bussa.

14 Q What sort of scene did you encounter when
15 you arrived at that location?

16 A Prior to arriving on the scene we were
17 notified by the on scene engine company that they had a
18 pediatric seizure and that when we arrived to just prepare
19 for them bringing the child straight to us at the
20 ambulance.

21 Q And so when you arrived is that what
22 happened?

23 A Yes.

24 Q Who brought the child to you?

25 A Lieutenant Tim Rainbolt.

Ms. Rosenthal - Direct Examination by Ms. Cote

318

1 Q And what did you do as soon as you received
2 him?

3 A I put the child on the stretcher and
4 continued oxygen administration and then attempted I.V.
5 access.

6 Q Okay, what sort of state was the child in
7 when you arrived?

8 A The child was very lethargic, still
9 seizing.

10 Q And what sort of behaviors was he
11 exhibiting as he was seizing?

12 A He had a right-sided gaze and he was very
13 lethargic.

14 Q Was he posturing at that time?

15 A Yes.

16 Q And will you, please, could you mind, could
17 you mind showing the jury what posturing is, it might look
18 like?

19 A Posturing goes in two different forms where
20 your arms push outward and then the opposite is with your
21 arms inward, the same goes for your legs.

22 Q After you loaded [REDACTED] onto the ambulance
23 did anybody else get in the ambulance with you?

24 A Yes.

25 Q Who was that?

Ms. Rosenthal - Direct Examination by Ms. Cote

319

1 A I don't recall who the driver was.

2 Q Okay, and was Mr. Bussa in the back with
3 you?

4 A Yes.

5 Q Treating [REDACTED]

6 A Yes.

7 Q Did [REDACTED]'s grandmother get in the
8 ambulance as well?

9 A Yes, she rode in the front passenger seat.

10 Q Were you able to communicate with her while
11 you were treating [REDACTED] in the back?

12 A Yes, there's a window that separates the
13 compartment, the patient care compartment from the front of
14 the cab.

15 Q And were you able to ask her questions
16 regarding [REDACTED]'s medical history, anything that he's
17 allergic to, things of that nature?

18 A Yes.

19 Q And did she give you that information?

20 A Yes.

21 Q What did she tell you?

22 A She mentioned that [REDACTED] had suffered fire
23 ant bites previously in the week and was treated for that.
24 She mentioned that he had not been sick, he had not struck
25 his head, he had not fallen, and she had not noticed any

Ms. Rosenthal - Direct Examination by Ms. Cote

320

1 fevers earlier on in the week or today.

2 Q Did she tell you when the last time she
3 administered that Xyzal medication?

4 A The day of the injury and that was it.

5 Q Was that the only time that it was given to
6 him?

7 A Yes.

8 Q Was he responding to, was [REDACTED] responding
9 to you and your treatment?

10 A No, after he received the initial dose of
11 Valium he, he stopped seizing.

12 Q May I interrupt you, I'm sorry?

13 A Sure.

14 Q Is Valium given, what's the purpose of
15 giving him Valium?

16 A Valium is given as a relaxant and sedative;
17 it's protocol for a seizure patient.

18 Q Okay, please continue, I'm sorry.

19 A It's okay, I forgot your question, I'm
20 sorry.

21 Q What, what types of aid were you
22 administering to him in the back of the ambulance as you,
23 were you taking him to the hospital?

24 A Yes, once we were able to secure the I.V.
25 line and stop his seizing we moved in route to the

Ms. Rosenthal - Direct Examination by Ms. Cote

321

1 hospital. He received the I.V. line oxygen, cardiac
2 monitoring, and then a full physical exam.

3 Q What did you notice or observe in that
4 physical as you did that physical exam?

5 A He had a right-sided gaze, his pupils were
6 dilated but they were responsive. They were sluggish to
7 respond but not uncommon for a seizure.

8 Q Were you able to obtain a blood pressure
9 from him?

10 A No, at that time we did not have pediatric
11 equipment small enough for [REDACTED]

12 Q And did you have an oxygen mask placed on
13 him?

14 A Yes.

15 Q That was done, obviously [REDACTED] was
16 breathing?

17 A Yes.

18 Q As ya'll were riding to the hospital did
19 Ms. Gorman give you any other information about his general
20 overall demeanor as a child?

21 A Yes, may I refer to this, I noted most of
22 it in the report. I asked, let's see, I asked whether or
23 not he had been sick, whether or not he had fallen, whether
24 or not he had any fevers, and one of her statements to me
25 was that he's been whiny and lethargic since the ant bites

Ms. Rosenthal - Cross Ex. by Ms. Graber-Lowenstein 322

1 previously, and the other statement was, and I'll have to
2 paraphrase it for you, it was three years ago, that she's
3 raised several children in her lifetime and never seen such
4 a bad one.

5 Q And did you note that in your report?

6 A In my verbal report to the physician I did.

7 Q But did you, was it an oversight that you
8 didn't put it down in your report?

9 A I try to only document exactly what I can
10 remember verbatim from a person.

11 Q So that general statement that she made did
12 that stick with you?

13 A Yes.

14 Ms. Cote: Beg the Court's indulgence?

15 Q (Continuing) By the time you got to the
16 hospital what was, what kind of state was he in?

17 A [REDACTED] was posturing, he had still been
18 posturing. His right-sided gaze had not changed, his
19 pupils were now more dilated than they previously had been
20 and he was still, still breathing very rapidly as well as
21 his heart rate was elevated.

22 Q When you say the right-sided gaze what does
23 that mean?

24 A Typically when there's a brain injury that
25 occurs your eyes will point to the side of your brain that

Ms. Rosenthal - Cross Ex. by Ms. Graber-Lowenstein 323

1 has been injured.

2 Ms. Cote: Thank you, I have no further
3 questions, please answer any questions the defense may
4 have.

5 Cross Examination

6 By Ms. Grabert-Lowenstein:

7 Q Good Afternoon, ma'am. When you received
8 [REDACTED] it was from the lieutenant who just spoke
9 previously, correct?

10 A Yes.

11 Q How was [REDACTED] dressed?

12 A I don't recall.

13 Q Do you recall whether he had a shirt on, a
14 diaper?

15 A I believe he had a diaper on, I couldn't
16 tell you what clothing he was wearing, though.

17 Q Okay, he had the oxygen mask to aid in his
18 breathing, once he, you got him into the unit you said you
19 did a physical exam?

20 A Yes.

21 Q Did you note any bruises?

22 A No.

23 Q Any broken bones that were obvious?

24 A There was no obvious deformity to [REDACTED] s
25 body.

Ms. Rosenthal - Cross Examination by Mr. Galmore

324

Ms. Grabert-Lowenstein: No further questions.

Cross Examination

By Mr. Galmore:

Q So you never entered the home on Highway
129?

A Correct.

Q You pulled into the parking lot or the
driveway and that's when Lieutenant, when the Lieutenant
brought [REDACTED] out to, to Medic 8?

A Yes.

Q Okay, you said you asked Ms. Gorman some
questions and did she answer your questions?

A Yes.

Q She gave you medical history information
about the ant bites?

A Yes.

Q She told you that he had not been sick?

A Correct.

Q And that he did not have a fever?

A Correct.

Q And she also told you that he hadn't fallen
and he hadn't struck his head?

A Correct.

Q Did you see any bruises on his body?

A No.

Ms. Rosenthal - Cross Examination by Mr. Galmore

325

1 Q Did you see any cuts on his body?

2 A No.

3 Q And you also said that she made a comment
4 that she's raised many kids and she never saw one as bad as
5 this one?

6 A Correct.

7 Q And you said that comment was not listed in
8 your written report?

9 A Correct.

10 Q Did you put it in any report at all?

11 A My verbal report to the physician.

12 Q Did you follow up with that, well what do
13 you mean, ma'am?

14 A The child began to seize again so, no, I
15 did not.

16 Q Do you know if she was referring to his
17 medical condition or if she was referring to something
18 else?

19 A I don't.

20 Mr. Galmore: No further questions, thank you.

21 Ms. Cote: Your Honor, I have nothing further
22 Ms. Rosenthal. I'd ask that she be excused from her
23 subpoena.

24 Ms. Grabert-Lowenstein: No further questions,
25 Your Honor.

Ms. Milan - Direct Examination by Ms. Lively

326

1 The Court: All right, you're excused, any
2 further need for this witness?

3 Ms. Cote: No, Your Honor.

4 The Court: Mr. Galmore?

5 Mr. Galmore: No, sir.

6 Ms. Grabert-Lowenstein: No, Your Honor.

7 The Court: You're released from your subpoena.

8 A Thank you.

9 The Court: Witness?

10 Ms. Lively: Yes, Your Honor, the State would
11 call Tina Millan to the stand.

12 Tina Shaw Millan

13 being first duly sworn, testified as follows:

14 Madam Clerk: Please state your full name and
15 spell your last name for the Court?

16 The Witness: Tina Shaw Millan, and that's m-i-
17 l-l-a-n.

18 Direct Examination

19 By Ms. Lively:

20 Q Tina, where do you work?

21 A I work at Conway Hospital in the emergency
22 room.

23 Q And how long have worked there?

24 A Five years and about six months.

25 Q And what are your specific duties in the

Ms. Milan - Direct Examination by Ms. Lively

327

1 E.R.?

2 A I am a registered nurse.

3 Q And in regards to, have you had any other
4 kind of training in any other areas or background in
5 medical profession?

6 A Yes, I have.

7 Q And what are those?

8 A I worked at MUSC in the neurological ICU
9 and also the surgical trauma neuro ICU.

10 Q And how long did you work in that capacity?

11 A Well I started off as a tech first and then
12 I worked four years there while I was in nursing school and
13 then worked there for a year to a year and maybe three
14 months as a nurse.

15 Q Have you had, have you had quite a bit of
16 experience in seeing traumatic injuries in the emergency
17 room?

18 A Yes, I have.

19 Q And in regards to that are you usually one
20 of the first ones that get to see a patient whenever
21 they're brought into the emergency room for treatment?

22 A Yes, I am.

23 Q All right, and how long have you worked at
24 Conway Medical again?

25 A Five years and about six months.

Ms. Milan - Direct Examination by Ms. Lively

328

1 Q Okay, and whenever you, when you started
2 there did you start there as an R.N.?

3 A Yes, I did.

4 Q Okay, and were you always in the E.R.
5 department?

6 A Yes.

7 Q All right, now, Ms. Millan, did you have an
8 opportunity to be working in your capacity as an R.N. on
9 the afternoon or evening of July 8th, or not July 14th of
10 2008?

11 A Yes.

12 Q Tell the jury who all was there with you
13 that day working in the E.R.?

14 A Myself, Debbie Warran was our charge nurse,
15 Dr. Cacace was our doctor that was on, and there was also
16 Lisa, she was the R.N. prior to me coming on.

17 Q What time did you come on that night?

18 A At 7:00.

19 Q All right, and what time, does your shift
20 go from 7 p.m. to 7 a.m.?

21 A Yes, it does. We usually stay about thirty
22 minutes after our shift especially if there's something
23 going on, so I usually come in at 6:53 is my clock in time
24 and then we come in to the back and get report.

25 Q And were you on time for work that evening;

Ms. Milan - Direct Examination by Ms. Lively

329

1 do you recall?

2 A Yes, I was.

3 Q And did you have an opportunity to come in
4 contact with a toddler on July the 14th, 2008, in the E.R.?

5 A Yes.

6 Q Okay, please tell the jury what you recall
7 seeing whenever you first came into contact with this
8 toddler?

9 A Can I refer to my notes?

10 Q Absolutely.

11 A Okay, could I grab them now?

12 Q Sure, go ahead, that's fine.

13 A I was, it was actually Room 9 cause I
14 remember the room number, this child came in and I was told
15 he had been seizing since 6:00 from the day shift nurse
16 that was on which was Lisa, and then when I immediately
17 observed him I found that he was, and I'll read from my
18 notes which I documented, that he was unresponsive, he was
19 posturing, which is an abnormal flexion, and also seizing
20 at the time, and he had no response whatsoever and his
21 pupils were dilated.

22 Q And in your experience in dealing with
23 traumatic injuries in the E.R. what was, what did you
24 consider his prognosis to be at that time?

25 A Very critical.

Ms. Milan - Direct Examination by Ms. Lively

330

1 Q Okay, and whenever you actually had the
2 opportunity to make those observations were there any other
3 people in that Room Number 9 with you when you were caring
4 for the child?

5 A Yes, at that time there was Lisa, still
6 cause she was giving me report, and I was also observing
7 Dr. Cacace. We also had the two family members that came
8 in with the child which was the boyfriend and the
9 grandmother.

10 Q Okay, now when you were in the room with
11 the child what were ya'll doing immediately to try and
12 treat his symptoms?

13 A We were giving him medication to stop the
14 seizing and we were also putting in the I.V.'s and drawing
15 blood like we normally do on all of our patients.

16 Q Okay, and who provided you with a history
17 as to any injuries or, you know, illnesses in regards to
18 this particular child?

19 A The grandmother.

20 Q All right, and do you see the grandmother
21 in the courtroom now?

22 A I can't remember her face as much but it's
23 been a long time, 2008.

24 Q Okay, and what information did the
25 grandmother provide to you?

Ms. Milan - Direct Examination by Ms. Lively

331

1 A She had told us that he had been seizing,
2 she had also told us that he was on a medication. She
3 didn't really tell us why he was on that medication, which
4 we knew what the medication was. She also told us that he
5 hadn't fallen or anything and we were told by the
6 grandmother, you know, that at first she was the mother and
7 then stated she was the grandmother of the child.

8 Q Okay, what medication was reported to you
9 as being the one that the child was on?

10 A Xyzal.

11 Q Xyzal, and were you familiar with that
12 medication?

13 A Yes.

14 Q All right, and did she give you approximate
15 time line as to when the last time the child would have
16 received that medication?

17 A Yes, can I refer to my notes?

18 Q Please do.

19 A She said it was on 7-11-2008 at 21:00.

20 Q Okay, and the day that of his visit was 7-
21 14-2008, correct?

22 A Correct.

23 Q Did she tell you what amount of that
24 particular medication that she was administering to the
25 child?

Ms. Milan - Direct Examination by Ms. Lively

332

1 A Yes, she did.

2 Q How much?

3 A I'm going to review my notes, 2.5
4 teaspoons.

5 Q Two point five teaspoons?

6 A Uh-huh.

7 Q Yes, now whenever you got this information
8 from the grandmother did she, was there anything else that
9 she said or did that, that you noticed?

10 A She was very anxious, pacing back and forth
11 in front of the bed, seemed very upset, and the boyfriend
12 was there with her as well.

13 Q And what did you notice about the
14 boyfriend, if anything?

15 A Very concerned about the child. While the
16 child was seizing he actually wanted to approach the bed
17 and I told him he could go ahead and talk to the child and
18 he was holding his hand.

19 Q Okay, and what about the grandmother, did
20 she do the same?

21 A She didn't at first and then she did later
22 on.

23 Q And at any point in time did [REDACTED] become
24 responsive?

25 A No, no, not at all.

Ms. Milan - Direct Examination by Ms. Lively

333

1 Q All right, in reference to your notes,
2 which you've provided to myself as well as the defense,
3 what is a Glasgow Coma Score?

4 A It is what we use for a neurological exam
5 to see how well the patient is responding to us.

6 Q Okay, all right, and tell the jury what the
7 three different things are that you look for in
8 establishing a score for a particular patient?

9 A Okay, can I review to my notes?

10 Q Absolutely.

11 A We would have used three things, eye
12 response; we'd also do verbal response and motor response.

13 Q Okay, and before you came on to your, to
14 work that night had there been some type of, you said Lisa
15 was there before you?

16 A Uh-huh.

17 Q Okay, so had she already done that type of
18 testing on [REDACTED] before you got there?

19 A She did, yes.

20 Q And is that documented in your nurses
21 notes?

22 A I'm going to look real quick.

23 Q Okay?

24 A Yes, it is.

25 Q Okay, please tell the jury what [REDACTED] s

Ms. Milan - Direct Examination by Ms. Lively

334

1 Glasgow Coma Score was at the time that it was first
2 noted?

3 A It was noted at 19:02 and it was a five.

4 Q Okay, what is the range for a Glasgow Coma
5 Score?

6 A It can go from three which would be coma
7 and then fifteen which is the highest which they're awake
8 and alert.

9 Q Okay, and whenever you're dealing with a
10 trauma patient in the E.R. what level Glasgow Coma Score
11 concerns you greatly regarding that particular patient?

12 A Anything below nine.

13 Q Below nine?

14 A Yes.

15 Q And when [REDACTED] got there at 7:02 his was a
16 --

17 A Five.

18 Q Five, now while he was in your care was
19 there any improvement to his, his physical condition?

20 A No.

21 Q All right, was there anything additional
22 that you did regarding this child with regard to his
23 breathing, let's talk about that first?

24 A Okay, yeah, we put a breather on him to
25 make sure he's getting enough oxygen at a hundred percent.

Ms. Milan - Direct Examination by Ms. Lively

335

1 Q: Okay, and what is that to do?

2 A Just basically making sure that he's
3 getting a lot of oxygen and that we're not depriving him of
4 any oxygen.

5 Q Okay, what observations, if any, did you
6 make regarding his breathing?

7 A He was very labored and grunting.

8 Q And did that give you any concern?

9 A Yes, it did.

10 Q Why is that?

11 A Because they can't keep going like that.
12 They're going to eventually get tired where they'll not
13 breath at all.

14 Q Okay, and so in regards to his heart rate
15 were you ever able to get his heart rate while he was in
16 your care?

17 A Can I look real quick at my notes?

18 Q Please do.

19 A I did get it down some but the lowest I
20 could get it was 142.

21 Q And for a child his age is that, is that a
22 concern?

23 A Yes, it is.

24 Q What would you have liked to have seen it,
25 the range be for him?

Ms. Milan - Direct Examination by Ms. Lively

336

1 A At least 110 to 115.

2 Q Now how long, were you caring for him the
3 entre time he was there?

4 A I was, yes.

5 Q And at some point in time was there a
6 decision made regarding where, whether his care was going
7 to continue at Conway Medical Center?

8 A Yes, as soon as we got the cat scan.

9 Q Okay, all right, and when you got the cat
10 scan were you able to review that cat scan and be with the
11 E.R. doctor to determine the next stage in his, in [REDACTED]
12 care?

13 A I was in the actual cat scan with the child
14 and was in the back watching the scan while I was watching
15 [REDACTED] at the time and then when I saw it I called
16 immediately to Dr. Cacace to pull it up and look at the cat
17 scan and then when we came back he came into the room.

18 Q Okay, what did you see?

19 A I saw cranial skull fractures.

20 Q Skull fractures?

21 A Uh-huh.

22 Q Okay, and what else did you see in regards
23 to those scans?

24 A I noticed a little bit of bleeding in the
25 back of the head as well.

Ms. Milan - Direct Examination by Ms. Lively

337

1 Q Now whenever you saw the skull fractures
2 and the bleeding, well let me ask you this, with that kind
3 of trauma what kind of a history would you expect to get as
4 to what had happened to this child?

5 A Any, it could range from anything of a
6 child falling from a second story building, a car accident
7 being thrown from a car or any kind of abuse to the child,
8 I mean it can range from a lot of things.

9 Q Okay, now whenever you saw [REDACTED] in the
10 hospital did you see any outside injuries or anything that
11 gave you concern?

12 A Yes, I did.

13 Q Okay, and what were those?

14 A I'm going to look at my notes again and
15 tell you.

16 Q Okay.

17 A I saw bruising on his right hand, his right
18 thigh, and his left thigh. I also saw a bruise on his
19 lower side of his chest on the left side.

20 Q And, and why do you document things like
21 that?

22 A Because normally you wouldn't see that on a
23 child at all, I mean you would see it maybe a little
24 scratch here or there but you wouldn't see the type of
25 bruises that I saw.

Ms. Milan - Direct Examination by Ms. Lively

338

1 Q And at the time whenever you were observing
2 him in the hospital what did he have on his body clothing-
3 wise?

4 A I can't remember, honestly.

5 Q All right, but you did document the
6 bruising?

7 A Yes, I did.

8 Q Was there ever a time whenever you
9 discussed with the grandmother or the boyfriend anything
10 about how he got the bruises?

11 A I did ask and I was told by the grandmother
12 that he did not have any falls.

13 Q Okay, that was the only response you got?

14 A Yeah, other, well I did get one other
15 response from the boyfriend, he said that he was dragging
16 his foot but, you know, earlier that day but I don't
17 remember anything else at that time.

18 Q Okay, and was there any follow up in
19 regards to dragging his foot, what do you mean or anything
20 like that?

21 A They just said that he had eaten earlier
22 and was dragging his foot.

23 Q Okay, all right, so he had eaten earlier?

24 A Uh-huh.

25 Q Okay, was there any information, was any

Ms. Milan - Direct Examination by Ms. Lively

339

1 information provided to you as to anyone else who had cared
2 for that child?

3 A I was just told that the, the dog, I'm
4 sorry, the mother of the child had dropped him off, but I
5 don't know when.

6 Q That the mother of [REDACTED] had dropped him
7 off?

8 A Yeah, with the grandmother.

9 Q Okay, did the grandmother say anything else
10 to you about the mother or concerns that she had with the
11 mother and this child?

12 A Yes, she did, she, she had also told me
13 that she was a drug addict and she just dropped the child
14 off and she didn't know where she was.

15 Q Now after the skull fractures were seen on
16 the cat scans and who made the decision that [REDACTED] was to
17 be transferred?

18 A Dr. Cacace.

19 Q Okay, and is that a normal procedure
20 whenever you have a child with these type of injuries?

21 A Yes.

22 Q Why is that?

23 A We are a level three hospital and you need
24 a level one hospital to care for a patient in that critical
25 state.

Ms. Milan - Direct Examination by Ms. Lively

340

1 Q And so do you, and you can refer to your
2 notes, do you recall when the child was going to be
3 transported to MUSC?

4 A The child left at 22:33, I mean could you
5 repeat the question?

6 Q Okay, that's basically my question when was
7 he actually transferred to MUSC, you said 22 --

8 A Thirty-three which is 10:33.

9 Q 10:33 p.m.?

10 A Uh-huh.

11 Q And, and who was it that actually comes and
12 gets the child?

13 A We actually had Megicare come, they flew
14 into our hospital to fly the child out.

15 Q And whenever they come and get the child at
16 that point in time is that when you relinquish your care of
17 the child?

18 A Yes.

19 Q Can you recall, and you might have said
20 this, was this an air flight or was it an ambulance?

21 A It was an air flight.

22 Q Okay ---

23 A We, I'm sorry.

24 A No, that's fine, and whenever, by the time
25 they got there what was [REDACTED] condition right before he

Ms. Milan - Direct Examination by Ms. Lively

341

1 left?

2 A He was still critical.

3 Q He was still critical?

4 A Uh-huh.

5 Q And had his Glasgow Coma Score changed in
6 any way, shape or form?

7 A Oh, yeah.

8 Q It did?

9 A Yes.

10 Q Okay, when did you reassess him for his,
11 those three things you look at in regards to Glasgow Coma
12 Score?

13 A I'm going to look at my notes again.

14 Q That's fine.

15 A 20:30.

16 Q And that would be 10:30?

17 A That would be 9, I'm sorry 8:30.

18 Q 8:30?

19 A Uh-huh.

20 Q Okay, thank you, 8:30, and what was his
21 Glasgow Coma Score for each thing you look at?

22 A It was a three.

23 Q It was a three?

24 A Uh-huh.

25 Q And you stated earlier that three is

Ms. Milan - Direct Examination by Ms. Lively

342

1 basically what?

2 A It's coma.

3 Q Okay, at any point in time did other
4 interventions, medical interventions have to be placed into

5 [REDACTED]

6 A Yes.

7 Q Okay, and what were those?

8 A We also intubated him to protect his
9 airway, we also did an oral gastric tube.

10 Q And why is an oral gastric tube done?

11 A To prevent any vomiting.

12 Q And once again is that a normal situation
13 when you have a patient in this condition?

14 A Yes.

15 Q And you stated that you were with the child
16 that whole evening?

17 A Yes.

18 Q Were the defendants also in that room the
19 whole evening?

20 A They were there until the police came and
21 separated them.

22 Q Okay, and who was it, if you know, that
23 contacted the police regarding this particular matter?

24 A I don't know honestly.

25 Q Okay.

Ms. Milan - Cross Ex. by Ms. Graber-Lowenstein

343

1 y A I just know they were there.

2 Q Okay, so it wasn't you?

3 A Uh-uh.

4 Q Did you ever speak with the police or DSS
5 that evening?

6 A No, no, I believe someone else did but it
7 wasn't me cause I didn't leave his side.

8 Q Okay, you did not leave [REDACTED] side that
9 whole night?

10 A Right.

11 Ms. Lively: Thank you so much, please answer
12 any questions the defense may have for you.

13 Ms. Grabert-Lowenstein: It pleases the Court
14 may I just very briefly.

15 Cross Examination

16 By Ms. Grabert-Lowenstein:

17 Q What kind of medication did Ms. Gorman
18 indicate that she had given [REDACTED]

19 A Xyzal.

20 Q What is Nyzal?

21 A Xyzal is an antihistamine.

22 Q I'm sorry, Xyzal?

23 A Yeah.

24 Q That's an antihistamine, if the child was
25 not stuffy nose, having other allergy symptoms would they

Ms. Milan - Cross Ex. by Ms. Graber-Lowenstein

344

1 need the Xyzal?

2 A You can actually have it for neuro cardio
3 which is an allergic action.

4 Q If you didn't have an allergic reaction
5 would you need the Xyzal?

6 A No.

7 Q Did she mention anything about giving it on
8 Saturday which would have been the 12th of July?

9 A I wasn't told the 12th, no.

10 Q You were told the 11th?

11 A Yeah.

12 Q And you indicated, do you recognize my
13 client as the --

14 A I don't remember faces, I'm sorry, it's
15 been a long time.

16 Q Do you recall that the boyfriend that came
17 in was concerned and he was allowed to approach and hold
18 [REDACTED] hand?

19 A Yes.

20 Q Did he stay there?

21 A He stayed there until he was escorted out
22 by the police.

23 Q Okay, and Ms. Gorman she did not approach
24 [REDACTED] until after the boyfriend had?

25 A Correct.

Ms. Millan - Cross Examination by Mr. Galtore

345

1 Q You don't have any knowledge of what caused
2 the injuries?

3 A No, I don't know exactly what caused his
4 injury.

5 Ms. Grabert-Lowenstein: No further questions.

6 Cross Examination

7 By Mr. Galtore:

8 Q You said you were in the room, Ms. Gorman,
9 Mr. Palmer were in the room, was there anyone else in the
10 room?

11 A Lisa was in the room, Dr. Cacace came in
12 the room.

13 Q Okay, was Lisa asking questions of these
14 two to try to get a medical, medical information?

15 A Yes, she was and I was present.

16 Q Was Dr. Cacace asking questions of these
17 two?

18 A Yes, he was.

19 Q Information?

20 A Yes.

21 Q Okay, so is it possible that while you were
22 asking questions of one of them either Lisa or Dr. Cacace
23 could have been asking the other one questions also?

24 A No, Lisa was talking to both of them and
25 then Dr. Cacace would talk to both of them as well.

Ms. Millan - Cross Examination by Mr. Galmore

346

1 Q Okay, you indicated that you intubated
2 [REDACTED] and gave him an oral gastric tube?

3 A Yes.

4 Q Does that sometimes cause bleeding?

5 A Bleeding from where?

6 Q During the insertion process is there
7 sometimes blood in the mouth or something like that?

8 A No.

9 Q Never?

10 A No.

11 Q Okay, when you took [REDACTED] to have the C.T.
12 scan did Ms. Gorman go with you?

13 A I don't recall.

14 Q Did, what kind of information or history
15 did you receive from EMS?

16 A I was told he was seizing since 6 p.m.

17 Q That was all that they, all the information
18 they gave you?

19 A And they gave him Valium.

20 Q Okay, and then you all began the process of
21 asking Ms. Gorman and Mr. Palmer questions also?

22 A Correct.

23 Q Did Ms. Gorman answer the questions that
24 you asked her?

25 A Yes, she did.

Ms. Millan - Cross Examination by Mr. Galtore

347

1 Q I know this is going to sound like a
2 unnecessary question but did anyone either of these two
3 people confess or admit to you in the hospital that they
4 had struck [REDACTED]

5 A No.

6 Q Did either of these people give you an
7 explanation for how he obtained these injuries?

8 A No.

9 Q Now you indicated that you saw bruising on
10 several body parts, and I think you said right hand, right
11 thigh, left thigh, and left lower chest?

12 A Correct.

13 Q Correct, and when you asked Ms. Gorman
14 about the source of these injuries what was her response?

15 A No falls.

16 Q Okay, and when you asked Mr. Palmer about
17 the source of these injuries what was his response?

18 A The question was directed to both and Ms.
19 Gorman was the only one responded.

20 Q Okay, at some point Mr. Palmer said he was
21 dragging his foot?

22 A Yes, earlier that day.

23 Q What, if anything, would that be
24 symptomatic of?

25 A I mean it could be a neurological thing,

Ms. Millan - Cross Examination by Mr. Galmore

348

1 you know, from whatever happened earlier that day, I'm not
2 sure.

3 Q Were you able to medically verify whether
4 [REDACTED] was in fact dragging his foot?

5 A No.

6 Q So you all conduct the C.T. scan and you
7 discover skull fractures?

8 A Yes.

9 Q Did you share that information with Mr.
10 Palmer and Ms. Gorman?

11 A Dr. Cacace did.

12 Q Okay, that would have been before the
13 helicopter came to take [REDACTED] to Charleston?

14 A Yes.

15 Q Would that have been before the police were
16 arrived at the hospital?

17 A The police actually had came before we got
18 the results of the cat scan, they were already there.

19 Q Okay, did the police ask you to not share
20 any information with these two?

21 A No, they did not.

22 Q So that's why Dr. Cacace told them what his
23 findings were?

24 A Correct.

25 Q And you said you were not the person that

Ms. Millan - Cross Examination by Mr. Galtore

349

1 contacted the police?

2 A No, I was no where near a phone.

3 Q Okay, did [REDACTED] appear malnourished?

4 A He seemed very thin.

5 Q Would you say he was just small or would,
6 or would it be malnourishment?

7 A He just looked very thin to me.

8 Q Would he be under weight for a child of his
9 size?

10 A Yes.

11 Q Now how long was [REDACTED] at Conway Medical
12 Center?

13 A He was there until 22:33.

14 Q That's 10:30 p.m.?

15 A Yes.

16 Q And what time did he arrive?

17 A 18:58 which is 6:58.

18 Mr. Galtore: Thank you, Nurse Millan, I don't
19 have any further questions.

20 A Thank you.

21 The Court: Anything further?

22 Ms. Lively: One moment, Your Honor, the Court's
23 indulgence?

24 No, Your Honor, that would be all the questions
25 from the State.

Ms. Millan - Cross Examination by Mr. Galmore

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1 The Court: You may step down.

2 Ms. Lively: May she be excused from her
3 subpoena?

4 The Court: Any objection?

5 Mr. Galmore: No, sir.

6 Ms. Grabert-Lowenstein: No, Your Honor.

7 The Court: You are released from your subpoena.
8 Witness?

9 Ms. Lively: Your Honor, can we approach?

10 (Whereupon, a bench conference was held off the
11 record in the presence of the jury, but out of the hearing
12 of the jury and the court reporter.)

13 The Court: Ladies and gentlemen, I'm informed
14 that the next witness will be a rather lengthy witness.
15 You've been sitting there almost two hours now, If I gave
16 you a break then it would be almost 5:00 and I truly hate
17 to keep you here past 5. I know you've got lives and
18 family that rely on you so I'm going to let you go home.
19 I'll ask you if you could get back in the morning shortly
20 after 9 downstairs ,that way Mr. Ropp can assemble you and
21 bring you up for, doughnuts, Mr. Ropp?

22 Mr. Ropp: Yes, sir.

23 Mr. Galmore: May we approach, Your Honor?

24 The Court: All right.

25 (Whereupon, a bench conference was held off the

Ms. Millan - Cross Examination by Mr. Galtore

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1 record in the presence of the jury, but out of the hearing
2 of the jury and the court reporter.)

3 The Court: My admonitions from yesterday still
4 apply. Please don't go on line anywhere or, or try to do
5 of your own investigations, look up old newspapers, don't
6 do any of that. As I said you should keep an open mind and
7 reserve any deliberation, even among yourself, until all
8 the evidence and witnesses. Again thank you and, Bobby,
9 you will have, you want ham biscuits or doughnuts, Mr.
10 Buie?

11 Mr. Foreperson: I think doughnuts.

12 The Court: Mr. Buie says doughnuts in the
13 morning, okay, and you get them in here and as soon as
14 they're assembled downstairs you bring them upstairs and
15 whenever they're ready let me know, okay.

16 (Whereupon, the jury was excused for the evening
17 at 4:30 p.m.)

18 The Court: Okay, we're at ease.

19 Ms. Lively: Thank you, Your Honor.

20 The Court: Until tomorrow morning, all right.

21 (Whereupon, court was adjourned for the evening
22 and resumes on November 16, 2011 at 9:30 a.m.)

23 (Whereupon, State's Exhibit Number 36 and 37
24 marked for identification.)

25 The Court: Are we ready?

Dr. Cacace - Direct Examination by Ms. Cote

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1 Ms. Lively: The State is ready, Your Honor.

2 The Court: All right.

3 Mr. Galmore: Ready, Your Honor.

4 Ms. Grabert-Lowenstein: Ready, Your Honor.

5 The Court: I understand my jury is ready so
6 let's bring them in.

7 (Whereupon, the jury returns to the courtroom at
8 9:30 a.m.)

9 The Court: I see we have everyone back in the
10 court room, all of the jurors and our alternates, and we
11 are ready to proceed. Ms. Lively or Ms. Cote?

12 Ms. Cote: Thank you, Your Honor.

13 The Court: Ms. Cote, the first witness, please?

14 Ms. Cote: Thank you, Your Honor, the State
15 calls Dr. John Cacace.

16 The Court: Come around, Dr. Cacace.

17 Dr. John Cacace

18 being first duly sworn, testified as follows:

19 Madam Clerk: Please state your full name and
20 spell your last name for the Court?

21 The Witness: John Cacace, c-a-c-a-c-e.

22 Direct Examination

23 By Ms. Cote:

24 Q Dr. Cacace, where do you work?

25 A Conway Medical Center.

Dr. Cacace - Direct Examination by Ms. Cote

353

1 Q And what's your job there?

2 A Attending physician in the emergency
3 department.

4 Q How long have been at Conway Medical
5 Center?

6 A Five years now.

7 Q Will you tell the jury a little bit about
8 your background and education?

9 A I'm a southerner, I retract that, I'm a New
10 Yorker. I grew up in New York City, attended Columbia
11 University, went to Mt. Sinai School of Medicine, New York
12 City also, Albert Einstein College of Medicine for
13 residency and surgery and Long Island Jewish Hospital for
14 residency and emergency medicine, and I spent eight years
15 at Yale teaching surgery and emergency medicine prior to
16 coming to Conway.

17 Q Have you ever testified in court before?

18 A Several times, yes, ma'am.

19 Q Do you know how many times?

20 A I would say four, four times.

21 Q Have you ever been qualified as an expert
22 before?

23 A I have.

24 Ms. Cote: Your Honor, at this time the State
25 would seek to qualify Dr. John Cacace in emergency medicine

Dr. Cacace - Direct Examination by Ms. Cote

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1 and trauma.

2 The Court: Mr. Galmore?

3 Mr. Galmore: No objection.

4 The Court: Ms. Grabert-Lowenstein?

5 Ms. Grabert-Lowenstein: No objection, Your
6 Honor.

7 The Court: Yes, ma'am.

8 Ms. Cote: Thank you, Your Honor. May I
9 approach the witness?

10 The Court: Yes.

11 Ms. Cote: Thank you, I'll show this to counsel.

12 Q (Continuing) Dr. Cacace, I'm showing you
13 what's marked for identification purposes as State's
14 Exhibit 36, I want you to take a look at that and tell me
15 if you recognize that document?

16 A Yes, ma'am, I do.

17 Q And can you tell us what that is?

18 A This is a record from Conway Medical Center
19 with documents involving radiologic studies and nursing
20 notes and my, my notes regarding that day of the incident
21 with the child.

22 Q And is the child [REDACTED] [REDACTED] [REDACTED]

23 A Yes, [REDACTED] [REDACTED].

24 Q And can you tell us the date of those?

25 A These were done on, the exam date was July

Dr. Cacace - Direct Examination by Ms. Cote

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1 14th, 2008.

2 Q Are those records and reports kept in the
3 ordinary course of business at Conway Medical Center?

4 A Yes. these are routine records we keep.

5 Q Do they appear to have been altered or
6 tampered with in any way that you can see?

7 A No, they don't appear altered, ma'am.

8 Q Thank you --

9 Ms. Cote: Your Honor, we would seek to enter
10 this exhibit into evidence at this time?

11 The Court: Mr. Galmore and Ms. Grabert-
12 Lowenstein?

13 Ms. Grabert-Lowenstein: Your Honor, we have no
14 objection to the witness referring to them; however,
15 without an actual the caretaker of the records being here
16 we don't know that these, we know they were kept in the
17 ordinary course of business but we don't know anything more
18 than that, but there may be information in there which
19 isn't referred to, we would object to the actual admission
20 of the records but not his referring to them.

21 The Court: Mr. Galmore?

22 Mr. Galmore: I will share in Ms. Grabert-
23 Lowenstein's objection. My concern is that we don't know
24 if it is a complete record. It contains nurses notes; it
25 contains radiology notes; it also contains his notes, but

Dr. Cacace - Direct Examination by Ms. Cote

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1 we do not have a problem with Dr. Cacace referring to these
2 records.

3 Ms. Cote: Your Honor, it's our position that he
4 was able to testify that they were kept in the ordinary
5 course of business, they appear to be a complete record.
6 They were all records that he referred to in making the
7 diagnosis involving [REDACTED] and in treating him.

8 The Court: I will allow that record.

9 Ms. Cote: Thank you, Your Honor.

10 (Whereupon, State's Exhibit Number 36 entered
11 into evidence.)

12 Ms. Cote: (Continuing)

13 Q Now, Dr. Cacace, were you working on July
14 14th, 2008, in the emergency room at Conway Medical Center?

15 A Yes.

16 Q Okay, and did you treat a seventeen-month-
17 old boy named [REDACTED] [REDACTED] [REDACTED]?

18 A Yes, I did.

19 Q Okay, do you recall what time he was
20 brought to the emergency room?

21 A I'd have to refer to the documents?

22

23 Q If that will help refresh your memory,
24 please do?

25 A He arrived somewhere around 7 p.m. I would

Dr. Cacace - Direct Examination by Ms. Cote

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1 say.

2 Q What do you recall about when you initially
3 responded to [REDACTED]

4 A He arrived via EMS through the front door
5 of the E.R. in extremist immediately evident. The child
6 was showing signs of a severe neurologic injury prior to
7 any studies or other than the nurses grabbing me and
8 telling me to attend to the child.

9 Q Was he conscious?

10 A No, ma'am.

11 Q Did he appear to be breathing on his own?

12 A At that time was, yes.

13 Q Did he have an oxygen mask on?

14 A Yes, ma'am.

15 Q What symptoms of neurological distress did
16 you witness?

17 A The child was breathing on his own, however
18 not conscious. The tone of the child that age is critical
19 and the child was exhibiting classical signs of
20 intracranial injury, extensive posturing of the arms.

21 Q Will you demonstrate for the jury what
22 posturing is?

23 A Basically extending the neck out and the
24 arms out like this, twisting the arms inward, it's a very
25 dramatic and classical presentation.

Dr. Cacace - Direct Examination by Ms. Cote

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1 Q And is that posturing and those symptoms
2 are those symptoms different from what you would see from
3 somebody suffering from epileptic seizure?

4 A Yes, the training to understand the
5 difference isn't really that complicated, This is a
6 posturing that only occurs in intracranial injury, other
7 doesn't appear in stroke or epilepsy seizure.

8 Q And when you see a child that age and in
9 that condition with your experience what typically do you
10 see as the cause of those types of injuries?

11 A It would have to be tremendous force to the
12 skull.

13 Q Do you remember speaking with anybody from
14 the family that evening?

15 A I remember the distressed grandmother.

16 Q And can you describe what her demeanor was
17 like for the jury, how was she acting?

18 A She was very upset, agitated. I needed to
19 take a moment to actually to, take a side moment for a
20 minute just to remind her we were going to do everything we
21 could and that she should stay present but not get in
22 between the care of the staff and the child.

23 Q Did you have to take time out from treating
24 [REDACTED] to deal with Ms. Gorman?

25 A Basically a minute or so.

Dr. Cacace - Direct Examination by Ms. Cote

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1 Q Were you told anything in regards to a
2 possible cause for his condition or a reason for it in any
3 way?

4 A I recall some conversation regarding the
5 mother of the child having left the infant in the care of
6 grandmom a week prior.

7 Q So when he presented what was the first
8 thing you did to treat his condition?

9 A Immediately bring him to the resuscitation
10 room and secure monitors on him, obtain a chest x-ray, and
11 rapid sequence, rapid sequence intubation to put a tube in
12 the airway to maintain the breathing because of the type of
13 injury suspected the brain swelling that goes on with that
14 would very soon stop his breathing.

15 Q Did you give him any medication at that
16 point?

17 A We routinely do, I'd have to look at the
18 chart again. It's, usually it's Etomidate and
19 Succinylcholine and I'm just trying to verify that, which
20 are medications we use to rapid sequence a child. I'm
21 getting there, Etomidate 3 mg. and decision between
22 Succinylcholine and Vecuronium. Vecuronium actually is a
23 preferred medication for head trauma so I, I chose
24 Vecuronium, so it's equivalent medicine that paralyzes a
25 person so we can pass the tube easily so Etomidate and

Dr. Cacace - Direct Examination by Ms. Cote

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1 Vecuronium is the answer to your question.

2 Q Okay, thank you. Did you order any
3 radiological studies or head scan performed?

4 A Yes.

5 Q Did you, as part of treating [REDACTED] did you
6 review those scans after they were completed?

7 A Immediately, sure.

8 Q And what did you see on those scans?

9 A The scans had evidence of, of gray-white
10 matter junction loss and blood. Basically the brain has
11 little ups and downs and curves and valleys and in the
12 trauma they swell and you lose the distinction of those
13 and intracranial hemorrhage, blood. I'm looking directly
14 at the document right now because I'd like to use the right
15 terminology here, extending along the falx, which is the
16 center part of the skull, left parietal lobe and left
17 frontal lobe parenchymal hemorrhage, that means hemorrhage
18 in the tissue of the brain itself, again the distinction
19 between gray-white matter was suspicious for intracranial
20 edema, swelling of the brain, and skull fractures, which
21 raises the concern of child abuse.

22 Q So these skull fractures that were observed
23 on those scans can you describe anything about that?

24 A They're not, they're not described in this
25 document and what I routinely, my, my usual standard is to

Dr. Cacace - Direct Examination by Ms. Cote

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1 identify the sutures, the lines that are normally present
2 in the skull. There are lines that are normal healthy
3 lines of a developing skull that finally fuses and then
4 there are, and those lines usually are a "v" in the back
5 and then a straight line at the top. If lines are
6 different from those it's suspicious for fractures and then
7 there's depression or step offs of the skull which are also
8 suspicious for fractures. The exact details of those lines
9 I don't have.

10 Q Okay, were you, after looking at those
11 scans were you able to come to a conclusion or a diagnosis
12 within a reasonable degree of medical certainty involving
13 [REDACTED] condition?

14 A Yes.

15 Q What was that?

16 A Head trauma.

17 Q What level of head trauma are we talking
18 about? I know trauma seems to me that it's pretty serious
19 but what, can you just go into more detail about that?

20 A Some authors, some authors break it down
21 into five categories, obviously minor to severe and the
22 trauma was severe, impending death is what it was
23 concerned.

24 Q Will you talk about the distinction, you
25 mentioned there was a distinction of gray and white matter

Dr. Cacace - Direct Examination by Ms. Cote

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1 on the brain in the scans, what exactly does that mean?

2 A The gray, the gray and white matter are the
3 different cells, different tissues of neurons and
4 astrocytes. essentially structural and actual brain
5 transmitting wires tissue.

6 Q When you see that type of distinction could
7 that potentially be fatal as well?

8 A The loss of the gray-white matter to be
9 unable to discriminate that is implying edema, edema has no
10 place to go in the skull cause the fixed structure and
11 that's very serious. I thought I was losing the child.

12 Q Were you able to classify the injury within
13 a reasonable degree of medical certainty as these were
14 accidental or non accidental?

15 A I could say that the majority of the cases
16 I've seen like this are not accidental.

17 Q And based on these injuries that [REDACTED] had
18 were you able to make a decision regarding his continued
19 care?

20 A Yes, I believe in record time we got in
21 touch with a neurosurgeon at MUSC and helicoptered the
22 child to MUSC for further care.

23 Q Why did you feel that it was necessary to
24 move him to MUSC as opposed to treating him at Conway?

25 A Conway doesn't, you know, Conway is I must

Dr. Cacace - Direct Examination by Ms. Cote

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1 say a great place, a little advertisement there, and at the
2 same time we don't have a neurosurgeon on staff yet, that
3 may happen some day in the future.

4 Q So did you feel somebody more specialized
5 was necessary to treat [REDACTED]

6 A Absolutely.

7 Q Do you know what time he left the hospital,
8 if you'd refer to your notes?

9 A I'd have to go to the notes, at 21:17 he
10 was transferred by helicopter so that would be the, I'm
11 sorry, let me correct that because the final note is 22:33
12 patient left the E.D.

13 Q And when he left were you able to stop his
14 seizures?

15 A The additional medicines that are listed
16 beyond the two I discussed, Ativan, Phenobarbital are
17 medicines for preventing seizure activity. There was some
18 noted and they were easily controlled and then we wanted to
19 protect as much brain tissue as possible in this situation
20 preserve a person.

21 Q So what you gave him was that, I'm just
22 trying to understand, was that more to control his
23 symptoms?

24 A I actually have to honestly say I don't
25 recall. I, I give medications like that in anticipation

Dr. Cacace - Direct Examination by Ms. Cote

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1 mostly, that's my, my standard. We don't want seizures,
2 the brain has had enough insult already and the traveling
3 time in the helicopter, etcetera, if I have to I would
4 press and think, I'm not sure I recall having seizures on
5 the child actually during the visit; I don't recall that.

6

7 Q You don't recall the seizures?

8 A I don't recall seizures actually, the more
9 I think about it.

10 Q You testified about [REDACTED] injuries on
11 the skull and the brain; did you notice any other injuries
12 on him at that time?

13 A I'm looking through notes because off, off,
14 off hand I don't recall other injuries, no, and the seizure
15 that I said I don't recollect I want to, I'm trying to
16 confirm that no one else saw seizure activity, lots goes on
17 during these events, no, I did not recall any other
18 injuries. The problem with if I, should I go on, I was
19 just going to mention just that the problem with seizure,
20 the word seizure sometimes the nurses might call something
21 seizure that is the posturing business so --

22 Q You did say that you saw the posturing of
23 [REDACTED] but that necessarily, doesn't necessarily mean that
24 there was a seizure?

25 A Correct, it's not, it's not seizure and,

Dr. Cacace - Direct Examination by Ms. Cote

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1 you know, my, my note here, my note contradicts what I'm
2 saying, it says here actively seizing with dysconjugate
3 gaze and that was my initial contact with the patient and
4 you spend seconds with a child and type something into your
5 computer and I would swear to my Almighty God that those
6 posture movements were not seizure activity. That's an
7 incorrect statement there, I don't know how that fouls up
8 the case or anything but ---

9 Q No, no, no, but you, you still stand by
10 that his posturing was indicative of neurological trauma?

11 A Most definitely, and every other piece of
12 evidence I've looked at in the case corroborates that,
13 ma'am.

14 Ms. Cote: Your Honor, if I may approach the
15 witness?

16 The Court: Sure.

17 Ms. Cote: Thank you, show this to counsel, it's
18 marked as State's 37.

19 Q (Continuing) Dr. Cacace, I'm going to show
20 you what's marked as State's Exhibit 37; do you recognize
21 that?

22 A Only, yes, in the, in the preparation for
23 this event I've seen this document before, yes.

24 Q So prior to testifying here today did you
25 review that?

Dr. Cacace - Direct Examination by Ms. Cote

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1 A I did, yes.

2 Q And can you identify what it is?

3 A It's a medical note from a local Aynor
4 Family Practicé.

5 Ms. Cote: If I may approach real quick, I may
6 have given you the wrong thing, I apologize.

7 A Private M.D. as well, sure.

8 Q Was that from Conway Medical Center?

9 A Oh, I'm sorry, yes, that is from Conway
10 Medical Center.

11 Q And like you previously stated, previously
12 stated with your other report is that a report that was
13 kept by Conway Medical Center in the ordinary course of
14 business?

15 A It is a Conway Medical Center document. I
16 apologize not recognizing it sooner, yes, it is.

17 Q And what is the date on that document?

18 A That date is 7, July 7th, 2008.

19 Q And can you tell us the name of the patient
20 on that document?

21 A [REDACTED].

22 Ms. Cote: Your Honor, at this time the State
23 would seek to introduce, I believe that was Exhibit 39, 37,
24 I apologize, into evidence at this time.

25 Ms. Grabert-Lowenstein: Your Honor, on behalf

Dr. Cacace - Direct Examination by Ms. Cote

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1 of Mr. Palmer we have an objection. I believe the evidence
2 will be that this was not a document that Dr. Cacace, that
3 he prepared. he would then have no knowledge of whether
4 it's complete or accurate and have no knowledge of the
5 underlying foundation for the report. It would be hearsay
6 and we would object.

7 The Court: All right, do you take the position
8 there are any subjective opinions in that or, or --

9 Ms. Grabert-Lowenstein: Yes, Your Honor,
10 because he cannot ---

11 The Court: All right, let's send the jury out.
12 (Whereupon, the jury retired to the jury room at
13 9:57 a.m.)

14 The Court: May I see the document, please, Ms.
15 Cote?

16 Ms. Cote: Yes, sir.

17 The Court: Have you had an opportunity to
18 review it, Ms. Grabert-Lowenstein?

19 Ms. Grabert-Lowenstein: I'm sorry, Your Honor?

20 The Court: Have you had an opportunity to
21 review it?

22 Ms. Grabert-Lowenstein: I have, Your Honor, and
23 we've had a copy of that and it is the report from the 7th
24 of July and it was when [REDACTED] saw a different doctor and
25 that's the basis of our whole objection is it's hearsay as

Dr. Cacace - Direct Examination by Ms. Cote

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1 to this doctor. It's not part of the consultation as to
2 the opinion that he just rendered about the injuries and I
3 believe that doctor should be called to testify as to his
4 examination of it. This doctor didn't see [REDACTED] on the
5 7th.

6 The Court: This was Dr. Mossey, was it?

7 The Witness: Mark Mossey, Your Honor.

8 The Court: Mark Mossey, okay. The thing that
9 gives me some problems about this particular document I
10 think that it would generally come under business record
11 exception to the hearsay rule, however, that exception has
12 an exception and that would be where there are subjective
13 judgments or opinions set out in the document and I'm, I'm
14 reviewing it here and it would appear that while it
15 contains quite a bit of objective information that was
16 provided it also contains a substantial amount of
17 subjective information or opinions, impressions that the
18 doctor had. What specifically do you object to in this
19 document, Ms. Grabert-Lowenstein?

20 Ms. Grabert-Lowenstein: Your Honor, I, I do
21 object to any of this objective statements made simply
22 because this doctor did not examine [REDACTED] on that day,
23 can't lead it, you know, lend itself to his testimony to,
24 to those subjective conclusions and I feel I have to, to
25 preserve the record because this is hearsay.

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1 The Court: All right, but let me, let me ask
2 Ms. Cote about that. Ms. Cote, would you agree with me
3 that this document does contain subjective findings and
4 opinions by this doctor? At first I thought it was the
5 record of the physician who testified earlier.

6 Ms. Grabert-Lowenstein: No, it's, it's from the
7 follow up visit and, yes, but those, you know, especially
8 when you're talking about the opinions of a professional
9 this doctor can't lay the foundation for those opinions and
10 so, you know, they're getting information in without us
11 being able to cross examine the individual who made those
12 opinions.

13 The Court: And I have an inclination to agree
14 with, with Ms. Grabert-Lowenstein on that point, Ms. Cote;
15 what does the State say?

16 Ms. Cote: Your Honor, first is our position you
17 stated that first comment as a business record exception
18 under hearsay.

19 The Court: It generally meets that exception.

20 Ms. Cote: Yes, sir, I understand and I
21 understand the exceptions to that but the defense was
22 allowed yesterday to cross examine Dr. Hutson on this
23 incident and this particular medical visit that those
24 records are from, so it's our position the door has already
25 been opened. He hadn't seen the child on that particular

Dr. Cacace - Direct Examination by Ms. Cote

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1 date, the 7th that those records are from. He's already
2 testified about it; he's already testified to his opinions
3 and what he saw in those records and the jury already knows
4 about it and Dr. Cacace looked over and relied on that in
5 forming his testimony today that this is, he's going to
6 continue to testify, Your Honor, but I'm going to ask him
7 regarding ---

8 The Court: Mr. Galmore, is this the record that
9 you referred to when you were cross examining Dr. Hutson?

10 Ms. Cote: Hutson, yes, sir.

11 Mr. Galmore: I don't think I referred to a
12 document. I know that Dr. Hutson had his records from
13 Aynor Family Practice.

14 Ms. Cote: And that, if I may, Your Honor, he
15 asked Dr. Hutson if he had access to Conway Medical
16 Center's document ---

17 Mr. Galmore: Yes, sir.

18 Ms. Cote: --- and asked him if he had access to
19 the hospital visit on the 7th and if he had seen that and
20 what [REDACTED] was seen for.

21 Mr. Galmore: That's correct, I did ask those
22 questions.

23 The Court: All right, and I think Ms. Grabert-
24 Lowenstein, you asked some questions concerning that visit
25 as well; did you not?

Dr. Cacace - Direct Examination by Ms. Cote

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1 Ms. Grabert-Lowenstein: Your Honor, I believe
2 that the way the cross examine went, cross examination went
3 was simply that Dr. Hutson was talking about a day after
4 the 7th having seen [REDACTED] and not as to any conclusions
5 that were made on the 7th. It is true that he said I have
6 access to the records as long as it's my patient but as to
7 the specific conclusions --

8 The Court: Can you tell me what you object to
9 in this record? I mean I'm looking at it and it would, it
10 would appear to me that we've talked about every bit of it?

11 Ms. Grabert-Lowenstein: Your Honor, and I, I
12 understand, I understand that. It's the very specific
13 conclusions of the doctor who saw [REDACTED] and I, I object to
14 the record coming in. I understand ---

15 The Court: What specifically do you --

16 Ms. Grabert-Lowenstein: You know what we have
17 is a business record but what we also have is a record that
18 contains expert information and we have had no testimony as
19 to how that expert opinion was reached and that's my
20 objection. They want to just put the record in, I would
21 have assumed they were going to call the doctor, you know,
22 if, and that's why I object to the actual record coming in.
23 If Dr. Cacace referred to it, if he is drawing any
24 conclusions and that assist him in doing that but that's
25 one thing, the jury seeing that record without hearing from

Dr. Cacace - Direct Examination by Ms. Cote

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1 that doctor is another and that's my objection.

2 The Court: I look at it and I look at the
3 doctor's impression and it's just physician on this and he
4 simply says that, and he's quite objective, "vomiting
5 improved, that's an objective finding, patient discharged
6 to home in stable condition with instructions on nausea and
7 vomiting, child one year old or older, follow up by private
8 doctor," that's what he says.

9 Ms. Grabert-Lowenstein: Right, but again
10 they're allowed to get the opinion in that he was fine
11 without bringing in that doctor and, and that I believe is
12 the reason it shouldn't come in. It's those underlying
13 opinions without that doctor being on the stand.

14 The Court: I'm going to allow it. I think
15 we've talked about it ---

16 Ms. Grabert-Lowenstein: Thank you.

17 Ms. Cote: Thank you, Your Honor.

18 The Court: --- enough that and I'm not sure
19 that or satisfied that there is a subjective judgment or
20 opinion in there.

21 (Whereupon, State's Exhibit Number 37 entered
22 into evidence.)

23 All right, let's bring the jury back.

24 (Whereupon, the jury returns to the courtroom at
25 10:07 a.m.)

Dr. Cacace - Direct Examination by Ms. Cote

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1 The Court: Yes, ma'am?

2 Ms. Cote: Thank you, Your Honor.

3 Q (Continuing) On that Exhibit 37, Dr.

4 Cacace, based on that was [REDACTED] seen at the Conway Medical
5 Center emergency room exactly one week before he presented
6 to you?

7 A Yes, it was one week prior.

8 Q And did you review those records from July
9 7th prior to coming here to testify today as an expert?

10 A Yes, I did.

11 Q Do you see on those records was he taking
12 any medications at that time?

13 A He was prescribed Xyzal syrup, I assume by
14 his P.M.D.

15 Q And does it say what the dosage of that
16 was?

17 A Yes, ma'am, it does, it's 2.5 mg. per 5 ml.
18 and taking one and a half teaspoon he would be taking
19 roughly three four mg. at that time.

20 Q And what did he present with on that day?

21 A Vomiting one to two days.

22 Q And was he kept for observation or anything
23 like that, if you can see?

24 A He was not the term, you know, implies
25 admitted to the hospital for twenty-four hours in that he

Dr. Cacace - Direct Examination by Ms. Cote

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1 was not but essentially, you know, the patients are
2 observed for quite some time, I'm sure most of us have
3 experienced in the E.R. so he spent some time there but and
4 it was observed but, no, he was not admitted to the
5 hospital for observation.

6 Q Was he seen for any of the same symptoms
7 that you saw him for on the 14th?

8 A No.

9 Q As an E.R. physician as well as an expert
10 in trauma and emergency room medicine when you see a
11 patient with the extent of injuries that [REDACTED] had would
12 you expect them to be able to be walking around, eating, or
13 functioning?

14 A A week prior or --

15 Q A week prior or --

16 A No, at any, no, really my question was
17 foolish because at the time of the injury that
18 presentation, no, they would not be able to walk around
19 and, you know, conduct any kind of physical activity.

20 Q In your opinion would they be able to eat.
21 or walk around earlier that day?

22 Ms. Grabert-Lowenstein: Objection, vague as to
23 time frame.

24 The Court: Rephrase your question.

25 Ms. Cote: Yes, sir.

Dr. Cacace - Cross Ex. by Ms. Garber-Lowenstein

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1 The Court: In the form of prior to or after
2 injury.

3 Ms. Cote: Yes, sir, I beg the Court's
4 indulgence.

5 Q (Continuing) In your expert opinion, I'm
6 sorry if I was vague, I want to try to be as clear as
7 possible, would a patient with these types of injuries that
8 you saw [REDACTED] for, I'm sorry, I'm jumping around a little
9 bit, what you saw him for on the 14th, would he be
10 immediately symptomatic?

11 A With those injuries he'd be immediately
12 symptomatic, yes.

13 Ms. Cote: I have no further questions, please
14 answer any questions the defense may have.

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: Thank you, Your Honor.

17 **Cross Examination**

18 By Ms. Grabert-Lowenstein:

19 Q Dr. Cacace, let's get about just the 7th,
20 was that medication that you referred to in direct was that
21 medication that was prescribed by Conway Medical Center or
22 does the note indicate it was prescribed by someone else?

23 A The note, that medication is listed on the
24 home meds and so that clearly means someone else.

25 Q And what was that medication?

Dr. Cacace - Cross Ex. by Ms. Garber-Lowenstein

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1 A Xyzal.

2 Q What is Xyzal?

3 A I only can tell you that I'm not familiar
4 with the medicine other than I would imagine it's an
5 antihistamine. There are so many of them and there's so
6 many brand names now and so many companies that market
7 antihistamines it's listed here at bedtime for allergies
8 and the only thing that we use for allergies and
9 antihistamine are either histamine one or histamine two
10 blocker, it's one of those, I would put money on that.

11 Q Doctor, you indicated a dosage, was that a
12 dosage that was noted and charged from the doctor's
13 prescription or from some other source?

14 A I believe this part of the document is
15 filled by the triage nurse and that means the information
16 was obtained either from the parents or the computer can
17 generate medical historical facts and automatically include
18 it. I'm not sure which occurred here.

19 Q Okay, so it could have been from the parent
20 and that not be the actual dosage that was given by the
21 doctor?

22 A That's possible.

23 Q Now, Doctor, let's go back to the 14th,
24 July of 2008, you're on duty in the E.R. and would it be
25 accurate to say that your job is to triage the patient, get

Dr. Cacace - Cross Ex. by Ms. Garber-Lowenstein

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1 them the absolute first care that they need?

2 A I'm sorry?

3 Q No, let me rephrase, I'm sorry, Doctor,
4 that your job is to get the immediate care that they need?

5 A Yes.

6 Q And any other treatment that the E.R. is
7 not equipped to do you don't make the decision about, you
8 just get them to where it needs to be?

9 A These days we make the decision about what
10 type of treatment the child needs, ergo we call the
11 appropriate consultant and I dare say we hit the nail on
12 the head a hundred percent of the time and so I consulted
13 with a neurosurgeon.

14 Q But my point being your care doesn't look
15 towards any future care that may be needed like in hours or
16 days down the road?

17 A I'm sorry, I can't, all I can say is that I
18 was concerned about brain swelling, there would be a
19 possible consideration of craniotomy or brain monitoring, a
20 monitor could be placed. These things the neurosurgeon can
21 handle but they were all running through my mind.

22 Q Okay, right, and, and you then got him to
23 where he needed to be to get that treatment?

24 A And, yes, and that's in the hands of the
25 neurosurgeon, sure to make those decisions.

Dr. Cacace - Cross Ex. by Ms. Garber-Lowenstein

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1 Q Okay, and, and in making those decisions
2 you take note of everything that you could possibly have to
3 take into account for treatment, correct?

4 A I try my best.

5 Q And that would include any other injuries?

6 A Yes, ma'am, it truly would.

7 Q There's no injuries noted such as bruising
8 in your report; is that correct, Doctor?

9 A I routinely note such things. Let me just
10 make sure but I gather by your question that there's no
11 bruising noted, I don't want to waste any of the court's
12 time, so I would say there, skin exam, sorry, just having
13 trouble finding it, electronic records, no, there was no
14 bruises.

15 Q And, Doctor, there was not total
16 differentiation between gray and white matter, correct?

17 A Correct.

18 Q Am I correct that if there had been total
19 differentiation then there would have been brain death?

20 A No, ma'am, you're not correct.

21 Q Okay, but it would have meant even more
22 severity to the injury; would that be correct?

23 A There should be differentiation between
24 gray and white matter so if there was there would be less
25 severity.

Dr. Cacace - Cross Examination by Mr. Galmore

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1 Q I'm, I'm sorry, I think I, if there was
2 total differentiation I think I, I misspoke, if there was
3 total differentiation between gray and white matter would
4 that mean death?

5 A I may be misunderstanding and I apologize
6 but we need to see total discrimination between gray and
7 white matter. As it gets blurry and we lose the
8 discrimination between the two there's a problem.

9 Q I'm sorry, I was asking, asking it in the
10 reverse, so when there's no differentiation that is what
11 indicates the severity of the injury?

12 A Yes, ma'am.

13 Q Now you cannot tell us when, when the
14 injury occurred, correct?

15 A I can give you a ball park figure.

16 Q But, but nothing more than that, that would
17 be correct? Okay, and ---

18 A Well substantiated in the literature.

19 Q Okay, but can you tell us any
20 instrumentality that caused the injury?

21 A Usually blunt force.

22 Q I understand that, Doctor, but you don't
23 know exactly what was used or may have been used?

24 A Having seen head trauma for twenty years
25 now usually there evidence of gun barrel, hammer, knife,

Dr. Cacace - Cross Examination by Mr. Galmore

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1 blunt instrument, and then there's none of that which
2 implies the whole head had a blunt blow to it.

3 Q And, and you can't tell us from your
4 examination of [REDACTED] who did it?

5 A Of course not.

6 Ms. Grabert-Lowenstein: No further questions.

7 Cross Examination

8 By Mr. Galmore:

9 Q Dr. Cacace, it was readily apparent to you
10 as soon as you entered the room that this child was
11 suffering from a neurologic injury?

12 A Yes, sir.

13 Q And I think you said that was based on your
14 actually seeing the posturing?

15 A Yes, sir.

16 Q And you saw the fact that he was not
17 conscious?

18 A Yes, sir.

19 Q Did you see any external injuries to the
20 head area?

21 A No, sir.

22 Q Did you see any bleeding?

23 A No.

24 Q Scalp injuries or anything like that?

25 A No.

Dr. Cacace - Redirect Examination by Ms. Cote

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1 Q And you decided that it was appropriate to
2 run a C.T. scan; is that correct?

3 A Yes, sir.

4 Q Okay, and you reviewed the C.T. scan; what
5 were your findings?

6 A The findings by the radiologist as well as
7 myself cause we, I review these things as well, again if I
8 may, was intracranial hemorrhage with blood extending along
9 the falx, the center portion of the brain, and within the
10 left parietal lobe, left frontal lobe consistent with
11 hemorrhage, parenchymal hemorrhage, that's brain tissue
12 hemorrhage, decreased distinction between gray and white
13 matter which is suspicious for intracranial edema and skull
14 fractures which were not delineated but the radiologist was
15 concerned to remind me that it was possibly non accidental.

16 Q So am I understanding this correctly that
17 there was a skull fracture but there was no external
18 ability to see skull that fracture?

19 A Very often.

20 Q Now you talk about the loss of gray-white
21 matter differential could the loss of gray-white matter
22 differential help us to establish a time frame when the
23 injury was inflicted?

24 A I believe it can, yes.

25 Q I think you talked about you a ball park

Dr. Cacace - Redirect Examination by Ms. Cote

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1 figure?

2 A Yep.

3 Q Can you give us that ball park figure?

4 A Thirty-six hours.

5 Mr. Galtmore: Yes, sir, thank you very much, no
6 further questions.

7 Redirect Examination

8 By Ms. Cote:

9 Q Dr. Cacace, did you have a nurse working
10 with you that night?

11 A Yes.

12 Q Who was that?

13 A That was Tina Millan.

14 Q And do you refer or rely on her notes at
15 all in coming up with your expert opinion?

16 A I depend heavily on the nursing staff at
17 Conway Medical Center, surely.

18 Q I'm going to ask you to refer to Exhibit 36
19 and part of that Exhibit are nurses notes?

20 Mr. Galtmore: I would object, Your Honor, this
21 line of inquiry has already been covered by a previous
22 witness.

23 Ms. Grabert-Lowenstein: Join the objection.

24 Ms. Cote: That's correct, Your Honor.

25 The Court: Understand, understand, I think I

Dr. Cacace - Redirect Examination by Ms. Cote

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1 know where she's going and it was raised on cross so I'm
2 going to allow it.

3 Ms. Grabert-Lowenstein: Thank you.

4 Mr. Galmore: Yes, sir.

5 Ms. Cote: (Continuing)

6 Q And that's page one of four at the bottom?

7 A I'm sorry, I'm so clumsy with these notes
8 here.

9 Q Take your time.

10 A Okay, one of four, yeah, got it.

11 Q Do you see any notation regarding bruising
12 under the heading assessment?

13 A Yes, I do, yes, in fact I now, I'm just
14 human, I am not God, I have great faith in Him, but I will
15 say to you I stand corrected in that, and Tina does this
16 often and as, as well as many of the, the nurses, we work
17 as a team, and they point things out to us, and whether
18 this makes me look like a real fool or not I recall now
19 Tina pointing out to me that the child had bruises on the
20 right hand, right thigh, and left thigh, bruises on the
21 shin bilaterally, scratches on the belly. Tina is
22 obsessive compulsive even more than I and sometimes some of
23 the doctors are annoyed with her but I love her and she
24 corrected me that time and I in the malay did not support
25 the documentation but actually recall the conversation with

Ms. Burke - Direct Examination by Ms. Lively

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1 her.

2 Ms. Cote: Yes, sir, thank you. I have no
3 further questions.

4 Mr. Galmore: Nothing further, Your Honor.

5 Ms. Grabert-Lowenstein: Nothing further, Your
6 Honor.

7 The Court: Very well.

8 Ms. Cote: Your Honor, we would ask that Dr.
9 Cacace be excused.

10 The Court: Any further need for Dr. Cacace?

11 Mr. Galmore: No, sir.

12 Ms. Grabert-Lowenstein: No, Your Honor.

13 The Court: You're excused, Doctor, and you're
14 released from your subpoena, thank you for coming.

15 A Thank you.

16 Madam Court Reporter: I'll take those.

17 A Yes, ma'am.

18 Ms. Lively: The State would call Pamela Burke
19 to the stand.

20 Pamela Burke

21 being first duly sworn, testified as follows:

22 Madam Clerk: Please state your full name and
23 spell your last name for the Court?

24 The Witness: Pamela Burke, b-u-r-k-e.

25 Direct Examination

Ms. Burke - Direct Examination by Ms. Lively

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1 By Ms. Lively:

2 Q Ms. Burke, where are you currently
3 employed?

4 A The Medical University of South Carolina.

5 Q And what are your duties there?

6 A I'm a pediatric flight nurse for the
7 Children's Hospital.

8 Q Okay, and in being a pediatric flight nurse
9 do you have special training for that particular duty?

10 A We do.

11 Q Okay, and are you up to date with that
12 training?

13 A I am.

14 Q All right, so are you currently the R.N. or
15 flight nurse on what is it called, is it Megicare?

16 A Megicare.

17 Q Megicare, is that correct?

18 A Yes.

19 Q All right, now, Ms. Burke, did you have an
20 opportunity to be called in on a case involving a toddler
21 in July, specifically July 14th of 2008?

22 A I did.

23 Q Okay, please tell this jury what has to
24 happen in order for Megicare to get involved with a
25 particular patient?

Ms. Burke - Direct Examination by Ms. Lively

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1 A A patient will present to a doctor's office
2 or an emergency room or already be a patient in the
3 hospital and that physician will then call our physicians
4 for a consult and they will decide if the patient needs to
5 be transported for a higher level of care at which time
6 will be the time to go.

7 Q All right, and is that what happened in
8 this particular case?

9 A It is.

10 Q How long does it take you to fly from MUSC
11 to, to Conway Medical Center?

12 A About forty minutes.

13 Q All right, was there any problems in the
14 timing of you getting there for this particular flight
15 within forty minutes?

16 A No, it doesn't, doesn't appear to be.

17 Q Okay, please tell the jury exactly when it
18 was that you got the call that you were going in to, to
19 Conway Medical Center for a patient?

20 A It was at 8:59 p.m. on 7-14-08.

21 Q Okay, 8:59 p.m., and whenever you got that
22 call do you have any information whatsoever regarding the
23 condition of that particular patient?

24 A We will get a weight and sometimes some
25 information.

Ms. Burke - Direct Examination by Ms. Lively

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1 Q Okay, and did you receive any information
2 so you could prepare yourself for that particular flight?

3 A It looks like this case we were told it was
4 a seventeen month old who was dropped off at the
5 grandparents a couple of days ago and EMS was called
6 tonight because he was "not acting right, began seizing
7 today," then they called EMS, the patient was brought to
8 the hospital and continued to seize.

9 Q Okay, so when you have that information
10 regarding that it's a seventeen-month-old with seizures
11 what do you have to have on flight to make sure you can
12 care for the child?

13 A We have to have monitoring capabilities as
14 well as appropriate medications.

15 Q Okay, and did you have that, that, those
16 items with you on that flight?

17 A They're standard on every flight.

18 Q Okay, now, Ms. Burke, what time did you
19 actually arrive at Conway Medical Center?

20 A We arrived at the patient's bedside at 10
21 p.m.

22 Q Okay, and when you arrived at the patient's
23 bedside you said we, so was that you and another person?

24 A A partner, yes, myself and a respiratory
25 therapist.

Ms. Burke - Direct Examination by Ms. Lively

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1 Q Okay, and so whenever you got there please
2 tell the jury what it was that you observed regarding the
3 seventeen month old at that time?

4 A Okay, the patient was intubated and on a
5 ventilator, breathe sounds were not equal so he had better
6 breath sounds on the right side than on the left listening,
7 his heart rate was high, his sinus tachycardia, his pulses
8 were a little weak, skin was pink and pale and cool, and
9 but he had been sedated already and was waking up. He did
10 only withdraw when he was waking up, his upper arms and he
11 moved his right better than his left but I didn't see
12 anything else move, pupils were large and not reactive to
13 light, his abdomen was soft. He had two I.V.'s, his
14 saturation at that time, his oxygen saturation was 96
15 percent which is good, but did quickly drop after that.

16 Q Now, Ms. Burke, the information that you
17 had was this a critical case or not?

18 A Yes.

19 Q Okay, did the child at any time, you said
20 that he didn't, he wasn't reacting to light; is that
21 correct?

22 A Yes.

23 Q The pupils, okay, and was that a concern
24 for you?

25 A Absolutely, it makes you think of a head

Ms. Burke - Direct Examination by Ms. Lively

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1 injury.

2 Q Okay, and in regards to his oxygen
3 saturation you said it was at 96 percent when you were
4 there but then it dropped, please explain what you mean by
5 that?

6 A He was 96 percent saturated getting 50
7 percent oxygen on the ventilator because his breathe sounds
8 were unequal we pulled his tube back so he was then
9 oxygenating both lungs, ventilating both lungs and it came
10 back up but it did drop to 81 percent so we increased his
11 oxygen and manipulated his tube to improve that.

12 Q Was he breathing above the ventilator?

13 A When he was awake, he was given, for
14 intubation he was given a medication a paralytic,
15 chemically paralyzes that patient so that they don't fight
16 the ventilator so that you can get the intratracheal tube
17 placed without trauma.

18 Q Now please explain you said when he was
19 awake was he in any way, shape or form responding to you or
20 speaking or anything coherent?

21 A He wouldn't be able to speak around his
22 tube.

23 Q Okay.

24 A So the only, but the only movement I saw
25 him do was a withdrawal which is not a purposeful movement

Ms. Burke - Direct Examination by Ms. Lively

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1 so it's just simply a response to stimulation and waking
2 up.

3 Q A reflex, okay. Now, Ms. Burke, how long
4 did it take then for the flight to go to MUSC, was it forty
5 minutes?

6 A We left the bedside, we lifted off there at
7 10:38 and got to the hospital at 11:13.

8 Q And when you arrived at the hospital who
9 actually greets you there to take over the care of the
10 child?

11 A I gave, I gave the patient over to a nurse
12 and also Dr. Tecklenburg was at the bedside at that time.

13 Q Okay, and during the flight was there any
14 problems or concerns with the child at that time?

15 A No, ma'am, it looks like the flight went
16 well.

17 Q All right, and once you actually arrived at
18 MUSC did you have any additional care for this particular
19 patient?

20 A No, ma'am.

21 Q All right, so that concluded your duties
22 with this patient?

23 A It did.

24 Ms. Lively: Okay, all right, thank you so much,
25 answer any questions the defense may have for you.

Ms. Burke - Cr. Ex. by Ms. Grabert-Lowenstein/Mr. Galmor 391

1 The Court: Ms. Grabert-Lowenstein?

2 Cross Examination

3 By Ms. Grabert-Lowenstein:

4 Q You're just simply here today to testify
5 about ---

6 A The transport.

7 Q --- receiving [REDACTED] and transporting him
8 and then leaving him within the care of MUSC?

9 A I am.

10 Ms. Grabert-Lowenstein: No further questions.

11 Cross Examination

12 By Mr. Galmore:

13 Q Nurse Burke, did you perform any test or
14 any procedures on [REDACTED] [REDACTED]?

15 A Other than monitoring, no.

16 Q Okay, did you observe any external injuries
17 to his head?

18 A I did not. He wasn't a full c-spine which
19 means he's had a neck collar on and his tape would be, his
20 head would be secured to a rigid board.

21 Q Yes, sir, you said you did not?

22 A But I did not, I did not chart that I did.

23 Mr. Galmore: Thank you very much, no further
24 questions.

25 Ms. Lively: That's all for this witness, Your

Ms. Burke - Cr. Ex. by Ms. Grabert-Lowenstein/Mr. Galmor@92

1 Honor, if she may be excused?

2 Ms. Grabert-Lowenstein: No objection.

3 Mr. Galmore: No objection.

4 The Court: You may be excused and you're
5 released from your subpoena.

6 Ms. Lively: Your Honor, may we approach for one
7 moment?

8 The Court: Certainly.

9 Ms. Lively: Thank you.

10 (Whereupon, a bench conference was held off the
11 record in the presence of the jury, but out of the hearing
12 of the jury and the court reporter.)

13 The Court: Take the jury to their jury room,
14 Mr. Ropp, make sure they're comfortable. We have a matter
15 that we have to take up.

16 (Whereupon, the jury retired to the jury room at
17 10:34 a.m.)

18 The Court: Before we get into her let's take a
19 quick break, okay.

20 Ms. Lively: Yes, sir, thank you.

21 (Whereupon, a recess was taken and the following
22 takes place on the record after the recess.)

23 Ms. Lively: Your Honor, the State would call
24 Dr. Donna Roberts to the stand.

25 The Court: All right, what are the issues for

Ms. Burke - Cr. Ex. by Ms. Grabert-Lowenstein/Mr. Galmor@93
1 the Court right now?

2 Ms. Lively: Oh, yes, sir, I'm sorry. Well,
3 Your Honor, the State is calling Dr. Donna Roberts who
4 we're going to ask the Court to qualify as an expert in
5 neuro-radiology. Dr. Roberts was brought in by the State
6 to review the entire case and the radiological scans of the
7 decedent, both from Conway Hospital as well as MUSC and
8 render her expert opinion.

9 This expert has been readily available to both
10 defense attorneys. We've actually met with Dr. Roberts in
11 person, all three of us did, and they have been provided
12 copies of her PowerPoint presentation that she intended to
13 use for demonstrative purposes weeks ago, probably over a
14 month ago, so, Your Honor, at this time we, I wanted to
15 just make sure that if the defense had an objection that
16 before we started to get into her testimony and then having
17 to cut her off that we can address it right now.

18 They've got the PowerPoint, we're ready to go
19 forward so if there are any objections to it the State does
20 intend to have Donna Roberts, Dr. Roberts use that
21 PowerPoint in her testimony.

22 The Court: Yes, ma'am?

23 Ms. Grabert-Lowenstein: Your Honor, on behalf
24 of Mr. Palmer we have met with Dr. Roberts and I believe it
25 was about two or three weeks ago that we got the

Dr. Roberts - Direct Examination by Ms. Lively

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1 PowerPoint. I would just like to have a foundation laid of
2 the resource, what she used in terms of putting that
3 PowerPoint together, you know, those, those basic items
4 because we don't, we don't have that information. The
5 PowerPoint was given to us after we met with her, so that
6 was the basis of my asking for a proffer and I think it
7 should be able to be really short but we need to know.

8 The Court: Is that what you want from her, the
9 basis for her PowerPoint, the information she received and
10 things of that nature?

11 Ms. Grabert-Lowenstein: Exactly.

12 The Court: Well then we wouldn't have to do the
13 PowerPoint then, we would have to have her testify; is that
14 correct?

15 Ms. Lively: Yes, sir, Your Honor.

16 Ms. Grabert-Lowenstein: I believe so unless,
17 absolutely, we don't need to --

18 The Court: Mr. Galmore?

19 Mr. Galmore: I have received the PowerPoint,
20 I've had an opportunity to consult with Dr. Roberts. I
21 understand the State is intending to introduce the
22 PowerPoint. I would, like Ms. Grabert-Lowenstein, like to
23 know the basis of what information she used to create this
24 document.

25 The Court: All right, very well, let's bring

Dr. Roberts - Direct Examination by Ms. Lively

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1 her around.

2 Ms. Lively: Yes, sir, Your Honor, I'll be glad
3 to. Dr. Donna Roberts, please take the stand.

4 The Court: Come around, Dr. Roberts.

5 Dr. Donna Ray Roberts

6 being first duly sworn, testified in camera as follows:

7 Madam Clerk: Please state your full name and
8 spell your last name for the Court?

9 The Witness: My name is Donna Ray Roberts and
10 my last name is spelled r-o-b-e-r-t-s.

11 Direct Examination

12 By Ms. Lively:

13 Q Dr. Roberts, where are you currently
14 employed?

15 A The Medical University of South Carolina.

16 Q Okay, and what are your duties there?

17 A I'm a neuro-radiologist there.

18 Q All right, and have you had an opportunity
19 to provide your services in court cases as well as in
20 treating patients?

21 A Yes.

22 Q Okay, and, Dr. Roberts, whenever you, well
23 what type of information do you review before actually
24 coming to court or giving an opinion regarding a particular
25 patient?

Dr. Roberts - Cross Ex. by Ms. Graabert-Lowenstein

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1 A My opinion is based on the images.

2 Q Okay, so very simply the images that you
3 see?

4 A Yes.

5 Q In this particular case what information,
6 what images did you receive?

7 A The images I received are from a C.T. scan
8 that was obtained on [REDACTED] at Conway Hospital on
9 July 14th, 2008, and also another C.T. scan that was
10 obtained at the Medical University on July 15th.

11 Q Okay, and with that information that you
12 received did you have ample time or excessive time actually
13 to review these images?

14 A Yes.

15 Q Okay, and I'm not going to get into your
16 opinion right now but for the benefit of the defense
17 whenever you received that information do you normally,
18 does it assist you in your testimony to be able to present
19 a PowerPoint or demonstrative pictures to the jury to
20 explain your opinion?

21 A Yes, my opinion is based on the images and
22 so that's what I use.

23 Q Okay, and in doing so you actually prepared
24 a, I think it was about about a forty-four page PowerPoint
25 presentation for the, for this particular case; is that

Dr. Roberts - Cross Ex. by Ms. Graabert-Lowenstein

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1 correct?

2 A Yes.

3 Q Okay, and why would you need this
4 PowerPoint in order to help the jury to understand what
5 you're describing?

6 A So the jury can see what I'm seeing.

7 Q Okay, and how difficult is it for just
8 looking at a radiological scan or image for the naked eye
9 or a layperson to be able to know what they're seeing?

10 A It takes training to be able to look at it.

11 Q Okay, did you use exactly the information
12 that you received from Conway Medical Center's radiological
13 exams, images, and MUSC's images in coming up with the
14 information in your PowerPoint?

15 A Yes.

16 Ms. Lively: Thank you, answer any questions the
17 defense may have.

18 Cross Examination

19 By Ms. Grabert-Lowenstein:

20 Q Dr. Roberts, just once again you received
21 information from Conway Medical Center concerning [REDACTED]
22 [REDACTED]; was that identified in some fashion as dealing with
23 that patient?

24 A Yes, the C.T. scan that I received has his
25 name and date of birth on it.

Dr. Roberts - Cross Ex. by Ms. Graabert-Lowenstein 398

1 Q And the C.T. scan that was taken at MUSC
2 did, what kind of information of the identifying nature did
3 it contain?

4 A Again his name and date of birth.

5 Q Have you used any other information other
6 than those two cat scans in preparing your PowerPoint?

7 A Yes, I did, I also included a C.T. scan of
8 a normal child of seventeen months and I've labeled that as
9 such on the PowerPoint.

10 Q Okay, and just, just so we know how did you
11 obtain that, those, those images?

12 A That was from a scan that also performed at
13 the Medical University.

14 Q Okay, and are you familiar with, was that
15 one that you performed or was it one of your case?

16 A Yes.

17 Ms. Grabert-Lowenstein: Okay, I have no further
18 questions.

19 The Court: Doctor, was the Conway Hospital C.T.
20 scan transported with the child when he was transported to
21 MUSC, sometimes that's I know is the process but I just
22 wonder if it was in this case?

23 A Not that I'm aware of, I received it from
24 Ms. Lively.

25 The Court: All right, and it is clearly

Dr. Roberts - Cross Ex. by Ms. Graabert-Lowenstein 399

1 identified on the C.T. scan?

2 A It is.

3 The Court: And is that the customary way of
4 authenticating C.T. scans and x rays to have some
5 indication on it as to who the patient is at the time and
6 the date it was taken?

7 A Yes.

8 The Court: All right, and was the C.T. scans
9 consistent, that is the one that was, did you take the one
10 at MUSC? Was it done under your direction?

11 A There was, it was, no, it was not.

12 The Court: It was just part of the record at --

13 -

14 A Yes.

15 The Court: --- at MUSC, was it consistent with
16 the one that you received from Conway Hospital?

17 A Yes.

18 The Court: Thank you very much. All right, Ms.
19 Lively, I'll hear from you?

20 Ms. Lively: Yes, sir, Your Honor, clearly the
21 information that Dr. Roberts had and that she relied on in
22 order to make these images is the information on this
23 particular patient and child. I don't believe that there's
24 any question at this point that every time that we've met
25 with Dr. Roberts that she's had an open phone policy that,

Dr. Roberts - Cross Ex. by Ms. Graabert-Lowenstein 400

1 that we were talking about this child and the images she
2 reviewed from Conway Medical Center as well as MUSC. She's
3 qualified as a neuro-radiologist. This is something she
4 uses to help the jury understand the way that she's
5 explaining, you know, I can't look at those images and
6 necessarily tell you where the fractures are, so it's going
7 to be extremely important for her to be able to have this
8 to explain to the jury.

9 The Court: Ms. Lively, is this the witness who
10 you indicated needed to also use the autopsy photographs?

11 Ms. Lively: No, Your Honor, that's the
12 pathologist.

13 The Court: A different witness, okay.

14 Ms. Lively: Yes, sir.

15 The Court: Mr. Galmore?

16 Mr. Galmore: Your Honor, I'm satisfied with the
17 answers.

18 The Court: Ms. Grabert-Lowenstein?

19 Ms. Grabert-Lowenstein: I am now, we just
20 needed to put it on the record.

21 The Court: Very well, let's bring the jury in.
22 Was this witness sworn?

23 Ms. Lively: No, Your Honor, do you want me to
24 call her to, have her come back down or do you want to just
25 have her sworn?

Dr. Roberts - Direct Examination by Ms. Lively

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1 The Court: She's there.

2 Ms. Lively: Okay.

3 The Court: Let's just have her sworn.

4 Ms. Lively: Yes, sir.

5 (Whereupon, the jury returns to the courtroom at
6 11:00 a.m.)

7 Dr. Donna Ray Roberts

8 being first duly sworn, testified as follows:

9 Madam Clerk: Please state your full name and
10 spell your last name for the Court?

11 The Witness: My full name is Donna Ray Roberts,
12 my last name is spelled r-o-b-e-r-t-s.

13 Direct Examination

14 By Ms. Lively:

15 Q Dr. Roberts, where are you currently
16 employed?

17 A The Medical University of South Carolina.

18 Q And what are your duties at the, at MUSC?

19 A I'm an attending neuro-radiologist.

20 Q Okay, and what is a neuro-radiologist?

21 A What I do is look at images of the brain
22 and spine, both in adults and children.

23 Q Okay, and how long have you been a neuro-
24 radiologist?

25 A I've been a neuro-radiologist at MUSC for

Dr. Roberts - Direct Examination by Ms. Lively

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1 five years and in fellowship for two years before that.

2 Q All right, and are you board certified?

3 A I am board certified and I also have an
4 additional certificate in neuro-radiology from the American
5 Board of Radiology.

6 Q All right, and, Dr. Roberts, will you give
7 the jury the benefit of your educational background?

8 A Yes, I went to Clemson University and
9 graduated in computer engineering. I went to the
10 University of Colorado and got a masters degree in
11 biomedical engineering. I went to medical school at the
12 Medical University of South Carolina. I then completed a
13 (five-year residency in radiology at the Medical University.
14 I then did a two-year fellowship in neuro-radiology at the
15 University of California in San Francisco.

16 Q And once again how long have you actually
17 worked in the field of neuro-radiology?

18 A Between the fellowship and being an
19 attending seven years.

20 Q Okay, and in regards to neuro-radiology
21 have you ever testified in court?

22 A Yes, I have.

23 Q Okay, have you ever been qualified as an
24 expert before?

25 A Yes, I have.

Dr. Roberts - Direct Examination by Ms. Lively

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1 Ms. Lively: Your Honor, at this time the State
2 would move to enter Dr. Donna Roberts as an expert in
3 neuro-radiology.

4 The Court: Mr. Galmore?

5 Ms. Grabert-Lowenstein: No objection, I'm
6 sorry, Your Honor, on behalf of Mr. Palmer.

7 Mr. Galmore: No objection, sir.

8 The Court: Very well, she's so admitted.

9 Ms. Lively: Thank you.

10 Q (Continuing) Now, Dr. Roberts, did you have
11 an opportunity to become involved in a case of a young
12 seventeen-month-old toddler by the name of [REDACTED] [REDACTED]
13 [REDACTED]

14 A Yes, I did.

15 Q Okay, please tell the jury how you became
16 involved in this particular case?

17 A You asked me to review some images, some
18 C.T. scans of the brain.

19 Q Okay, and what information did you have
20 prior to contact by me as to what had happened to this
21 child?

22 A I had no information before you contacted
23 me.

24 Q Okay, and were you there whenever the
25 images were done for this child on July the 15th, 2008?

Dr. Roberts - Direct Examination by Ms. Lively

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1 A No, I was not.

2 Q Okay, all right, so when you came in to
3 review this case were you seeing everything for the first
4 time?

5 A Yes.

6 Q Okay, now what information was provided to
7 you for you to render an opinion?

8 A I was given the C.T. scan of the brain
9 performed at Conway Hospital on July 14th, 2008. I was
10 also given the C.T. scan of the brain performed at the
11 Medical University on July 15th, 2008. I've also reviewed
12 additional records such as the autopsy report. I've seen
13 some pediatrician visit clinic notes and I saw the EMS
14 report.

15 Q Okay, and based on all the information that
16 you had do you believe you've got a full picture in order
17 to provide or render an opinion for this jury here today?

18 A Yes, I do.

19 Q Okay, and in preparation for your testimony
20 here today in order to further aid the jury did you prepare
21 anything for them to actually view while you testify?

22 A Yes, a PowerPoint slide.

23 Q Okay, and what does this PowerPoint slide
24 show for the jury?

25 A It, it's images that were part of the C.T.

Dr. Roberts.- Direct Examination by Ms. Lively

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1 scans performed both at the Medical University and at
2 Conway Hospital.

3 Q Okay, and why is the PowerPoint helpful for
4 you as a radiologist to be able to have the jury understand
5 what you're saying?

6 A As a radiologist my job is to interpret
7 images and so it would be useful for me to show the jury
8 what I'm seeing.

9 Q Okay, and is it difficult for a layperson
10 to look at an image like a Cat scan or MRI and know what it
11 is that they're looking at?

12 A It can be, yes.

13 Q Okay, all right, now the images that you're
14 going to provide to us those images were done by whom?

15 A One of the C.T. scans was performed at
16 Conway Hospital and the other one was performed at the
17 Medical University.

18 Q Okay, now, Dr. Roberts, after you looked at
19 all of this information have you consulted with any of the
20 other people who had contact with [REDACTED] while he
21 was actually being cared for at MUSC?

22 A I have spoken with Dr. Schandl and Dr.
23 Abel.

24 Q And who's Dr. Schandl?

25 A She's the pathologist.

Dr. Roberts - Direct Examination by Ms. Lively

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1 Q She performed the autopsy?

2 A Yes.

3 Q And who is Dr. Abel?

4 A She is the forensic pediatrician.

5 Q Okay, all right, and so after you received
6 all of this information and reviewed the, the images before
7 we get to the PowerPoint what, what injuries did you
8 actually see on this child?

9 A The injuries that I saw on the C.T. scans
10 were blood around the brain. I saw severe swelling of the
11 brain. I saw a loss of the gray-white differentiation
12 which indicates to me dead brain tissue, and I saw severe
13 fractures.

14 Q Are you aware in, in any of the subjective
15 history of this child whenever you're looking at these
16 scans, would that matter, like stories as to possible
17 mechanisms of the injuries?

18 A My findings and interpretation are based
19 solely on the images.

20 Q Okay, so your observation is objective?

21 A Yes.

22 Q Okay, okay?

23 A Excuse me.

24 Q Sure, now, Dr. Roberts ---

25 The Court: Bobby, could you help Dr. Roberts

Dr. Roberts - Direct Examination by Ms. Lively

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1 with some water; you got it there, Doctor?

2 Ms. Lively: (Continuing)

3 Q Dr. Roberts ---

4 The Court: Do you need the screen down?

5 Ms. Lively: Yes, sir, Your Honor.

6 The Court: Ladies and gentlemen of the jury,
7 we're going to try to operate this PowerPoint with the
8 lights no dimmer than they are now so that you can see the
9 witness. If you have difficulty seeing it or if there's a
10 glare or whatever would you, please, raise your hand and
11 let me know, okay. Can everyone see that fairly clearly?
12 If Ms. Lively will stay out of the way you can, okay, very
13 well.

14 Ms. Lively: Yes, sir, thank you.

15 (Whereupon, Dr. Roberts' PowerPoint presentation
16 is played for the jury.)

17 Ms. Lively: (Continuing)

18 Q Now, Dr. Roberts, you told us that you
19 reviewed the images for [REDACTED], will you, please,
20 tell us what is portrayed in this particular image that
21 we're seeing right here?

22 A Yes, these are pictures from the C.T. scan
23 that was performed at MUSC on July 15th, 2008, and this is
24 a 3-D reconstruction of the bones of the skull of [REDACTED]
25 [REDACTED]. In this picture you see here this big bone in the

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1 front is the frontal bone; these are the eye sockets, and
2 this is the opening for the nose and this line right here
3 that goes from side to side is called the coronal suture
4 and sutures are the places where the bones of the skull
5 come together; and in newborns they're open but as the
6 child gets older they start to fuse together to the solid
7 skull of a normal older child or an adult; and in the case
8 of [REDACTED] because of his age they were not
9 completely fused, however, on the C.T. scans -- if you'll
10 scroll it a little bit, please -- as I scroll around to the
11 side of the head --

12 Q Is that it?

13 A One more, please, however, his sutures are
14 not fused but they were separated unnormally widened and
15 that indicated separation of the bones of the skull, the
16 frontal bone from the two bones on the side of the head
17 called the parietal bones.

18 Q Dr. Roberts, let me stop you right there,
19 what can cause the separation of the suture in the skull?

20 A What can cause it is a traumatic force or
21 else swelling of the brain.

22 Q All right, thank you, all right, and then
23 you've noted the fractures here. Will you explain what,
24 what type of fractures we're seeing here?

25 A Right, so this again here is the coronal

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1 suture and then this bone on the side of the head, the left
2 side of his head, is called the parietal bone and this line
3 here is abnormal. This is a fracture, and if you scroll
4 some more for me, please, as we scroll around, if you could
5 continue to scroll, you can see that the fracture line
6 extends to the back of the head and it separates this
7 parietal bone into multiple pieces.

8 Okay, could you scroll some more, please? As we
9 get around to the back of the head these are also sutures
10 but again where the sutures here come together they're
11 slightly separated.

12 Q And in the images that you actually saw
13 before you made this reconstruction what are those
14 fractures called; what is the technical term for them this
15 side of the head?

16 A The technical term for it is comminuted
17 fracture.

18 Q Okay, and a comminuted fracture just tell
19 the jury what a comminuted fracture is?

20 A It just means that the bone is separated
21 into multiple pieces.

22 Q Okay, and what type of trauma would need to
23 or force would need to be inflicted on a person in order
24 for a comminuted fracture to take place?

25 A It would take severe traumatic force to

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1 create these type of fractures.

2 Q Okay, thank you, if you'll continue.

3 What's the next thing we're looking at?

4 A If you could scroll some more for me,
5 please? As we scroll around to the right side of the head
6 this is right parietal bone -- and if you'll continue to
7 scroll -- and again we see multiple lines going through the
8 right parietal bone which are fractures separating the
9 right parietal bone into multiple pieces.

10 Q And, and once again in regards to these
11 fractures we're seeing on this side of his, his skull would
12 that also require tremendous amount of force?

13 A Yes, it would -- continue to scroll, please
14 -- and again on the right side this is the coronal suture
15 again and you can see separation of the frontal bone from
16 the parietal bone. Can you just scroll?

17 Q And once again these are scans from where?

18 A These scans are from MUSC.

19 Q Okay, now what are we seeing here, Dr.
20 Roberts?

21 A So what we're seeing here are pictures from
22 the C.T. scan that was obtained on [REDACTED] at Conway
23 Hospital on July 14th of 2008.

24 Q And before we get into some of the other
25 pictures, how important was it for you to have the scans of

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1 the patient that were taken immediately upon entry of the
2 E.R.?

3 A It was very important because I was able to
4 see the state of his brain at the time or very close to the
5 time of injury.

6 Q Okay, and, and I know you're going to talk
7 about this, but what was the state of his brain that you
8 observed in those C.T. scans from Conway E.R.

9 A I think the most concerning thing for me
10 was that there was loss of distinction between the white
11 matter that's in the middle part of the brain and the gray
12 matter or the cortex on the outside of the brain.

13 Q Okay, and as a neuro-radiologist and within
14 a reasonable degree of medical certainty was this a
15 critical and grave condition for this child?

16 A It was a condition that I would expect no
17 meaningful recovery.

18 Q Thank you. I'm go to go ahead then.
19 Please explain to us some of the other images that you've
20 provided for the jury?

21 A Okay, this is a side view of the head which
22 was part of that C.T. scan, and I don't know if you can see
23 with the lighting in here, but the fractures can again be
24 seen through the parietal bones, the bones on the side of
25 the head, and the next set of pictures from the C.T. scan

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1 that I'm going to show you are images that start at the top
2 of the head and extend down to the bottom of the head so
3 we're just going to kind of scroll from the top of the head
4 down to the bottom of the head, and I've also included a
5 C.T. scan of a normal seventeen-month-old child just to use
6 as a comparison and that's on the left side and this is the
7 scan of [REDACTED] [REDACTED] on the right side.

8 Q Give me just a minute, let me see if I can
9 mess with the brightness on this just a second?

10 A Candice, I think it might be okay when we
11 scroll further down.

12 Q Okay, I'll just leave it alone then, thank
13 you, Dr. Roberts. All right, continue to explain what it
14 is that we're seeing.

15 A Okay, if you could scroll some down for me,
16 please, a little bit more, please, okay. So we've started
17 at the top and now this is still pretty close to the top
18 and this is a normal for comparison. On this side you can
19 see, and we'll be able to see a little bit better as we
20 scroll down, but there are areas here that are very bright
21 on the scan and you can see it a little bit more on this
22 side than which is the left side than you can see it on the
23 right side and those bright areas represent fresh blood and
24 that's because fresh blood on a C.T. scan is white so, and
25 if you could scroll down. As, as we scroll down you can

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1 continue to see more fresh blood going around the brain.

2 Q Dr. Roberts, let me ask you real quick just
3 to kind of put it in layman's terms, in the normal for
4 comparison brain what are those squiggly looking lines that
5 we're seeing; is that what you're talking about the
6 differentiation of gray-white matter?

7 A It is, and if we could scroll down I
8 actually have, I show that indicate a little bit better.
9 These are, these areas again are indicating the fresh blood
10 around the brain. If you could scroll ---

11 Q I'm sorry, what I was going to ask you is
12 that can you give us your opinion as a neuro-radiologist
13 within a reasonable degree of medical certainty as to
14 whether or not there was any old injury or old blood on his
15 brain?

16 A I wouldn't be able to tell that.

17 Q Okay, all right. So based upon the images
18 that you're looking at right now what did it appear, was it
19 an acute injury meaning a recent injury or an old injury?

20 A This is an acute injury, a recent injury.

21 Q Thank you, okay, if you'll continue,
22 please?

23 A If you could scroll down, continue to
24 scroll down, please, we're again just seeing the blood
25 around the brain. Continue to scroll down, please, okay,

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1 and so I'm not sure it's projecting very well, but in this
2 normal brain here you can see an area that's dark in the
3 center of the brain and that's called the white matter and
4 then outside of that there's an area that's just slightly
5 brighter and that's called the gray matter or cortex.
6 That's the part of our brain that let's us think, let's us
7 feel, let's us talk, see, move, and basically the part of
8 our brain that makes us human and that's the gray matter,
9 and you can see the difference between the white matter and
10 the gray matter in the normal brain. I've kind of got it
11 indicated by a squiggly yellow line, however, in the case
12 of [REDACTED] brain I do, I do not see that
13 differentiation. You can't see a distinction between the
14 gray matter and the white matter. There's, there's that
15 loss of distinction and that to me indicates dead brain
16 tissue and it's a very ominous sign, we call it the big
17 bright brain sign and to me it indicates no chance of
18 meaningful recovery.

19 Q Okay, and once again when was the, what's
20 the date of this particular C.T. scan?

21 A July 14th, 2008.

22 Q And the information you had was this the
23 first scan that was done of [REDACTED]?

24 A Yes. If you could continue to scroll down,
25 please. On this next slide I'm indicating severe brain

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1 swelling and basically if you look at the normal brain you
2 can see that the brain doesn't go, the white part out here
3 is the skull and the brain doesn't go all the way out to
4 the skull. There are infoldings of the brain that you can
5 see but in the case of [REDACTED] [REDACTED] you cannot see that
6 because the brain is so swollen that it extends all the way
7 out to the skull and that indicates severe brain swelling.

8 Q And when a patient has severe brain
9 swelling like that are they, in your experience are they
10 able to walk, eat, breathe, function?

11 A The findings on the C.T. scan would
12 indicate to me that the patient would not be able to walk,
13 eat, function normally.

14 Q All right, thank you, continue?

15 A If you could scroll please, just continue
16 to scroll, again this bright area is blood around the
17 brain, so continue to scroll down, again blood around the
18 brain, and if you could just continue to scroll on down to
19 the bottom, this is basically showing that there's blood
20 around the entire brain.

21 The Court: Do you need the lights back up?

22 Ms. Lively: Yes, sir, Your Honor, please.

23 The Court: Mr. Ropp?

24 Ms. Lively: (Continuing)

25 Q Now, Dr. Roberts, were, have you ever

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1 worked in a hospital where you dealt with pediatric
2 patients?

3 A Yes.

4 Q Okay, and where was that?

5 A I deal with pediatrics patients at the
6 Medical University of South Carolina and I've also served
7 as an attending neuro-radiologist at St. Jude Childrens
8 Hospital.

9 Q Okay, and will you, please, tell the jury
10 typically in a small child at [REDACTED] age what type of
11 fractures, if any, would you expect to see from a fall or
12 bumping of the head?

13 A Well that would depend on the type of fall,
14 if it was a fall from a two or three story window then I
15 would expect to see the type of fractures that I see on the
16 scan of [REDACTED]s. If it was a fall from standing I
17 wouldn't expect to see a fracture at all.

18 Q Okay, to give you a hypothetical if a child
19 were to be knocked down by a large dog or pet could that
20 cause the kind of complex fractures we see in [REDACTED]
21 [REDACTED]?

22 A A fall from standing I would not expect to
23 see a fracture.

24 Q Well, Dr. Roberts, in your experience would
25 you expect to see this type of a fracture if the child were

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1 to fall out of a stroller?

2 A No, I would not.

3 Q Okay, and why is that?

4 A Because these type of fractures indicate to
5 me that it required severe force to create them.

6 Q And you've mentioned, well let me ask you
7 this, when you've seen a patient with these type of complex
8 and severe fractures what is the normal history that would
9 you get in your experience?

10 A The most common indication and where I've
11 seen these type of fractures is in a patient following a
12 motor vehicle accident.

13 Q And you'd already testified regarding the
14 gravity of what you saw from Conway E.R., in your opinion
15 as a neuro-radiologist did he have any chance of recovery
16 from those injuries?

17 A In my opinion he would not have a chance
18 for meaningful recovery.

19 Q Now, Dr. Roberts, one of the things in
20 radiology that you do, well let me ask you, is one of the
21 things you do as a radiologist is to try and determine the
22 timing of fractures and injuries to a particular patient?

23 A Looking at the images I can have an
24 indication of the timing.

25 Q Okay, and, and how can you do that, what do

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1 you look for in regards to radiological exams to, to be
2 able to try and tell whether it's a fresh injury, old
3 injury, healing injury, that type of thing?

4 A I can look at the, the, the, the, what the
5 blood looks like, that gives me an idea of if it's a new or
6 old injury. I can look at the state of the brain and
7 determine if it's a new or old injury and I can look at the
8 fractures and see if there's any evidence of healing.

9 Q And let's talk about the blood. I think
10 you've already testified that within a reasonable degree of
11 medical certainty can you tell this jury whether or not the
12 blood was acute or old?

13 A I can say there's acute blood there; I
14 can't say if there's old blood there or not but there is
15 definitely acute blood there.

16 Q Definitely acute recent blood?

17 A Yes.

18 Q Okay, now let me ask you in regards to the
19 fractures that you saw on the C.T. scan, was there any
20 indication of healing on those fractures?

21 A I saw no indication of healing.

22 Q And in regards to the status of the brain
23 or the appearance of the brain that you saw from July 14th
24 from Conway E.R., based upon the state of the brain that
25 you saw would a person who had this kind of injury be able

Dr. Roberts - Direct Examination by Ms. Lively

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1 to function or would they have been immediately
2 symptomatic?

3 A A person with this type of injury would be
4 immediately severely symptomatic.

5 Q Okay, and will you, please, tell the jury
6 what type of immediate symptoms you would expect to see
7 based upon your experience as a neuro-radiologist?

8 A The type of symptoms I would expect to see
9 is an alteration or loss of consciousness, alteration in
10 breathing, likely seizures, a child would not be able to
11 walk, move, play with toys, eat.

12 Q Would it be possible for their, for the
13 child or patient to foam at the mouth?

14 A Yes.

15 Q What type of seizures would you expect to
16 visually see of that particular patient? Okay, well let me
17 ask you, what type of body movement could you expect to see
18 from a child suffering seizures from a traumatic brain
19 injury?

20 A Well I would say that from the state of the
21 brain I would not see purposeful body movements.

22 Q Okay, and I know in your job as a neuro-
23 radiologist you're very confined in regards to the
24 objectiveness of your opinion; would that be a fair
25 statement?

Dr. Roberts - Direct Examination by Ms. Lively

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1 A Yes.

2 Q Okay, but I, I do need to ask you whether
3 or not you can tell us if it would be reasonable under the
4 circumstances to expect this child could have been injured
5 a day before he showed up at the E.R.?

6 A I don't, in, in my opinion a child with
7 this type of brain injury cannot be functioning normally
8 for any period of time.

9 Q And functioning normally once again was
10 that what you were testifying earlier eating, moving,
11 playing?

12 A Exactly, yes.

13 Q If I provided you with history that he had
14 eaten that day and was up that day and then became
15 symptomatic around 4:00 would that sound reasonable?

16 A I would not ---

17 Ms. Grabert-Lowenstein: I'm going to object
18 that there's facts that aren't in evidence in that
19 hypothetical.

20 Ms. Lively: It's just a hypothetical, Your
21 Honor:

22 The Court: I understand, I'm going to allow it.

23 Ms. Lively: Thank you.

24 Q (Continuing) All right, if I provided you
25 with a history that the child had eaten that day earlier in

Dr. Roberts - Direct Examination by Ms. Lively

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1 the day and had been up that day and then became
2 symptomatic around 4:00 would that seem reasonable?

3 A It would not seem reasonable to me that a
4 child could eat and be up after suffering this type of
5 trauma.

6 Q Okay, so when trauma was inflicted is it
7 your opinion within a reasonable degree of medical
8 certainty that he would have been unconscious, seizing, and
9 critical?

10 A He would have been acutely symptomatic.

11 Q Okay, acutely means immediately?

12 A Immediately, yes.

13 Q Thank you. What do fractures indicate to
14 you in regards to a mechanism of injury; does it have to
15 be, tell me if you know?

16 A I can't tell the mechanism of injury. I
17 can just say that it was some type of severe force.

18 Q Okay, all right, would it indicate that the
19 brain, I mean the skull, had actually come into contact
20 with an object; can you say that?

21 A Yes.

22 Q Okay, and in regards to that with the brain
23 coming into contact with the object, can you tell us or do
24 you feel comfortable telling us in your expertise why there
25 might not be any type of outside indication of impact?

Dr. Roberts - Direct Examination by Ms. Lively

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1 A Sometimes particularly if the force is a
2 blunt force on a wide surface there cannot be, there can be
3 times when there is not external evidence of injury.

4 Q Okay, and what about the particulars of a
5 child's skull, how absorbent is that skull to force?

6 A A child's skull is more compliant than in
7 an adult skull.

8 Q Okay, so would it be, in your experience
9 would it be unusual for there to be no outside indication
10 of an actual traumatic force on the scalp of a child with
11 having these type of fractures?

12 A No.

13 Q No, okay, and once again why is that?

14 A Because at times if a surface, for example,
15 is a large surface and it's a blunt force it can be the
16 potential that there would not be external injury.

17 Q Okay, would the skull absorb that force?

18 A Yes.

19 Q However, what do the fractures indicate?

20 A That even though the skull was compliant
21 the force had to be very severe in order to, to cause it to
22 break into multiple pieces.

23 Q And this force based upon what you saw with
24 [REDACTED] was it on both sides of his head or could you give
25 us that opinion?

Dr. Roberts - Direct Examination by Ms. Lively

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1 A There were fractures on both sides of the
2 head but I can't give an opinion as to what caused them.

3 Q Okay, can you give us your opinion within a
4 reasonable degree of medical certainty as to whether or not
5 you believe the fractures and the subdural hematoma, which
6 is the bleeding on the brain, would have occurred at the
7 same time?

8 A Yes, they both seem to be at the same age.

9 Q Okay, so they're both the same age in your
10 opinion?

11 A Yes.

12 Q Can you tell us or think of any naturally
13 occurring condition that could result in what we saw [REDACTED]
14 suffering from?

15 A No, I cannot.

16 Q Would it be possible in your opinion for
17 the child to have inflicted these injuries on himself?

18 A No.

19 Q When you're presented with a child who
20 doesn't have a history of a motor vehicle accident or
21 falling from a two story building or some other traumatic
22 event what conclusion do you normally come to in your
23 opinion as an expert?

24 A In my opinion that there was some type of
25 severe force that caused this whether it be a motor vehicle

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 424

1 accident, dropped from a two story building, or
2 intentionally applied.

3 Q Okay, but you just don't know; is that
4 correct?

5 A Right.

6 Q Okay --

7 Ms. Lively: One moment, Your Honor?

8 The Court: Certainly.

9 Q (Continuing) And one just to clarify, Dr.
10 Roberts, if you don't mind, do you remember talking about
11 the sutures of a child [REDACTED] age, correct?

12 A Yes.

13 Q All right, now in the images that you
14 showed us there was quite a bit of separation, we discussed
15 that, correct?

16 A Right.

17 Q Now when you see that in a child his age is
18 there any type of normal diagnosis that you expect to see
19 something like that happen with a child since they're not,
20 it's not fused bone yet?

21 A If the brain were to swell for whatever
22 cause that could cause the sutures to separate.

23 Q Okay, but when you're seeing the fractures
24 along with the brain swelling is that a normal occurrence
25 for a child this age for their sutures to be so separated

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 425

1 with all the injury that you saw with him?

2 A To me it just indicates the sutures are
3 separated, could either be due to the force itself that
4 separated them or due to the brain swelling that I also see
5 on the images.

6 Q Okay, but ---

7 A Or both.

8 Q Okay, or both, so it's all inclusive, the
9 force, the fractures, the swelling, all of it could
10 contribute to sutures separating?

11 A Yes.

12 Ms. Lively: Thank you so much, Dr. Roberts,
13 please answer any questions the defense may have.

14 The Court: Ms. Grabert-Lowenstein?

15 Ms. Grabert-Lowenstein: Thank you, Your Honor.

16 Cross Examination

17 By Ms. Grabert-Lowenstein:

18 Q Dr. Roberts, you mentioned that one of the
19 examples where you've seen these types of injuries is
20 children in car accidents and there's a period of time from
21 the time of the accident till they get to the E.R.; would
22 that be an accurate statement?

23 A Yes.

24 Q Okay, and is that when you would first have
25 knowledge of their symptoms?

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 426

1 A Yes.

2 Q Okay, what's the average amount of time
3 that that takes, you know, in terms of transport or when
4 you would have seen those children?

5 A I can give, I cannot give an accurate
6 answer to that question, but I would think that it would
7 happen rather quickly.

8 Q When you say quickly could it be fifteen
9 minutes to a half an hour or to an hour?

10 A I would assume so.

11 Q Okay, and so it would be reasonable to
12 think that if a child was transported by emergency medical
13 personnel at six and was breathing on their own did show
14 other symptoms but that there may have been some period of
15 time before that that the injury occurred? If the injury
16 didn't occur like within fifteen minutes or something like
17 that because they're breathing on their on; would that be
18 accurate?

19 A I'm not sure I understand the question.

20 Q Okay, counsel asked you about 4:00, my
21 question to you is that if the patient is breathing, the
22 child is breathing and breathing on their own at say 6:00
23 then there, there had to have been some period of time
24 before that that injury occurred before those symptoms
25 showed up? Could there have been a period of time say a

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 427

1 half an hour, forty minutes?

2 A Yeah, I think I can't answer, I can't give
3 you an exact time of when, when a patient nba, would stop
4 breathing on their own, you're using that breathing on
5 their own.

6 Q Would you say that within an hour would be
7 a limit to where these injuries could have happened, that
8 they could have happened within that time?

9 A To me these injuries appear to be acute in
10 such that the patient would be acutely symptomatic. I
11 can't give you an exact minute or time period but acutely
12 symptomatic.

13 Q If there was evidence that the child was
14 checked on at about 4:30 and they were sleeping fine then
15 you, if, if the injuries had happened prior to that would
16 you expect symptoms to be seen?

17 A Yes, I would.

18 Q You wouldn't expect the child to just be in
19 there normal so if that's what reported then they wouldn't
20 be normal, the injuries occurred some time after that?

21 A Well if the child was functioning normally
22 I would have expected that the injury occurred after that.

23 Q And functioning normally could mean
24 sleeping normally? I realize it's difficult but is in
25 essence what you're saying is that when you do have a child

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 428

1 that is functioning normally those injuries had to happen
2 some time after they were functioning normally?

3 A Yes, I can say that.

4 Q In your estimation can you give us a time
5 frame that these had to happen during?

6 A I can't give an exact time frame.

7 Q We know they didn't happen the day before?

8 A Yes.

9 Q And likely not say twelve hours before?

10 A If I'm given the history that the child has
11 been eating, moving then I would not expect that they had
12 happened before that.

13 Q So if they had eaten breakfast, had eaten
14 lunch, or put down for a nap, you wouldn't expect that if
15 they had been injured prior to, to that time?

16 A Yes.

17 Q You've already covered this somewhat but
18 can you tell us anything about the mechanism for the
19 injury?

20 A I can't tell the exact mechanism from the
21 images but it would had to have been some type of severe
22 force.

23 Q Okay, could that be like somebody coming up
24 and hitting the child on both sides out of frustration?

25 A If it was a severe force.

Dr. Roberts - Cross Examination by Mr. Galmore

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1 Q And obviously you can't tell us who, you're
2 not, you're not here to answer that part of the equation,
3 are you, Doctor?

4 A No, I'm not.

5 Q Okay --

6 Ms. Grabert-Lowenstein: And if I could have
7 just one moment but I don't believe that I'm going to have
8 any other questions.

9 No further questions.

10 The Court: Mr. Galmore?

11 Mr. Galmore: Thank you, sir.

12 Cross Examination

13 By Mr. Galmore:

14 Q Good morning, Dr. Roberts.

15 A Good morning.

16 Q Is it correct to say that you were brought
17 onto the case as a consultant?

18 A As an expert witness.

19 Q As an expert witness, yes, ma'am, you never
20 actually treated [REDACTED]

21 A No, I did not.

22 Q Okay, but you reviewed the C.T. scans both
23 from Conway Hospital and from MUSC and you reviewed his
24 medical file from Conway Hospital as well as the EMS report
25 and the medical files from MUSC; is that correct?

Dr. Roberts - Cross Examination by Mr. Galtmore

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1 A I did not review the complete file, just
2 some files, I mean some notes, but not the complete file.

3 Q Yes, ma'am, let me ask you about the suture
4 separation. Were the sutures separated by the force or by
5 the swelling?

6 A I wouldn't be able to tell.

7 Q Okay, there was swelling of the brain in
8 this case?

9 A Yes, there was.

10 Q Was there a difference in the amount of
11 swelling from the C.T. scans done at Conway Hospital and
12 the C.T. scan done at MUSC?

13 A There was about the same amount of
14 swelling.

15 Q So there was no increase in swelling
16 overnight or anything like that?

17 A No.

18 Q Can you give us any information about the
19 rate of swelling in this case, how quickly the brain would
20 have swollen?

21 A No.

22 Q I guess I'm trying to figure out is it
23 possible for the swelling on the brain to, well it's
24 possible for it to cause a suture separation; is that
25 correct?

Dr. Roberts - Cross Examination by Mr. Galtore

431

1 A Yes.

2 Q Is it possible for the swelling on the
3 brain to exacerbate the fractures?

4 A The swelling would not cause the fractures.

5 Q No, I did not say cause, said exacerbate?

6 A I'm not sure what you mean by exacerbate.

7 Q Okay, if there was a small fracture and
8 there was swelling could the swelling result in increasing
9 the size of the fracture?

10 A I would not expect it to extend the
11 fracture.

12 Q Okay, but it could cause the suture
13 separation?

14 A Yes.

15 Q Were there any injuries to [REDACTED] neck?

16 A I did not have images of the neck.

17 Q Okay, you can't answer that question?

18 A I cannot.

19 Q Could you tell us if [REDACTED] hit something
20 or had been hit by something?

21 A I couldn't tell.

22 Q Looking at these, at these fractures you're
23 not able to say if perhaps he was impacted into a wall or
24 table or something or if an object hit him such as a two by
25 four?

Dr. Roberts - Cross Examination by Mr. Galtore

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1 A No, I can't.

2 Q You indicated that there was a loss of
3 gray-white differential; is that correct?

4 A Yes.

5 Q Are you able to give the jury a time of
6 injury based on the amount of gray-white differential that
7 you were able to see?

8 A What I can say is that I would not expect a
9 child with this loss of gray-white differentiation to
10 function normally.

11 Q Can you give us any information about the
12 rate of loss of gray-white differential?

13 A On the first C.T. scan that was provided to
14 me from Conway Hospital there was complete loss of gray-
15 white differentiation throughout the upper part of the
16 brain.

17 Q Well I guess the question is how long does
18 it take to reach a point of complete loss?

19 A It can happen, it can happen very quickly;
20 the brain only needs to go a few minutes without oxygen or
21 blood.

22 Q So just looking at the gray-white
23 differential are you able to tell us when at a specific
24 time when these injuries were inflicted?

25 A I can't give a specific time.

Dr. Roberts - Cross Examination by Mr. Galmore

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1 Q Can you give us a general estimate?

2 A I would not expect the child to be
3 functioning normally with loss of gray-white
4 differentiation.

5 Q Well looking at the injuries, the
6 fractures, I think you said that [REDACTED] would have been
7 immediately symptomatic; is that correct?

8 A Yes.

9 Q Based on looking at the fractures are you
10 able to give us an estimate of when these injuries would
11 have occurred?

12 A I can't tell at what time the injuries
13 would have occurred.

14 Q Okay, with the injuries that he received
15 what type of symptoms would he have?

16 A I would expect a child to have some type of
17 altered or loss of consciousness, shallow breathing, not
18 functioning normally, not eating, not playing with their
19 toys, not moving.

20 Q Is it possible that the child might appear
21 to be asleep?

22 A I guess I would need to know if the child
23 was unconscious or asleep.

24 Q Well if the child were unconscious is there
25 anything that a person could, could know by looking at the

Dr. Roberts - Cross Examination by Mr. Galtore

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1 child to tell whether that child was symptomatic or
2 unconscious or asleep?

3 A I think a pediatrician would be able to
4 answer that better.

5 Q Okay, can you tell us how many impacts to
6 the skull took place in this case?

7 A I can't.

8 Q When you looked at the C.T. scans were you
9 able to see any evidence of any old fractures?

10 A I didn't see any evidence of old fractures.

11 Q Could this have been a case where there was
12 perhaps a series of smaller injuries that led to these
13 fractures?

14 A To me it looked like that there was such
15 severe force by the, the, the fact that the fractures were
16 comminuted that it would cause so much injury to the brain
17 that the patient would be acutely symptomatic.

18 Q An acutely means what for the jury again?

19 A Immediate.

20 Q In your medical opinion would it be
21 possible that these injuries would have been inflicted
22 perhaps three days before this child reported to the
23 hospital?

24 A No.

25 Q Would it be possible that these injuries

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 435

1 were inflicted two days before the child reported to the
2 hospital?

3 A No.

4 Q It's your, would it be, is it possible that
5 these injuries were inflicted some time during the day that
6 this child reported to the hospital?

7 A Yes.

8 Q Okay. let me put it in context, I'm not
9 trying to confuse you. If we had testimony that EMS was
10 contacted at 6 p.m. on Monday is it your testimony that
11 these injuries would have had to have occurred some time on
12 Monday?

13 A Yes.

14 Q Could the fractures to the head have been
15 caused by shaking the baby?

16 A No.

17 Q Can you tell us if the fractures to the, to
18 the skull are intentional or accidental?

19 A I can't tell.

20 Q Did the police ask you to go to the home to
21 see if there was any object or surface that could have
22 caused these injuries?

23 A No.

24 Q Did the Solicitor ask you to go to the home
25 to see if there was an object or surface that could have

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 436

1 caused these injuries?

2 A No.

3 Q Did anybody bring you any object to ask you
4 is this object consistent with something that would have
5 caused these injuries?

6 A No.

7 Q So you weren't presented with a two by four
8 and asked is this what did it?

9 A No.

10 Q And you cannot tell us who inflicted these
11 injuries?

12 A No.

13 Mr. Galmore: Thank you very much, Dr. Roberts.

14 The Court: Ms. Lively?

15 Ms. Lively: I wasn't going to redirect unless
16 Ms. Grabert-Lowenstein had questions.

17 The Court: Okay.

18 Ms. Grabert-Lowenstein: I have some cross based
19 on Mr. Galmore's, just briefly.

20 Recross Examination

21 By Ms. Grabert-Lowenstein:

22 Q Doctor, what time was the C.T. scan taken
23 at Conway Medical Center?

24 A I don't recall the time.

25 Q Okay, in terms of if it could have been

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 437

1 caused by the shaking, if that shaking was violent and
2 threw the child into something or where the child was hit
3 into an object could it have caused those injuries?

4 A There had to have been some type of impact.

5 Q And, and that shaking could have caused
6 that?

7 A The impact.

8 Q You can't tell us what initial symptoms
9 would have been shown because you weren't there when he
10 became symptomatic? You can't tell us like what what
11 series of symptoms happened?

12 A I was not there when he was symptomatic.

13 Q Okay, if a child was breathing, sleeping
14 normally, and had functioned normally prior to 4:30 p.m.
15 would it be your testimony that those injuries had to
16 happen some time between then and when he became
17 symptomatic at 6?

18 A My testimony is that the child would have,
19 the forces were so severe that the child would have been
20 acutely or immediately symptomatic.

21 Q You're not saying that they had to have it
22 just absolutely immediately but that it would have been
23 very soon after the injury?

24 A Yes.

25 Q Okay, possible that say half an hour, forty

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 438

1 minutes could have passed?

2 A I can't give an exact time.

3 Ms. Grabert-Lowenstein: Thank you.

4 The Court: Ms. Lively?

5 Ms. Lively: Yes, Your Honor, we've already
6 published the actual PowerPoint to the jury, however, I'd
7 like to have this marked and put in as State's Exhibit
8 Number 38?

9 The Court: What do you have there?

10 Ms. Lively: It's just the print out of the
11 PowerPoint, Your Honor.

12 The Court: All right.

13 Ms. Lively: And like I said the defense was
14 provided prior to ---

15 Mr. Galmore: No objection.

16 Ms. Grabert-Lowenstein: I don't then have an
17 objection. I'd just like to see it again.

18 The Court: All right, without objection. Do
19 you propose to submit that as one exhibit?

20 Ms. Lively: Yes, sir, I think it's easier to do
21 that.

22 The Court: Are they numbered by any chance?

23 Ms. Lively: I'm sorry?

24 The Court: Are they numbered by any chance?

25 Ms. Lively: No, sir, they are not, they're

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1 paper clipped together but we can get a large stapler and
2 put them together for the benefit of the evidence.

3 The Court: How would you like them, Ms. Babb?

4 Madam Court Reporter: Stapled together.

5 The Court: All right, we can have that done
6 during the next break.

7 Ms. Lively: Okay, thank you, Your Honor.

8 Madam Court Reporter: It's Exhibit 56, Your
9 Honor.

10 The Court: Number 56.

11 Ms. Lively: 56, thank you, Your Honor.

12 (Whereupon, State's Exhibit Number 56 marked and
13 entered into evidence.)

14 Ms. Lively: That was all I have for Dr.
15 Roberts, Your Honor, if she may be excused from her
16 subpoena.

17 The Court: Any objection.

18 Mr. Galmore: No, sir.

19 The Court: Any objection?

20 Ms. Grabert-Lowenstein: No, Your Honor.

21 The Court: Dr. Roberts, thank you, you're
22 excused and released from your subpoena.

23 Ms. Lively: The State is going to call Dr.
24 Cynthia Schandl next, Your Honor.

25 Ms. Grabert-Lowenstein: Your Honor, if we could

Dr. Schandl - Direct Examination by Ms. Lively

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1 just have our table put back, take just a moment.

2 The Court: Is this the one where we have the
3 issue?

4 Ms. Lively: Yes, sir.

5 The Court: Okay, well let's let the jury take a
6 quick break and I'll handle that while they're out.

7 Ms. Lively: Yes, sir.

8 (Whereupon, the jury retired to the jury room at
9 11:55 a.m.)

10 Dr. Cynthia Anna Schandl

11 being first duly sworn, testified in camera as follows:

12 Madam Clerk: Please state your full name and
13 spell your last for the Court?

14 The Witness: Cynthia Anna Schandl, s-c-h-a-n-d-
15 l.

16 Direct Examination

17 By Ms. Lively:

18 Q Thank you, Dr. Schandl, what was your
19 involvement in the case of a minor child by the name of
20 [REDACTED] [REDACTED] [REDACTED]?

21 A I was the forensic pathologist. I
22 performed the autopsy after his death.

23 Q Okay, and what date was that done?

24 A The autopsy itself was performed on July
25 19th of 2008.

Dr. Schandl - Direct Examination by Ms. Lively

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1 Q And, Dr. Schandl, as a part of what you do
2 as a pathologist to document injury and signs of possible
3 causes of death or manner of death for a particular
4 patient?

5 A Yes, that's correct.

6 Q Okay, and in your explanation as a
7 pathologist is it sometimes over the head of lay people in
8 understanding what you're describing?

9 A It can be but I, I do my best.

10 Q Okay, and do you have any ways of trying to
11 assist your testimony when describing certain injuries or
12 things that you note in your actual report?

13 A Sure, I do a lot of pointing. I also use
14 sometimes diagrams, sometimes photographs that I've taken
15 during the course of the case, and other materials such as
16 those.

17 Q Okay, is that normal for you to do that in
18 documenting your findings?

19 A Yes, every case that I do I use
20 photographic and diagrammatic documentation.

21 Q And typically, well have you been qualified
22 as an expert in court before?

23 A Yes, ma'am.

24 Q And typically when you're in court and you
25 testify do you use demonstrative evidence, pictures, and

Dr. Schandl - Direct Examination by Ms. Lively

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1 things like that documenting the autopsy to explain to the
2 jury?

3 A Often, not always, but certainly often.

4 Q Okay, and in this particular case involving
5 [REDACTED] [REDACTED] [REDACTED] would it assist you in corroborating
6 your testimony by having the pictures of certain autopsy
7 photos to explain to the jury?

8 A It is much, much easier to show than to
9 make up words for things, yes.

10 Q And in specifically with, with the child
11 [REDACTED] [REDACTED] would you agree that there was no outside
12 injury to the scalp showing, showing what was going on
13 underneath the skin?

14 A Yes, that is true.

15 Q Okay, so in regards to that in order for
16 you to explain what your findings were would it be helpful
17 to you or important to you to be able to actually show the
18 fractures that you saw on this child?

19 A That would be very helpful, yes.

20 Q Okay, do you believe you'd be able to
21 describe for the jury in adequate enough detail to show the
22 level of trauma to this particular child without the
23 pictures?

24 A I could do it but I don't think that it
25 would be very clear, it may not be as clear.

Dr. Schandl - Direct Examination by Ms. Lively

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1 Q Okay, all right. Were his fractures simple
2 linear fractures or were they complex?

3 A They were complex, there were, there were
4 several of them.

5 Q Okay, all right, and, Dr. Schandl, would it
6 matter if these photos were in color or black and white in
7 order for you to show the fractures to the jury?

8 A The fractures, no, but the associated
9 bleeding it's much more easy to describe when there's color
10 because the bleeding would be red as opposed to in black
11 and white it's very difficult to differentiate bleeding
12 from other things, so it depends what I'm trying to show
13 which one would tell the whole picture.

14 Ms. Lively: Okay, and if I may approach, Your
15 Honor, and retrieve those photos?

16 Q (Continuing) And you actually provided to
17 me some photos from the actual autopsy of [REDACTED]; is
18 that correct?

19 A Yes, ma'am.

20 (Whereupon, State's Exhibits Numbers 57, 58, 59,
21 and 60 marked for identification.)

22 Ms. Lively: Let the record reflect, Your Honor,
23 I'm showing defense counsel 57 through 60 marked for
24 State's. I.D. purposes.

25 The Court: Now, Ms. Lively, these are the four,

Dr. Schandl - Direct Examination by Ms. Lively

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1 five photographs that were provided for me at a pretrial,
2 at pretrial motions; is that correct?

3 Ms. Lively: Yes, sir.

4 The Court: And I understand that there are
5 many, many other photographs but you seek only to admit
6 four black and white and one color photograph; is that
7 correct?

8 Ms. Lively: Correct, Your Honor, based upon my
9 conversations with Dr. Schandl, I'm sure she for the record
10 tell the Court I asked her to, please, limit just what she
11 needed to corroborate her testimony to avoid too much
12 graphic.

13 The Court: All right, let's show the
14 photographs to her and have her tell me how that would
15 corroborate.

16 Ms. Lively: Yes, sir, absolutely.

17 Q (Continuing) Dr. Schandl, I'm going to show
18 you what's been marked for State's I.D. 57, 58, 59, and 60
19 --:

20 Ms. Lively: It's actually four photos, Your
21 Honor; I've taken out the colored photos of the skull.

22 Q (Continuing) If you could, please, tell me
23 what you see in State's I.D. 57?

24 A In 57 the picture shows the right side of
25 the head, the skull after the scalp is reflected and it

Dr. Schandl - Direct Examination by Ms. Lively

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1 shows the fractures on the right side of the head.

2 Q And would that photo assist you in your
3 description to the jury as to the severity of the
4 fractures?

5 A Yes, ma'am.

6 The Court: Is there anything unique about these
7 fractures or the positioning or location of the bone
8 fragments that could be shown by that photograph?

9 A Yes, it does show exactly where the
10 fractures are. It provides one possibility for a place of
11 impact that, that could be demonstrated using the
12 photograph, so, yes, it does show anatomically where, where
13 the fracture is.

14 The Court: All right.

15 Ms. Lively: (Continuing)

16 Q And in regards to State's I.D. Number 58
17 could you, please, tell the Court what that photo is of and
18 how it assists you?

19 A Yes, this is similar to 57 except it is now
20 the left side of the head so there are additional fractures
21 on the left side of the head, so while 57 shows the right
22 side of the head and those fractures 58 shows the left side
23 of the head.

24 Q And once again those fractures are those
25 complex comminuted fractures?

Dr. Schandl - Direct Examination by Ms. Lively

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1 A Yes, there's more than one fracture line.

2 Q Okay, and as Your Honor was asking about
3 the other one would it assist you in, well let me ask you
4 this, you came to a conclusion in regards to a cause of
5 death for this child, correct?

6 A Yes.

7 Q And what was that?

8 A It was essentially inflicted, inflicted
9 blunt head trauma.

10 Q Blunt head trauma, okay?

11 A Yes.

12 Q Okay, in order for you to explain to the
13 jury how you reached your conclusion regarding blunt head
14 trauma being the reason this child died, would it assist
15 you to have the, those pictures of the fractures?

16 A Yes, absolutely.

17 Q Okay ---

18 The Court: Is there any other reasonable
19 alternative than the photographs, anything that would rise
20 to the level of the photographs that you could use equally
21 as well?

22 A Not equally but I, I certainly can use
23 diagrams and other devices, again it's not going to be as
24 accurate.

25 The Court: Okay.

Dr. Schandl - Direct Examination by Ms. Lively

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1 Ms. Lively: (Continuing)

2 Q And then, Dr. Schandl, if you would the
3 next photograph, I believe, is Number 59?

4 A Yes, ma'am.

5 Q For I.D., could you tell us what that one
6 shows?

7 A Yes, this is another picture again of the
8 head, in this case we're seeing the head from the top and
9 we're seeing the left sided fractures and the right sided
10 fractures and how they relate to each other.

11 Q Okay, all right, so you can see both of the
12 fractures coming together in that particular photo?

13 A That is correct.

14 Q And once again would that photo help you to
15 explain your conclusions as to blunt force trauma to this
16 child?

17 A Yes, ma'am.

18 Q Okay, and then finally the final picture,
19 which is State's I.D. Number 60, now please tell the Judge
20 and the, and defense why this is important for you in
21 explaining what you saw in this autopsy?

22 A Well this, this shows the bleeding that
23 occurred around the, around the brain in the subdural
24 space, so that is part of the blunt force trauma that the
25 child received so this, this, this picture does demonstrate

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1 that these fractures had an affect inside of the skull, so
2 not just on the bone itself but on the structures inside of
3 the skull.

4 Q And once again when I asked you to try and
5 pick a photo to help you explain your conclusions, well did
6 you have several pictures of the bleeding in the brain?

7 A Yes, there are several.

8 Q Okay, and was this one picture the one you
9 chose to help corroborate your testimony regarding his
10 cause of death?

11 A Yes, this one, this one is sufficient; it
12 shows that the process is bilateral. It shows that there
13 is bleeding and so effect into the head below the level of
14 the bone so, yeah, it is sufficient.

15 Q All right, and would black and white
16 sufficiently help you to describe the bleeding that, that
17 you documented in your autopsy?

18 A It would be much more difficult simply
19 because then I would not be able to differentiate between
20 areas that are actually blood and red and those that are
21 just dark whether they're vasculature or other structures,
22 so it's more difficult to describe blood or hemorrhage with
23 a black and white picture.

24 Ms. Lively: Okay.

25 The Court: Let me ask you something, Doctor?

Dr. Schandl - Direct Examination by Ms. Lively

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1 A Yes?

2 The Court: I've looked at these photographs ---

3 A Yes, sir.

4 The Court: --- and I have seen the C.T. scans
5 and something that in my mind I find significant about the
6 photographs is the photographs seem to show the
7 displacement of the bony segments more so than anything
8 else; is that a significant part of your analysis in this
9 case?

10 A That to my opinion that's more of an
11 affect, a later affect so as the brain, the brain is
12 injured it starts to swell and as the brain swells those
13 parts of the skull begin to displace sort of like the
14 countries on the globe they start to separate from each
15 other so if, if that's the, the consequence that you're
16 suggesting I think that that is an affect sort of a
17 sequella of the trauma, not directly indicative of the
18 traumatic event itself, so it kind of depends how you look
19 at it. The sequella in a head trauma can be the cause of
20 death, the swelling and the changes that occur so from that
21 point of view it can be very important, but it's not
22 necessarily directly related to the traumatic event itself
23 except as it is a consequence later.

24 The Court: Displacement does have its place in
25 your analysis in this case?

Dr. Schandl - Direct Examination by Ms. Lively

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1 A Yes, sir.

2 The Court: Okay, all right.

3 Ms. Lively: Your Honor, just because I want to
4 make sure we don't have to have the jury coming in and out
5 I have studies where she documented the bruising to the
6 child as well which, of course, the defense has had all
7 that information in their custody, and once again it would
8 be the same argument in regards to Dr. Schandl being able
9 to show where she documented injury to the child that we
10 would be seeking to put this in through her so it might be
11 just easier for me to go ahead and address that issue as
12 well.

13 The Court: May I see them?

14 Ms. Lively: Yes, sir.

15 Ms. Grabert-Lowenstein: And I would ask that
16 that issue be addressed now as well, Your Honor, I think
17 counsel is right it would be easier.

18 The Court: I am, what does this photograph
19 show?

20 Ms. Lively: The bruise on his cheek which she
21 documented in her autopsy -- the bruise on his thigh.

22 The Court: I've seen all those.

23 Ms. Lively: Yes, sir.

24 The Court: All right, have you seen these?

25 Mr. Galmore: Yes, sir.

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1 Ms. Grabert-Lowenstein: We've seen them, Your
2 Honor.

3 The Court: All right.

4 Ms. Grabert-Lowenstein: We just need the very
5 specific ones.

6 The Court: Okay, then are you ready for me to
7 hear from them, Ms. Lively?

8 Ms. Lively: Yes, sir, that's fine.

9 The Court: All right, Ms. Grabert-Lowenstein?

10 Ms. Lively: Just one moment, I'm going to allow
11 Brénda to mark it for I.D. at this point.

12 The Court: Okay, and that's a series of how
13 many photos?

14 Ms. Lively: Yes, sir, six.

15 (Whereupon, State's Exhibit Number 61 marked for
16 identification.)

17 Ms. Lively: Okay, this will be State's 61 for
18 I.D.

19 The Court: Let me, let me ask you this, at the
20 time of Ms. Millan's observations do her notes or did her
21 testimony indicate any bruising to the cheek?

22 Ms. Lively: I don't recall that it did.

23 The Court: Okay.

24 Mr. Galmore: Your Honor, I think she said that
25 he had a right hand injury, right thigh, and left thigh,

Dr. Schandl - Cross Ex. by Ms. Grabert-Lowenstein 452

1 and left lower chest.

2 The Court: Okay, all right, let me hear from
3 you, Ms. Grabert-Lowenstein.

4 Ms. Grabert-Lowenstein: Well, Your Honor, my
5 recollection of her testimony was there was no attempt to
6 even describe those bruises. If I could first address the
7 autopsy photos, I'd like to ask the doctor a question.

8 Cross Examination

9 By Ms. Grabert-Lowenstein:

10 Q Doctor, is the blood would show up on a
11 C.T. scan, correct?

12 A It may, depends upon how thick it is and
13 where it is.

14 Q If we had a C.T. scan that showed that
15 blood that would assist you in your presentation, correct?

16 A No, ma'am, I'm not a radiologist and I do
17 not read C.T. scans.

18 Q And we've heard that there were bruises,
19 why would you find it necessary to have pictures of those
20 bruises?

21 Ms. Lively: Your Honor, if I may interrupt for
22 a second, I'm going to withdraw my request to put in the
23 bruising from the autopsy. I'll deal with that through my
24 P.Q. expert Dr. Ann Abel at a later time, that way we can
25 deal with the bruising there.

Dr. Schandl - Cross Ex. by Ms. Grabert-Lowenstein

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1 The Court: Okay.

2 Ms. Lively: We can limit it.

3 Ms. Grabert-Lowenstein: That's fine, Your
4 Honor.

5 Ms. Lively: That might be easier than to, to
6 get into that.

7 The Court: All right, Ms. Grabert-Lowenstein?

8 Ms. Grabert-Lowenstein: Your Honor, then my
9 comments in terms of the pictures I understand the Doctor's
10 comments but I think what she wants to is to be able to
11 present her testimony in the way that's easiest for her.
12 We also have another issue, though, and that is what effect
13 is this is going to have on the jury.

14 As we said when this issue was put over those,
15 those pictures even in black and white this is, this is a
16 dramatic case and they're dramatic. You know you look at
17 those and it's not just seeing the injury. The pooling of
18 the blood in particular we're talking of things may
19 absolutely inflame the jury and, therefore, it becomes more
20 prejudicial than probative. We have seen the PowerPoint;
21 the PowerPoint is going to confirm everything that Dr.
22 Schandl is going to say and, you know, it would be our
23 position on behalf of Mr. Palmer that they should be not
24 admitted because they would inflame the jury and be more
25 prejudicial than probative.

Dr. Schandl - Cross Ex. by Ms. Grabert-Lowenstein

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1 Mr. Galtmore: Yes, sir, Your Honor, we would
2 submit these pictures are also highly prejudicial. First
3 of all the autopsy photos, the black and white photos, are
4 photos taken, taken during the autopsy. One thing that is
5 clear in there is that [REDACTED] scalp is peeled back. You
6 can see where the hair line is and I think that is
7 extremely prejudicial to show to a jury. In addition the
8 pictures give a false impression.

9 Your Honor asked about the displacement and Dr.
10 Schandl testified that the displacement is a result of
11 swelling, so to show the picture it gives the impression
12 that, you know, [REDACTED] is struck and his skull is fractured
13 in little tiny pieces when that's apparently not the
14 result. It seems that the displacement is the result of
15 the swelling.

16 The Court: Don't they help her explain that?

17 Mr. Galtmore: Well the picture gives the wrong
18 impression to the jury is my statement. Furthermore, Your
19 Honor, we believe that the pictures are designed only to
20 inflame the prejudices of the jury. We have had several
21 photos introduced into evidence so far. We've got pictures
22 of [REDACTED] at the pool; we've got pictures of [REDACTED] at the
23 beach. I think the Solicitor even showed a picture of
24 [REDACTED] on a carousel and that coupled with these particular
25 exhibits it seems to me that they're trying to get a

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1 conviction based on, based on sympathy rather than fact and
2 these pictures with [REDACTED] hairline being pulled back it
3 just, it just pulls towards the prejudices rather than the
4 facts and evidence in the case.

5 The Court: All right, the controlling issue as
6 to the admission of any evidence is, is Rule 401 and that's
7 whether it's relevant or not and, of course, I don't think
8 there can be any argument that there is relevancy to these
9 photographs.

10 Now these photographs have been screened, we have
11 all been through the many photographs that the Solicitor
12 has. The Solicitor at my instruction or suggestion has,
13 has presented these photographs in a black and white
14 format.

15 This same issue in a child homicide by child
16 abuse cases was addressed in the Gerald case as recently as
17 2002, I think our Supreme Court, and in that case the Court
18 seemed to focus upon the issue of whether or not these
19 photographs would corroborate the testimony and help the
20 jury understand the testimony and I think that's the key.

21 Do not believe that these photographs violate
22 Rule 403 in that their prejudicial value substantially
23 outweighs their probative value. I think they have
24 significant probative value. For instance, as you said
25 the displacement of the bone fractures or fragments, this

Dr. Schandl - Direct Examination by Ms. Lively

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1 witness can testify as to what would have caused those to
2 move unless in her opinion and give a better picture of
3 what occurred.

4 I think that the State has reduced these
5 photographs to the, the less prejudicial format and they're
6 not being presented for the purposes of arousing any
7 passions or prejudice. I think that they're necessary for
8 the jury to or for this witness to help the jury understand
9 what she is testifying about and I'm going to admit those
10 photographs.

11 Ms. Lively: Thank you, Your Honor.

12 The Court: And as to the photograph showing the
13 blood as this witness says she's not a radiologist and she
14 needs that photograph and it is the color photograph to
15 show the extent of the bleeding on the brain.

16 Ms. Lively: Yes, sir.

17 The Court: All right, I'm going to allow it but
18 we're going to take a quick break.

19 Ms. Lively: Yes, sir.

20 The Court: Before we, well it's almost 12:30.
21 I'm going to send this jury to lunch until a quarter of
22 two, okay, that will give them almost an hour and a half,
23 okay.

24 Ms. Lively: Thank you.

25 The Court: All right, does anybody have any

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1 objections to Ms. Graham telling the jury since they're in
2 their chambers that they're excused for lunch until quarter
3 of two?

4 Ms. Lively: That was going to be my question,
5 so you're not going to bring them back out?

6 The Court: Do you have any problems with that,
7 Ms. Grabert-Lowenstein?

8 Ms. Grabert-Lowenstein: No, Your Honor.

9 The Court: For the Deputy just tell them, that
10 saves us from bringing them in.

11 Ms. Lively: That's fine.

12 The Court: Okay, we'll do that, we're at ease.

13 Ms. Lively: Thank you.

14 (Whereupon, Court was recessed for lunch and the
15 following takes place on the record after the lunch
16 recess.)

17 The Court: Bring the jury in.

18 (Whereupon, State's Exhibit Number 62 marked for
19 identification.)

20 (Whereupon, the jury returns to the courtroom at
21 1:42 p.m.)

22 The Court: All right, if you would swear
23 Dr. Schandl.

24 Dr. Cynthia Anna Schandl

25 being first duly sworn, testified as follows:

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1 Madam Clerk: Please state your full name and
2 spell your last name for the Court?

3 The Witness: Cynthia Anna Schandl, s-c-h-a-n-d-
4 l

5 Direct Examination

6 By Ms. Lively:

7 Q Dr. Schandl, where are you currently
8 employed?

9 A I'm employed at the Medical University of
10 South Carolina in Charleston, South Carolina, in the
11 Department of Pathology and Laboratory Medicine, the
12 Medical and Forensic Autopsy Section.

13 Q Okay, and, and what is your formal title?

14 A I am a forensic pathologist and associate
15 professor.

16 Q And how long have you been a forensic
17 pathologist, Dr. Schandl?

18 A I've been employed on faculty as a forensic
19 pathologist since 2004.

20 Q How many autopsies have you performed since
21 2004?

22 A Over two thousand.

23 Q And, please, describe to the jury exactly
24 what pathology means?

25 A Pathology the word means the study of death

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1 so ology for the study of and path as of death of disease
2 and in that death and disease processes includes injuries,
3 includes natural disease processes. It's a whole range of
4 things, so in order to become a pathologist one first
5 trains to become a doctor so you go through medical school.
6 After you've done your bachelor's degree you go through
7 medical school to train to be a doctor, and then after
8 getting your medical degree you go on to train in the field
9 of pathology; so again the study of death and disease,
10 which I did my training at the Medical University of South
11 Carolina and that training, the further training after
12 medical school is called a residency;, and I trained in
13 anatomic pathology and clinical pathology which are two
14 different main branches of pathology. There's a lot of
15 overlap but basically covering the range again of. of
16 disease processes. and also during my training I did an
17 additional year which is called a fellowship year in
18 specifically the field of forensic pathology; and following
19 all of those training years there are board examinations by
20 the American Board of Pathology in those areas of pathology
21 that one is trained; so I have taken and passed board
22 examinations through that body, the American Board of
23 Pathology in anatomic pathology, clinical pathology, and
24 forensic pathology.

25 Q Okay, so you're board certified in all

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1 three of those areas of pathology?

2 A Yes, ma'am.

3 Q Okay, and is that certification still
4 current and you're still actively practicing as a
5 pathologist; is that correct?

6 A Yes, ma'am.

7 Q All right, now, Dr. Schandl, all of those
8 things that you were just now discussing basically
9 describes your educational background as well as your hands
10 on experience in pathology; is that correct?

11 A Yes.

12 Ms. Lively: Okay, Your Honor, at this time the
13 State would offer Dr. Cynthia Schandl as a, an expert in
14 forensic pathology?

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: No opposition, Your
17 Honor, on behalf of Mr. Palmer.

18 Mr. Galmore: No objection, Your Honor.

19 The Court: All right, very well, she's so
20 admitted.

21 Ms. Lively: Thank you, Your Honor, thank you.

22 Q (Continuing) Now, Dr. Schandl, were you
23 working at, in your field of forensic pathology in the, at
24 MUSC on or about July of 2008?

25 A Yes, ma'am.

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1 Q Okay, and did you have an opportunity to
2 come into contact with, well let me back up, how do you get
3 a particular case assigned to you; how does that happen?

4 A So there are several forensic pathologists
5 that work in the section. We take turns basically what we
6 call on service, so whoever is on service for that day or
7 that week will be contacted by the different county
8 coroner, so since the State of South Carolina has a coroner
9 system in most areas it is the county coroner who
10 determines in their locality, their place, which
11 individuals and which cases need to come to us for an
12 autopsy; so the cases are referred to us from counties all
13 over South Carolina. The coroner will generally call us
14 and let us know what information they have about the case
15 and let us know that, that we're going to have a case, so
16 that's how cases are referred to us and as far as who's on
17 service that day that just depends on, on our schedule
18 which is revolving.

19 Q Okay, and were you contacted regarding the
20 need for an autopsy to be performed on a child back in July
21 of 2008?

22 A Yes, ma'am.

23 Q And who was it that actually contacted you,
24 which coroner; do you recall?

25 A I have the paper work in front of me, I can

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1 certainly check.

2 Q Okay?

3 A This case was referred to us by Mr. Robert
4 Edge, the Horry County Coroner.

5 Q Now when, when the coroner contacts you
6 what type of information is normally relayed regarding the
7 need for the autopsy?

8 A Well some of the information surrounding
9 the circumstances, whatever might be known at the time.
10 It's always an ongoing investigation when we're getting the
11 case, or not always but often; so we have what is called an
12 information form that sort of directs us to take down the
13 information that we're going to need including their name,
14 the date of birth, the date and time of death, any
15 circumstances again that they're aware of surrounding the
16 death; so those are the kinds of information that we, we
17 get from the coroner, when they know that information.

18 Q Okay, and did some of that, you say
19 sometimes it's during an ongoing investigation, is
20 sometimes the information provided to you given to you in a
21 very general form as in we believe this or so far we know
22 this?

23 A Yes, ma'am.

24 Q Okay, all right, and forensic pathology
25 what is your goal in regards to going in during the

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1 autopsy, what kind conclusion are you attempting to reach?

2 A Well it's going to depend on the type of
3 case, but overall in every case our goal is to determine
4 the cause of death, so did the person die because they had
5 a heart attack or did the person die because they were
6 shot, that's cause of death, and in addition to that we
7 also try to determine a manner of death.

8 The manner of death is one of five things in our
9 state. It can be homicide, suicide, accident,
10 undetermined, or natural, so those are our five choices; so
11 that's the other main component that we are tasked with.
12 Depending upon the type of case we're also trying to
13 document injuries, document disease processes. In some
14 cases we're trying to determine identification, so it
15 really depends upon the case. But, but the, the bottom
16 line is that we're trying to determine the cause of death
17 and the manner of death.

18 Q Okay, and do you, how objective is your
19 perspective on how you look at the body as it's presented
20 to you?

21 A Well the objectivity comes from the fact
22 that basically we're dealing with, with factual information
23 so regardless of what we are told on the front end of the
24 case I, I have to come to the case just to look at the case
25 itself. So the way that, that an autopsy flows after the

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1 case is referred to us the, the body is brought up to the
2 autopsy suite, initial photographs are taken how that body
3 comes to us, so whether they're dressed or undressed we, we
4 capture that.

5 At that point the clothing, if there is clothing,
6 will come off, and then we capture what's called the
7 external examination where we're looking at identifying
8 features, how tall the person is, how much they weigh, do
9 they have scars, do they have tatoos, what's the color of
10 their hair, their eyes, those sorts of things, are there
11 any signs of injury to the outside of the body, to the
12 skin, to anything else that we can see externally; so
13 that's another part of the autopsy and we are, yes, we're
14 also documenting that photographically and on diagrams so
15 as I go it's sort of a layer by layer approach.

16 Q Okay, and was this approach used in regards
17 to the autopsy of [REDACTED] [REDACTED] [REDACTED]?

18 A Yes, ma'am.

19 Q Okay, and. Dr. Schandl, will you, please,
20 tell the jury what day you actually performed the autopsy
21 on this child?

22 A Yes, the autopsy was performed on July 19th
23 of 2008.

24 Q And other than the information that, that
25 the Coroner Robert Edge provided to you what other records,

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1 if any, did you review prior to beginning the autopsy?

2 A I can't tell you exactly what I reviewed
3 prior to the autopsy because I don't remember, but the
4 child was, was an MUSC patient before he died and I do have
5 access to those records, at least what is available at that
6 time. They have most of them electronically so I presume
7 that I was able to review those records prior to, to
8 looking at the body.

9 Q Okay, now you, you just basically started
10 to describe to the jury where you start in regards to an
11 autopsy, will you, please, describe to the jury in regards
12 to the specifics with [REDACTED] did you begin with an
13 external observation of any particular things that you
14 might notice or injuries that you might document in this
15 particular case?

16 A Sure, so in looking at, at this child,
17 [REDACTED] [REDACTED] [REDACTED] is how I have his name in my file, he
18 had several bruises to different parts of the body so those
19 are things again that I'm seeing outside; so I, I make a
20 document of those before we do touch the body in any other
21 way, so there were several bruises to the shoulder, to the
22 legs. There was nothing, no cuts to the body. There were
23 no, there was no broken skin what we might call
24 lacerations; so like for example if you hit a cantaloupe
25 with a, with a hammer you're going to break the skin of

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1 that cantaloupe, there was, there were no findings like
2 that on this child on the external examination, so just,
3 just some bruising here and there.

4 Q And, and, and in regards to the bruising
5 how was that documented for a record in this particular
6 case?

7 A In my cases I like to document in, in at
8 least two different ways and in this one as well by
9 photographs; so taking photographs of, of the child,
10 overall photographs as well as some more close up
11 photographs of bruises and other things that I'm seeing,
12 and in addition to photographs I also draw them on what we
13 call a body diagram which is just a little tracing in this
14 case of a small child and then I put a little circle here
15 for what might be a bruise and I'll mark it and measure it
16 and put the measurements down, so a diagram and pictures.

17 Q Okay, and did you, once again you did that
18 in this particular case as well?

19 A Yes.

20 Ms. Lively: And may I approach, Your Honor?

21 The Court: Yes.

22 Ms. Lively: (Continuing)

23 Q I'm going to show you what's been marked
24 for I.D. State's Exhibit Number 62 --

25 Ms. Lively: Let me show it to defense counsel

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1 first.

2 Q (Continuing) All right, I'm going to hand
3 you now what's State's I.D. Number 62 and ask you if you
4 recognize those two pages?

5 A The, yes, I do.

6 Q Okay, is that, are those two pages the
7 diagrams that you documented certain findings you had on
8 the decedent [REDACTED] [REDACTED]?

9 A Yes, they're photocopies of those.

10 Q Okay --

11 Ms. Lively: Your Honor, at this time the State
12 would move to introduce 62 into evidence?

13 Ms. Grabert-Lowenstein: No objection on behalf
14 of Mr. Palmer.

15 Mr. Galmore: No objection; Your Honor.

16 The Court: Without objection.

17 Ms. Lively: Okay, thank you, Your Honor.

18 (Whereupon, State's Exhibit Number 62 entered
19 into evidence.)

20 Ms. Lively: (Continuing)

21 Q Now, Dr. Schandl, just, I won't get into
22 your findings on the second page yet, but just to go ahead
23 and state what is the second page documenting?

24 A The second page that I have here is, shows
25 the surface of the brain from different perspectives.

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1 Q Okay, and once again that's where you
2 documented your findings related to that particular organ;
3 is that right?

4 A That's correct.

5 Q Okay, now you already testified that on the
6 outside you looked for things that you're documenting such
7 as injury or lacerations and that type of thing, correct?

8 A Yes.

9 Q And after you've done all of that on the
10 external examination of the body then tell the jury what
11 your next step is?

12 A So after the external examination we go to
13 what people commonly consider the autopsy which is the
14 internal examination where we go beneath the skin and look
15 at the organs and tissues underneath; so during this
16 examination we're going to look at, in this case it's a
17 little bit different because he was an organ donor so some
18 of his organs went to other people, but generally speaking
19 we're going to look at each organ looking for any kind of
20 injury, any kind of disease process both with our eyes so
21 looking at the organ itself; and then cutting it to look at
22 it more closely and then also taking sections, what we call
23 sections, to look at under the microscope so that we can
24 also see if there are any disease processes that we're not
25 seeing with our eyes that would be smaller than we can see

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1 with our eyes so looking in the microscope, so all those
2 different components we do with each organ system and that
3 would include the brain and in people who haven't donated
4 organs the heart, the lungs, and all the organs.

5 Q Does the ---

6 Ms. Grabert-Lowenstein: Your Honor, I'm sorry,
7 I don't mean to interrupt, counsel, but could we approach,
8 we need to put something on the record.

9 (Whereupon, a bench conference was held off the
10 record in the presence of the jury, but out of the hearing
11 of the jury and the court reporter.)

12 The Court: Take the jury out.

13 (Whereupon, the jury exits the court room at 1:55
14 p.m.)

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: Your Honor, I just feel
17 like we need to put on the record the juror who is our
18 foreman was dozing at the very least and during probably
19 the entirety of Dr. Schandl's testimony. I'm just
20 concerned we need to put that on the record to see if
21 there's an issue or if he's made aware of it then, you
22 know, if he can stay awake, but I felt like I needed to, to
23 put that on the record and have it documented.

24 The Court: What do you suggest?

25 Ms. Grabert-Lowenstein: I'm sorry?

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1 The Court: Are you asking for any type of
2 relief?

3 Ms. Grabert-Lowenstein: Your Honor, if, what I
4 would ask if we, if we note it again that we ask him if
5 there's a medical issue or something. I can understand
6 it's after lunch and all of that but we need a jury that is
7 listening to all the testimony and I didn't want to get
8 like, you know, thirty minutes into it and have him still
9 be dozing, that's our concern so I think what, if I could
10 ask the Court to watch it and if we need to make him aware
11 of it then take action at that point would be my
12 suggestion.

13 The Court: My concern is bringing it to his
14 attention now and that points a finger back at you.

15 Ms. Grabert-Lowenstein: And I, well and, Your
16 Honor, I don't, I don't want that done. I need to protect
17 my client, that's my I'm ---

18 The Court: That's what I'm doing.

19 Ms. Grabert-Lowenstein: Right.

20 The Court: And we have just started this
21 testimony, in fact we haven't even gotten into any
22 findings. I didn't notice if the juror was or not, I was
23 paying attention to Dr. Schandl. He was in my general
24 peripheral view but I did not notice. I usually watch
25 jurors for that purpose. Let me hear from the State.

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1 Ms. Cote: Your Honor, I actually noticed that
2 he was dozing as well. It caught my attention because I
3 thought he was taking notes because he appeared to be
4 looking down and so I began watching him. His head was
5 down for a good portion of Dr. Schandl's testimony. He
6 appeared to be waking himself up but he was the only one.
7 All the other jurors appeared to be fully paying attention
8 to her testimony but he was definitely in and out as far
9 as that's how it appeared to me, but I hadn't noticed it
10 before this witness.

11 Ms. Grabert-Lowenstein: I hadn't noticed it
12 either. If we could just watch it, Your Honor, and then
13 maybe bring it to his attention.

14 The Court: Well perhaps going in and out will
15 refresh the jury, we will keep an eye towards that. If it
16 develops I will, I would not have any choice but to remove
17 him; is that what you want me to do at this juncture?

18 Ms. Grabert-Lowenstein: It's not what I want
19 you to do at this juncture, Your Honor. I just want us to
20 watch it and I appreciate you letting it, you know, letting
21 us put it on the record bringing it to your attention and
22 watching it. I think that would be sufficient.

23 The Court: All right, we will, I'm just a
24 little fearful that if we come in and question the juror
25 about it we may be pointing a finger at you.

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1 Ms. Grabert-Lowenstein: I agree, Your Honor.

2 The Court: So perhaps we'll see if this issue
3 resolves itself, okay.

4 Ms. Grabert-Lowenstein: Thank you, Your Honor.

5 The Court: You think that's the best way to
6 handle it, Ms. --

7 Ms. Grabert-Lowenstein: I think it is, Your
8 Honor, I really do.

9 The Court: Mr. Galmore?

10 Mr. Galmore: Yes, sir, Your Honor, I think it's
11 probably best just to monitor the jurors in general to see
12 if it happens again.

13 The Court: All right, and, and I'm, the reason
14 I'm willing to do that is because Dr. Schandl is just
15 getting cranked up. She's basically given her, her
16 qualifications and is developing her methodology but she
17 hasn't gotten into any of her findings and let's, let's
18 just see what, what happens, okay.

19 Ms. Lively: Yes, sir.

20 (Whereupon, the jury returns to the courtroom at
21 2:04 p.m.)

22 The Court: I'm sorry, we had to take a little
23 quick break. I would admonish you all that this is very
24 important testimony, as is every person who testifies in
25 this court, please try to remain alert and attentive to

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1 this witness and all other witnesses.

2 Ms. Lively: (Continuing)

3 Q Thank you, Your Honor. Now once I think we
4 had talked about the external information that you
5 documented regarding [REDACTED] [REDACTED] and then you were moving
6 on into the internal organs. What I was about to ask you
7 was you mentioned that the child had been an organ donor,
8 does that in any way affect your ability to still do what's
9 required of you as a forensic pathologist?

10 A In this case, no, no, ma'am.

11 Q And why is that?

12 A Well in this case this child was in
13 hospital for a time before he died and in this case
14 injuries were documented clinically before he died and
15 again in this case it was very clear that injuries
16 clinically were only to the head and not to the rest of the
17 body.

18 In addition in all cases that come to us after
19 organ donation organs will not be taken if they have any
20 damage to them, so all of those things put together make me
21 very confident that this child having been an organ donor
22 was not in any way detrimental to my examination.

23 Q Okay, so tell the jury, please, where you
24 start in regards to the internal autopsy?

25 A Generally we start at the chest and then

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1 the abdomen which is what we did in this case. Again since
2 this little boy was an organ donor some of the organs were,
3 were missing at the time of the autopsy, was able to
4 examine his lungs. I was able to examine his prostate and
5 his testes and his gastrointestinal tract, his thyroid, and
6 his brain. Those were the main organs that I was able to
7 look at.

8 Q And before we get to above his neck, okay,
9 before we get to the brain, will you, please, tell this
10 jury whether or not you had any findings regarding those
11 other body parts or internally that was abnormal or
12 concerning to you?

13 A There was, was no evidence of any, any
14 significant injury below the neck. The, when the, when I
15 weighed the lungs they seemed a little bit heavy and after
16 further analysis it did turn out that he had just a little
17 bit of an infection in his lungs, which I find not abnormal
18 at all, not abnormal whatsoever in an individual who is on
19 life support. An individual is on their back in a, in a
20 position that puts them at risk to get a pneumonia so I did
21 not find that abnormal; it's just another finding that I
22 had, but otherwise, no, ma'am.

23 Q Okay, and you're required to document all
24 your findings whether they're, you believe them to be
25 injury, disease, or an artifact that may be being kept

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1 alive?

2 A Yes, yes, I consider that part of my job.

3 Q Okay, thank you, now, Dr. Schandl, moving
4 above now from the neck and above, please tell the jury how
5 handle that part of your examination of the, of the child's
6 head?

7 A So the first again is the external exam,
8 which we've already gone over, and I mentioned that I
9 didn't see anything on the surface of the scalp to lead me
10 to any sort of conclusions; so at that point we have to
11 look beneath the skin and in order to do that we have to
12 what we call reflect the scalp, which is the skin covering
13 the skull, reflect the scalp forward so that we can see the
14 bone underneath, and so that's what we did in this case and
15 what we do in every case that we're doing a complete
16 autopsy on when we're looking at the head and the brain, so
17 the first thing that we do is to then reflect the scalp.

18 We'll look at the scalp, the underside of the
19 scalp, as well as the surface of the skull for any
20 injuries. In this case there was very patchy light
21 bleeding around those structures covering the skull but
22 much more striking was the fact that there were fractures
23 to the skull and these fractures extended on both sides of
24 the head in this side of, this area of the skull on both
25 sides of the head which we call the parietal skull so the

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1 left parietal skull and the right parietal skull.

2 In addition looking at the surface of the skull
3 so we have a little bit of bleeding, we have these
4 fractures. What we're also seeing is when a child is, is,
5 is as small as this one is the bones of the skull are not
6 used, so there's several different bones that make up your
7 skull, and as you get older the bones fuse together so it
8 becomes one bone, but anyone who's touched a baby's head
9 they know that they have soft spots and so those are
10 marking the places in between the bones of the skull so
11 babies and toddlers they have these various bones are still
12 separate; so the other thing that I saw when I was looking
13 at the surface of the skull was that the skull itself
14 appeared to be somewhat enlarged. If you think of a
15 balloon getting bigger enlarged in that way, so the skull
16 was enlarging in this way and those areas where those bones
17 go together were starting to separate, so this was telling
18 me at least superficially looking just again at the surface
19 of the skull, that I have blunt force trauma to both sides
20 of the head, cause I have fractures on both sides, and is
21 telling me that there has been some swelling of the brain
22 between the time of the injury and when I'm seeing the
23 child, so those are the things that I saw again looking
24 externally at the surface of the skull.

25 Q And in regards to externally you've done a

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1 really good job describing it but is there; did you
2 document and do you have any pictures with you that would
3 help the jury to understand exactly what you're trying to
4 explain to them in regards to the way the skull looked to
5 you?

6 A Yes, just like every other part of the
7 autopsy I'll diagram the find, if there are any, findings
8 on, on the surface of the skull and the scalp, both by
9 diagram and by photography, so, so that, that was also done
10 in this case.

11 Q And would that assist you, Dr. Schandl?

12 A Yes, ma'am.

13 Ms. Lively: If I may approach, Your Honor?

14 The Court: Yes.

15 Ms. Lively: Your Honor, may I ask that the
16 witness be allowed to step down. I'll make sure she stands
17 in front of the microphone ---

18 The Court: Yes, please.

19 Ms. Lively: --- for the court reporter. Will
20 you step down, please, Dr. Schandl?

21 Q (Continuing) And I'm going to hand you
22 what's been marked and is in evidence as State's Exhibits
23 57, 58, and 59, and if you would, please, if you'll step
24 here to the microphone and I know this is, and they're in -
25 --

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1 Mr. Galmore: Your Honor, for the record I want
2 to renew our previous objection.

3 The Court: Correct.

4 Ms. Grabert-Lowenstein: I'll join that for the
5 record.

6 The Court: Noted.

7 Ms. Lively: Thank you, Your Honor.

8 Q (Continuing) Now, Dr. Schandl, if you
9 would, please, publish the, or show to the jury, Number 57
10 and, and describe to the jury what it is reflected on that
11 particular photo? If you want me to hold the other two
12 while you do that I'll do that, that might help you?

13 A Okay, so what I, what I have is a black and
14 white photograph as opposed to a color photograph of the
15 right side of, of the child's head. Again we're looking at
16 the head, the surface of the skull, so the, the scalp has
17 been reflected and what you see in this picture is the
18 surface of the skull, and may I publish?

19 Q Yes, please.

20 A So, so this is again the right side of the
21 head on this side and this is the middle of the, of the
22 head. Here's the middle, this is the right side. These
23 lines here are the fracture on the right side. As you can
24 see there it is extending outward.

25 Q If you could back up just a tad?

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1 A Sorry.

2 Q Some of the jurors on this side might have
3 a little bit of trouble seeing, okay?

4 A And if you like I can go over there and
5 then come back over here and we'll dance; so basically
6 we've got these lines which shouldn't be here. These are
7 the fracture ones and then these lines, these sort of
8 squiggly lines, these lines are the sutures that we were
9 talking about. Those are the lines that are supposed to be
10 there because they're marking between the different bones
11 of the skull, okay, so these are the fractures, that's the
12 trauma. These thingies here, these are not fractures, this
13 is just these suture lines, what they called the suture
14 lines between the different bones of the skull.

15 So this again the right side of the head these
16 lines show the fractures and then these one, there are not
17 fractures, these are what they call the suture lines
18 between the different bones of the skull.

19 The other thing that you can begin to appreciate,
20 and I think we have another picture a little bit better, is
21 as you can see there's a little bit of space going on
22 between these bones of the head, so that's the suture
23 lines, you're starting to see a little bit of that opening
24 of that little bit of space that I was describing earlier;
25 so again at the suture lines, particularly this one here,

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1 you can start to see a little bit of opening there, a
2 little bit of stretching of that suture line between the
3 bones, but again those are not fractures. This is, this is
4 the fracture on the right.

5 Q And which one would you like to show next?
6 Okay, now she's showing Number 59 which is in evidence?

7 A This is another, it's a similar picture.
8 This one, however, is, is from a different angle where you
9 can see how this, the fracture, so this is the one we were
10 looking at on the right side, and this is the one on the
11 left side; so we have fractures running this way on the
12 left side, again parietal bone, parietal bone, left and
13 right fractures and this shows better those suture lines
14 that are meant to be there. Those are okay, and then again
15 these are the fractures.

16 So these are the ones we saw on the last picture
17 on the right side, these are the fractures on the right,
18 fractures on the left and then again the suture line which
19 are not fractures.

20 Q Thank you, Dr. Schandl, and then State's
21 Exhibit Number 58 which is this the other side of the
22 skull?

23 A That's correct, this is the other side of
24 the skull. So again a very similar picture but now we're
25 looking at the left side of the skull and you can

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1 appreciate how this fracture goes this way and this way and
2 that way. You can get that idea that this suture line is
3 starting to open up a little where, you know, where the
4 bones are coming together and starting to separate a little
5 bit, which I believe is due to swelling of the brain as
6 it's taking up more space in the head, and again over on
7 the left side of the head, left parietal fracture, and then
8 you can again see the suture line where it's just a normal
9 suture except perhaps a little bit stretched as if from
10 swelling.

11 Q Thank you so much, you can have a seat, Dr.
12 Schandl.

13 Based on those photos and the documentation
14 that you made of those fractures are you able to tell us
15 within a reasonable degree of medical certainty if there
16 were one or more impact sites?

17 A There are always more possibility so I
18 cannot tell you with a reasonable degree of medical
19 certainty whether this was one really big hit or
20 compression or whether it was a hit on the left and a hit
21 on the right, both of them are certainly possible.

22 Q Okay, how about within a reasonable degree
23 of medical certainty can you tell us the type of force or
24 the level of force that it would take to inflict such an
25 injury or such injuries to the skull?

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1 A No, not in like in pound, feet or something
2 like that, no, not really, I mean every child's skull is,
3 is different. They are more compressible than an adult
4 skull so then you may need more, more, more pressure than
5 you would otherwise. There are just way too many variables
6 to give you a number plus we have such a complex fracture
7 pattern that again we're not sure if is it two hits, one on
8 the left and one on the right or is it some kind of a
9 complex one hit thing that, you know, you can't quite get
10 your head around but it's possible that there was one big
11 hit that caused all those fractures, so, so, no, I can't
12 give you that information.

13 Q Okay, and that's fair, and one of the
14 things I was going to ask you in regards to you saying that
15 the, how the child's skull is different, would that help to
16 explain why there would not be any outside lacerations or
17 contusions because of the way that the child's skull
18 absorbs force?

19 A Yes, that, that's certainly one, one of the
20 reasons so if you hit something that's soft it's not going
21 to show as much trauma on the outside as if you hit
22 something that's very hard, and I think that's what she's
23 trying to get at. The, the other thing to consider is that
24 I don't know how large of a surface was, was involved in,
25 in the trauma or how small of a surface. If it's a larger

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1 surface that, that impacted the head then that energy or
2 that power is spread out over more distance and so you're
3 less likely to show something on the skin, and that
4 combined with the fact that the child's skull is more
5 compressible than mine or yours and so we have a softer, a
6 softer thing that's being hit, possibly a larger area of
7 something that is hitting those two things together can
8 play a role in whether or not we actually see something on
9 the skin.

10 Q Okay, were the type of fractures that you
11 saw in [REDACTED] skull, and you've named it comminuted
12 fractures, is it different than a linear fracture or
13 something maybe just like one small fracture; how is that
14 different whenever you're making your findings?

15 A Well when, when you're looking at, at
16 fractures it really is what it looks like, so if you have
17 one small fracture that's linear it's much less likely that
18 the force that caused that is going to cause as much damage
19 to the brain. We're worried about the brain, not the skull
20 so much. The skull, you know, is there to protect the
21 brain, so if we have one little tiny linear skull fracture
22 we're less worried about the effect on the brain as if we
23 have multiple fractures in different areas of the head.
24 We're much more worried about, okay, well we have all these
25 fractures now we're worried something is going to happen to

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1 the brain; and so that's really what the difference is, is
2 how much chance is there that that trauma to the skull,
3 which is where we're seeing all the trauma, is impacting
4 the health of the brain and that's really the question.

5 Q Okay, and so after taking all that into
6 consideration and in trying to come up with your finding,
7 excuse me, were you able to, to look at the skull and the
8 internal brain to determine whether the injuries occurred
9 at the same time or if there were any old injuries to the
10 head?

11 A To a degree, yes.

12 Q Okay, and can you tell it within a
13 reasonable degree of medical certainty?

14 A Yeah, well, well within a range of time,
15 yes.

16 Q Okay, and what would that opinion be
17 regarding the injury, the skull fractures and the swelling
18 and blood on the brain?

19 A It appears that all of that damage occurred
20 within a week. There are several things that are going on
21 that I'm looking at including how much bleeding is on the
22 brain? How much, is it stuck to the, to the side, what
23 does it look like under the microscope, is there any
24 healing of the bone? I mean, there are number of different
25 things that go into that opinion but and put them, putting

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1 them all together it really looks like this injury took
2 place somewhere between three days and a week from when I
3 saw, when I saw him.

4 Q Okay, and let's be clear, what day did you
5 see him?

6 A I saw him on, on the 19th of July and what
7 I mean by when I saw him is at the time of his death and to
8 me that's the time after organ donation, so we have lots of
9 different times of death floating around. There's the time
10 of brain death but he was kept alive after that time, so
11 then we also have the time of organ procurement and that
12 is, is basically the time that I'm referring to as the time
13 that I see him, so his actual time of death when he no
14 longer has circulation, he no longer has oxygen to his
15 parts and all body activities cease. We can expect that as
16 long as he's kept alive on machines that there will be some
17 degree, perhaps not as rapid as somebody in full health,
18 but some degree of change, some degree of attempt to heal
19 as long as the person is kept alive; so that's sort of the
20 window that I have to look at is the actual time of death
21 when, when his body functions ceased, which is the time of
22 organ donation, for, for my, my estimations of when this
23 injury occurred.

24 Q Okay, and in all fairness is this one of
25 the things that you and I have gone back and forth about

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1 regarding timing as well?

2 A It is.

3 Q Okay, and you actually have on the autopsy
4 report what is the official recorded time of death, date
5 and time?

6 A Yes, the official date and time of death is
7 July 16, 2008, at 3:25 p.m.

8 Q And do you have it documented in your
9 autopsy the date when his organs were procured?

10 A I do not believe that I have that date and
11 time in my report, however, it was on July 18th, some time
12 during the day of July 18th.

13 Q And that would have been the day when the
14 blood flow and circulation and everything and the oxygen
15 flow would have ceased?

16 A That's correct.

17 Q Okay, now, Dr. Schandl, in regards to the
18 findings that you have to come up with in your forensic
19 examination of the body were you able to come up with, and
20 I know you have and that's why I'm asking, within a
21 reasonable degree of medical certainty were you able to
22 provide us with an opinion as to the cause of death to

23 [REDACTED] [REDACTED] [REDACTED]?

24 A Yes, ma'am.

25 Q And, please, tell the jury what your final

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1 conclusion was in regards to the cause of his death?

2 A I will read it and then I'll explain what
3 it means. Subdural and subarachnoid hemorrhage with global
4 cerebral edema, due to inflicted blunt head trauma; so
5 subdural and subarachnoid hemorrhage, that's the bleeding
6 on the brain, different areas surrounding the brain.
7 Cerebral edema that's the swelling of the brain which can
8 in itself cause damage to the brain, as it swells it has
9 nowhere to go, and so blood can't get to it because the
10 vessels are squashed basically; so all those things are
11 going on, and due to inflicted blunt head trauma we know he
12 has fractures. We know he has blunt head trauma. I have
13 no history that he was run over by a wagon or fell off of a
14 horse or, you know, anything else to suggest that there was
15 something else going on, so this is inflicted blunt head
16 trauma from my point of view.

17 Q Is it the type of trauma that a child his
18 age can inflict upon himself?

19 A It's highly unlikely. We're talking about,
20 children get into precarious situations, don't get me
21 wrong, but this is not something that, you know, you fall
22 down from standing or, or you fall out of the, you fall
23 onto the road from the, from the car door or something like
24 that, this isn't an ordinary childhood accident.

25 Q And, Dr. Schandl, once you come up, once

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1 you've been able to determine the cause of death are you
2 required as a pathologist to determine or make a finding as
3 to the manner of death?

4 A Yes.

5 Q And were you able to do that in this case
6 as well?

7 A Yes, ma'am.

8 Q And would you, please, tell the jury what
9 your final conclusion was in regards to the manner of death
10 for [REDACTED] [REDACTED] [REDACTED]

11 A The manner of death in this case is
12 homicide.

13 Q And, Dr. Schandl, when you were talking
14 about the cause of death you mentioned the subarachnoid
15 hemorrhaging and subdural hemorrhaging in the brain which
16 is the blood; is that correct?

17 A That is correct.

18 Q And, and I believe that you provided me as
19 well as the defense with one particular photo you felt was
20 important to be able to describe the amount of blood; is
21 that correct?

22 A Yes, ma'am.

23 Q And is that actually a picture that we've
24 looked at earlier today

25 A Yes, ma'am.

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1 Q State's Exhibit Number 60, if you would,
2 please, Dr. Schandl, would you ---

3 The Court: Your objections previously made are
4 noted.

5 Ms. Grabert-Lowenstein: Thank you, Your Honor.

6 Ms. Lively: Thank you.

7 Q (Continuing) And, Dr. Schandl, that's
8 State's Exhibit Number 60 and I'll go ahead and for the
9 record, it is in color, but please explain why to the jury
10 you needed to provide that and what it shows?

11 A This is, is a color photograph and it
12 shows, so before we were looking at the surface of the
13 skull, this shows after I've removed the skull plate the
14 surface of the brain and the bleeding around the, around
15 the brain. I believe she asked me to, to tell you why I
16 request, would request it in color, essentially blood is
17 red and everybody can see where the blood is if it's in
18 color but that's really the long and the short of it.

19 Q All right, and, Dr. Schandl, was there, was
20 there a lot of blood in the brain?

21 A There was a sufficient amount to make me
22 very confident that, that there was a blunt trauma.

23 Q And once again if I may, I'll take that
24 from you, did this help you in making your conclusion
25 regarding the inflicted trauma to [REDACTED] [REDACTED]?

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1 A Yes, absolutely, so we were talking earlier
2 about fractures to the skull, again we're not worried so
3 much about the skull, what we're worried about is the
4 brain, so what we're worried about is things that happen
5 inside the skull; so just looking at fractures to the skull
6 is certainly one thing and it tells us that there was blunt
7 trauma and then that's a very important piece of the
8 puzzle, but until we see what's inside the skull such as
9 the bleeding then we're not really getting to the, the
10 matter which is his brain was sick because of the trauma.

11 Q And finally did you have any type of
12 findings in your, in your autopsy and your complete
13 investigation of his case that he had any type of genetic
14 disorders, or diseases or anything that could have caused
15 the type of injuries that you noted in your autopsy?

16 A No, ma'am.

17 Ms. Lively: Okay, thank you, answer any
18 questions the defense may have for you, Dr. Schandl.

19 A Yes, ma'am.

20 Cross Examination

21 By Ms. Grabert-Lowenstein:

22 Q Good afternoon, Dr. Schandl?

23 A Yes.

24 Q You didn't find any old injuries, let me
25 rephrase it, you didn't find any broken bones?

Dr. Schandl - Cross Ex. by Ms. Grabert-Lowenstein

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1 A No, ma'am.

2 Q And there were no cuts?

3 A No, ma'am.

4 Q Okay, your job was to determine what caused
5 [REDACTED] to die?

6 A Yes, ma'am.

7 Q Okay, and would I be correct in saying you
8 didn't see [REDACTED] when he was alive?

9 A That is correct.

10 Q And you weren't his treating physician,
11 obviously?

12 A That is correct.

13 Q Okay, there isn't any way for you from your
14 examination to say how much pressure was applied?

15 A That is correct.

16 Q And you're saying basically that there's a
17 difference between the type of pressure if there were two
18 hits, one hit, and the type of surface?

19 A That's correct.

20 Q Okay, you aren't saying, are you, that it
21 would take somebody who weighed say two hundred pounds to
22 apply the pressure?

23 A I am not suggesting that in order that it
24 would take someone that was three hundred pounds or one
25 hundred pounds, no, ma'am.

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1 Q I mean you're not, you can't tell us
2 anything about the size of the person or who it was who
3 inflicted the injuries?

4 A No, ma'am.

5 Q Okay, and the time frame that you gave us
6 that's when the date that you did the autopsy, correct?

7 A Well strictly speaking it's the day before
8 the autopsy so the date that the organs were procured which
9 was the 18th, I believe.

10 Q Okay, so your, your estimation as a
11 pathologist of the three days to a week was based on what
12 you saw on the 18th, not what was seen by anyone on the
13 14th?

14 A That is correct.

15 Ms. Grabert-Lowenstein: If I may have just a
16 moment, Your Honor, but I believe that's all.

17 No further questions, Your Honor.

18 The Court: Mr. Galmore?

19 Cross Examination

20 By Mr. Galmore:

21 Q Dr. Schandl, let me ask you about this time
22 frame again. I think your testimony was that the damage
23 was inflicted within three days to a week; is that correct?

24 A That's correct.

25 Q Okay, and when you say a week are you

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1 referring to seven days?

2 A Yes, sir.

3 Q Okay, now you're not saying that these are
4 fractures and injuries that were repeatedly done over a
5 seven day period, are you?

6 A No, sir.

7 Q Okay, are you able to give an opinion as to
8 whether these, these injuries occurred at a single event or
9 multiple events?

10 A I cannot tell you that for certain, no,
11 sir, I cannot tell you that for certain.

12 Q Okay, would it be possible for these
13 injuries to occur at different times?

14 A Within that, within that time frame, yes,
15 sir.

16 Q Within the three to seven day time frame?

17 A Yes, sir.

18 Q Okay, now you said that that time frame was
19 based on the time that the organs were procured; is that
20 correct?

21 A Yes, sir.

22 Q And that would have been the 18th?

23 A Yes, sir.

24 Q And you performed the autopsy on the 19th?

25 A Yes, sir.

Dr. Schandl - Cross Examination by Mr. Galmore

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1 Q Okay, so your time frame for this jury is
2 somewhere between the 11th and the 15th is when these
3 injuries had to have been inflicted?

4 A Yes, sir.

5 Q And we know ---

6 A It wasn't the 15th.

7 Q Right, we know he was in the hospital as of
8 the 14th?

9 A Yes, sir.

10 Q So somewhere between the 11th and the, and
11 the 14th when 911 was called?

12 A Yes, sir.

13 Q So that is seventy two hours?

14 A Yes, sir.

15 Q Okay, and I think you testified that you
16 can't give us any information regarding the amount of force
17 that was used to inflict these injuries?

18 A NO specific information, sir.

19 Q Can you tell us whether he was hit with
20 something or if he struck something, he impacted something
21 himself?

22 A I do not have any specific evidence to
23 determine that.

24 Q Okay, now as part of your duties in
25 performing autopsy you try to obtain case history on the

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1 patient; is that correct?

2 A Yes, sir.

3 Q And I think you testified on direct
4 examination that you had no history of the, the patient
5 being run over by a wagon?

6 A That is correct.

7 Q Okay, what case history information did you
8 receive in this case?

9 A That he had skull fractures and had been
10 flown from a local hospital to MUSC.

11 Q Did you receive information that the child
12 had been to a swimming pool?

13 A I did. I cannot tell you if I received
14 that information before my examination.

15 Q Okay, okay, did you receive information
16 that he was noted to be lethargic?

17 A Yes, at the same, the same juncture, yes.

18 Q And you said you can't tell us whether this
19 was a single event or a multiple event?

20 A That is correct, just within that bucket of
21 time.

22 Q So you don't know who inflicted these,
23 these wounds, these injuries?

24 A That's correct.

25 Q And you don't know how these injuries were

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1 inflicted?

2 A That is correct.

3 Q Very briefly let me ask you about the
4 bruising that you noted on the body, did you note that some
5 or, some of all of his bruising may have been caused by
6 resuscitation efforts?

7 A There's certainly a possibility
8 resuscitation can cause bruising.

9 Mr. Galmore: Thank you very much, Dr. Schandl,
10 no further questions.

11 A Yes, sir.

12 The Court: Ms. Lively?

13 Ms. Lively: One question.

14 Redirect Examination

15 By Ms. Lively:

16 Q Did you have any information provided to
17 you whether the child ever underwent CPR?

18 A I honestly cannot remember.

19 Q Would that be important in regards to your
20 documentation of bruising to know if CPR had actually been
21 administered?

22 A Yes, ma'am.

23 Ms. Lively: Okay, thank you, that's all I have.

24 Ms. Grabert-Lowenstein: Nothing further, Your
25 Honor.

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1 The Court: Mr. Galmore?

2 Mr. Galmore: No, sir, nothing further.

3 The Court: All right, you may step down, Dr.

4 Schandl. Will there be any further need for Dr. Schandl?

5 Ms. Lively: No, Your Honor, may she be excused
6 from her subpoena?

7 Mr. Galmore: No objection.

8 Ms. Grabert-Lowenstein: No objection, Your
9 Honor.

10 The Court: Dr. Schandl, you're released from
11 your subpoena. thank you for coming.

12 Ms. Lively: Dr. Ann Abel.

13 The Court: All right, let's, that's going to
14 be another rather lengthy --

15 Ms. Lively: Yes, sir, Your Honor.

16 The Court: All right, let's let the witness
17 [sic] take a break. Would you take them back, Becky, and
18 may I see you, Mr. Ropp?

19 Ms. Lively: Thank you.

20 (Whereupon, the jury retired to the jury room at
21 2:36 p.m.)

22 The Court: All right, we'll be at ease for
23 about ten minutes.

24 Ms. Lively: Thank you, Your Honor.

25 (Whereupon, State's Exhibits 38 - 55 marked for

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1 identification and a recess was taken.)

2 The Court: One moment before we bring them in.

3 Yes, ma'am?

4 Ms. Lively: Your Honor ---

5 The Court: Please be seated, please be seated.

6 Ms. Lively: Just to avoid the back and forth of

7 the jury I just wanted to let Your Honor know the next

8 witness is going to be Dr. Ann Abel. She is the one who

9 actually worked at MUSC that took the photos of the

10 bruising of the child while in the hospital bed at MUSC and

11 she documented that. I've had these photos marked for I.D.

12 purposes ahead of time. These would be State's Exhibit 38

13 through 55 and the defense, of course, has had a copy of

14 these and I have Dr. Abel ready to proffer any testimony

15 necessary regarding this matter.

16 The Court: Ms. Grabert-Lowenstein, Mr. Galmore,

17 I assume you have seen these photographs?

18 Mr. Galmore: May I approach, Your Honor?

19 Ms. Grabert-Lowenstein: Your Honor, yes, we

20 have seen all of these.

21 The Court: Objections?

22 Mr. Galmore: Yes, Your Honor, I, I have an

23 objection to the introduction of these photographs. It's

24 my position that these photographs are highly prejudicial

25 in violation of Rule 403. While some photographs show what

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1 purport to be bruises we just had testimony that many of
2 these alleged bruises could have been caused by
3 resuscitation efforts.

4 We've already had testimony from the 911 workers
5 and from, that there was no bruising. We've had some
6 testimony from Conway Medical Center as well.

7 Your Honor, the problem is with these photographs
8 and again I ask you to put it in context, we've already had
9 photographs of [REDACTED] on a carousel, [REDACTED] at the pool,
10 [REDACTED] on the beach, now it's being contrasted against
11 [REDACTED] in a hospital bed with I.V.'s and intubation tubes
12 in them, and finally we've already had admitted into
13 evidence photographs of [REDACTED]'s skull, scalp reflected,
14 and his skull split open, so I really think that these
15 photographs are being purposely introduced to the jury to
16 try to gain a, a verdict based on sympathy and not based on
17 evidence.

18 The Court: Would you agree that these
19 photographs show bruising?

20 Mr. Galtmore: Yes, I do agree that the
21 photographs show something.

22 The Court: And have you not challenged that?

23 Mr. Galtmore: I submit that there has been
24 testimony about bruising, if there is bruising then the
25 testimony ---

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1 The Court: Haven't you challenged it?

2 Mr. Galmore: I'm sorry?

3 The Court: Haven't you challenged the fact?

4 Mr. Galmore: I have, yes, sir.

5 The Court: All right, sir, you know any other
6 evidence that would more clearly show that the bruising did
7 exist?

8 Mr. Galmore: I think the point is that the
9 bruising, that the pictures of these, of these alleged
10 bruises is cumulative since the testimony has already been
11 put out there.

12 The Court: But it's conflicting testimony.

13 Mr. Galmore: Should I not challenge them when
14 they're introduced?

15 The Court: I understand but isn't there
16 conflicting testimony, some said they didn't see the
17 bruises others said they did?

18 Mr. Galmore: Yes, sir.

19 The Court: All right, sir, Ms. Grabert-
20 Lowenstein?

21 Ms. Grabert-Lowenstein: Your Honor, my, my
22 concern is a little bit different in that I believe some of
23 those are probably duplicative and, therefore, we don't
24 need two pictures that show the same bruises, one may be
25 blown up. I would simply like to limit them just to the