

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

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1 Q As far as we know we've heard no evidence
2 that the machine made an error on the date; is that
3 correct?

4 A On what date?

5 Q On the, on the check, we haven't heard any
6 testimony that there actually is an error other than yours;
7 that would be correct?

8 A Yes, ma'am.

9 Q Okay, now you were with Robert when he was
10 honorably discharged from the service?

11 A Yes, ma'am.

12 Q And during the time that you were in North
13 Carolina he got to know Kayla and Kyle?

14 A In Virginia.

15 Q I'm sorry, in Virginia?

16 A Yes, ma'am.

17 Q Excuse me, and he was around them, enjoyed
18 them, there was no problems with him being around them?

19 A No.

20 Q Okay, and after the two of you moved to
21 South Carolina again Kyle and Kayla come to, came to visit
22 and they interacted with Robert and there were no problems?

23 A Kyle and Kayla moved here, they didn't come
24 to visit, they resided here.

25 Q Okay, and during the time that you say they

Ms. Gorman - Cross Ex. by Ms. Gräbert-Lowenstein

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1 moved here there were no problems between them and Robert?

2 A Just your normal childrens just acting out.

3 Q Okay, no hitting?

4 A No, no hitting.

5 Q Okay?

6 A No.

7 Q And you just simply got a phone call that
8 they weren't going to come back from being with their
9 father?

10 A Yes.

11 Q It is true that Robert went outside during
12 the period of time that you were cooking dinner on the 14th
13 of July?

14 A Robert took out the dog at some point to
15 let the dog out to go to the bathroom.

16 Q Okay, and he walked the dog actually,
17 didn't he?

18 A No, he took the dog out to go to the
19 bathroom; he didn't walk the dog.

20 Q Okay, you said that he had gone out; you
21 told Detective Troxell that?

22 A He took the dog out, doesn't mean he took
23 him for a walk, just means he took the dog out.

24 Q Now the area that the two of you lived in
25 is country?

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

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1 A Yes, ma'am.

2 Q And you lived on about two acres?

3 A Give or take, I don't know.

4 Q Okay, and showing what's been entered as
5 Palmer Defense 1, do you recognize what's in that photo?

6 A Yes, it's a trampoline.

7 Q And it also shows the distance, does it
8 not, from the, basically the edge of the trailer to where
9 there's a pine tree?

10 A It doesn't give a distance, it just shows
11 just the date.

12 Q So is that about a quarter of an acre?

13 A I guess, I don't know, I mean --

14 Q Okay, it's quite a distance?

15 A It is a distance, it's a walk.

16 Q And that's actually the area where Robert
17 walks the dog?

18 A Not necessarily, we walk him in the front
19 yard. We walk him right by the, the steps. We walk him in
20 the front. We walk him in the side, we walk him
21 everywhere.

22 Q Okay.

23 A So you can't necessarily say where he
24 walked him that day.

25 Q Now whenever the time line is that you got

1 home you and Robert both checked on [REDACTED]

2 A When I came home from work when I asked
3 where [REDACTED] was, he said he was taking a nap. We walked
4 to the room and I saw that he was asleep. He and I walked
5 away from the room, we talked for a minute, few minutes,
6 and then I left, went to the grocery store to go get us
7 something for eat for dinner, and I stopped at the video
8 store.

9 Q Let me stop you because my question was,
10 did you both went in to check on him?

11 A We stopped at the door. We didn't, we
12 didn't physically go in the room.

13 Q And you didn't see any seizures, correct?

14 A I stopped at the door and I saw that he was
15 asleep; I didn't physically go in and put my hands on him.

16 Q My question, Ms. Gorman, is you're saying
17 if you knew he was asleep you had to look in far enough, at
18 least, to check on [REDACTED] that much, correct?

19 A You don't have to go that far in the room
20 because the port a crib is netted so you can see, and I can
21 see him and you can see over it.

22 Q And you, you would be able to hear?

23 A I can hear.

24 Q And you didn't hear any gurgling, weird
25 sounds?

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

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1 A I didn't hear anything strange or anything.

2 Q Okay, did you hear breathing?

3 A I heard him, he was asleep, I mean --

4 Q Okay, normal breathing?

5 A That's what, uh-huh.

6 Q Okay, you had a discussion with Cesalee in
7 the car about the fact she wasn't taking [REDACTED]

8 A Yes.

9 Q Now after you received the call from
10 Richard you initially wanted her to take [REDACTED] with her?

11 A Well I figured if she's going home she take
12 her baby with her, that's generally what a parent does is
13 they go home their children go home with them.

14 Q But she decided not to do that?

15 A Yes.

16 Q And yet you wanted her to?

17 A If she wanted to take him, yes.

18 Q And Robert was agreeable to allowing him to
19 stay?

20 A And I said that was fine.

21 Q Okay, and didn't have any angst about it,
22 didn't say I don't want to have to take care of this child?

23 A No.

24 Q The truth he was very loving and caring and
25 patient with [REDACTED] wasn't he?

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

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1 A Absolutely.

2 Q And you even said he had more patience than
3 you did?

4 A Yes.

5 Q Okay, now you also made a statement in your
6 interview about being around somebody that would have hit
7 and that was, had been a part of your past, correct?

8 A Yes.

9 Q You wouldn't have stayed with Robert if he
10 had hit you?

11 A No, I wouldn't have.

12 Q Or hit Kyle or Kayla?

13 A No, I wouldn't have.

14 Ms. Grabert-Lowenstein: May I have just a
15 moment, Your Honor?

16 Q (Continuing) Robert wasn't at home on
17 Friday the 11th, was he?

18 A That afternoon or that evening, no, he
19 wasn't, he went out with a neighbor.

20 Q He had called you and said Cody, a
21 neighbor, wanted him to go out with him?

22 A When I came home from work, cause I had to
23 get home, you know, when I got home from work he left with
24 the neighbor.

25 Q Okay, and you had initially said it was

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

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1 okay that he was leaving?

2 A Yeah, Cody's girlfriend came over and hung
3 out with me and [REDACTED]

4 Q Okay, and but wasn't there some issue about
5 Robert being gone a lot and you didn't like that?

6 A We had a discussion earlier that week that
7 he was out a lot, he was out late a lot, you know, he
8 needed to spend time at home.

9 Q You didn't just walk away from [REDACTED] when
10 you got frustrated with him, you went clear outside?

11 A I'd go out to the front porch.

12 Q And what would happen when, when you came
13 back in?

14 A He'd whine.

15 Q Started all over again, didn't he?

16 A Yeah.

17 Q Same pitch?

18 A Same pitch.

19 Q Just the same stuff?

20 A Yes, but that's what he did.

21 Q And that's what frustrated you?

22 A But that's what he did, it didn't mean I
23 did anything different.

24 Q The way you bought the dog was a tax refund
25 and that purchase was your decision, correct?

1 A Yes, ma'am, it was.

2 Q Okay, now you made the comment that your
3 bills were paid. Wasn't your car repossessed and you
4 borrowed money to get it back out?

5 A Yes, ma'am, and the money was returned that
6 week.

7 Q But that meant that at least for some point
8 the bills were not paid?

9 A No, all bills were paid but my car.

10 Q Okay, and Robert was contributing his
11 unemployment?

12 A When he was getting unemployment, yes,
13 ma'am.

14 Q He was getting unemployment at the time
15 that [REDACTED] and ---

16 A No, ma'am, he was not, well, no, I take
17 that back, he may have a couple of times.

18 Q Okay --

19 Ms. Grabert-Lowenstein: Your Honor, may we
20 approach, just very briefly?

21 (Whereupon, a bench conference was held off the
22 record in the presence of the jury, but out of the hearing
23 of the jury and the court reporter.)

24 Ms. Grabert-Lowenstein: (Continuing)

25 Q You recall your interview with Detective

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

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1 Stroschal, Troxell -- it's getting late -- do you recall
2 that interview?

3 A Yes, ma'am.

4 Q You recall saying I would never hurt one of
5 my children?

6 A Yes, ma'am.

7 Q When your son Kyle was eight you got into
8 an argument with him over Cesalee and split his lip, didn't
9 you?

10 A I didn't get over an argument with him over
11 Cesalee.

12 Q You split his lip, though, didn't you?

13 A I didn't split his lip. He was talking
14 back and everything and I went to go talk to him and I pat
15 his mouth and what happened was his lip caught his tooth
16 and it cut it. It wasn't like I had punched him or beat
17 him or nothing, his lip caught his tooth.

18 Q So it would be your testimony that a simple
19 pat ---

20 A Yes, ma'am.

21 Q --- caused the cut?

22 A It was truly an accident. It wasn't
23 malicious or vicious.

24 Q How long has it been since you've seen Kyle
25 and Kayla?

Ms. Gorman - Redirect Examination by Mr. Galmore

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1 A Have not seen Kyle or Kayla since they left
2 and went to Hawaii in 2007 when he graduated the fifth
3 grade.

4 Q Thank you -- If I could have just one
5 moment, Your Honor. I think that's it.

6 Your Honor, the defense on behalf of Mr. Palmer
7 has no further questions.

8 Mr. Galmore: Very briefly, Your Honor.

9 The Court: Do you promise, Mr. Galmore?

10 Mr. Galmore: That's a promise.

11 **Redirect Examination**

12 **By Mr. Galmore:**

13 Q I think it came out on cross examination
14 that Kyle and Kayla moved here; is that correct?

15 A Yes, they did.

16 Q How long did they stay with you here in
17 Aynor?

18 A They stayed with me until they grad --
19 until they finished school in 2007. We moved here in
20 October of 2006 and they finished school. I would, June I
21 guess is when they finished school here in 2007, and then
22 they left to go to North Carolina with Lisa Cortizon, their
23 grandmother. They met me in North, we had a halfway point
24 we'd meet in North Carolina, and we met there and they went
25 to North Carolina and visited with them and then they flew

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1 to Hawaii.

2 Q Now you said they were in school down here;
3 what school did they go to?

4 A They went to Midland Elementary.

5 Q And this would have been when you and
6 Robert were living together?

7 A Yes.

8 Q So and you said that was from 2006 until
9 June of 2007?

10 A Yes.

11 Q So when [REDACTED] comes to town in 2008 is it
12 a major disruption in your lifestyle?

13 A No.

14 Q Just briefly, how much do you weigh?

15 A Now or then?

16 Ms. Lively: Objection, Your Honor, outside the
17 scope of any of the re -- I mean the cross.

18 The Court: That has nothing to do with the
19 cross examination or the --

20 Mr. Galmore: I'll leave it alone, thank you,
21 Ms. Gorman.

22 The Court: Ms. Lively?

23 Ms. Lively: I have no questions, Your Honor,
24 thank you.

25 Ms. Grabert-Lowenstein: Nothing further, Your

1 Honor, thank you.

2 The Court: Thank you very much. Mr. Galmore?

3 Mr. Galmore: Your Honor, the defense rests.

4 The Court: All right, ladies and gentlemen of
5 the jury, that concludes the testimony. I want to thank
6 you for being so patient with us. I did want to complete
7 this testimony today. I'm going to bring you back in the
8 morning, going to ask you not to come back until 10.

9 Bobby, you will have something for them, won't you?

10 Mr. Ropp: Yes, sir.

11 The Court: If you would come back at 10:00.

12 I'm going to be meeting with these attorneys tonight
13 further into the evening. I'll have them come in early in
14 the morning. I want to make sure that when I get you back
15 at 10:00 we can proceed with final arguments and a charge
16 on the law, okay, and let this, and turn this case over to
17 you.

18 Now again I admonish you not to look at any news
19 reports, internet information, don't go on Facebook,
20 Google, whatever you have, just as you have been instructed
21 throughout the week. You must deliberate based on just the
22 evidence that you've heard, I ask you to do that. Bobby,
23 if you would.

24 (Whereupon, the jury was excused for the evening
25 at 7:58 p.m.)

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1 The Court: Ms. Gorman, you may step down.

2 All right, ladies and gentlemen, you know my
3 policy on providing the jury with copies of the, of my
4 charge. I have prepared my charge in transcript form as I
5 always do. I have copies for the prosecution, copies for
6 each defense team. These are general charges addressing
7 the points of law that I see. I would ask that if you have
8 any additions, deletions, objections to my charge that we
9 will address that at 9:15 in the morning, I ask you to be
10 here. There's one other issue that I want to address
11 tonight; it is not addressed in my charge, and that is the
12 issue of the, or had you rather address this in the
13 morning, the issue of whether or not there may be two
14 convictions?

15 Ms. Lively: I'm ready.

16 The Court: All right, let me hear you on that?
17 Each defendant is charged with homicide by child abuse as
18 well as aiding and abetting homicide by child abuse which
19 both, both charges fall under one statute.

20 Ms. Lively: Yes, sir.

21 The Court: Now my question is what's the
22 defense's position on those two charges? Now I understand
23 there's a third charge unlawful act, unlawful conduct
24 towards a child which is a different charge. Now tell me,
25 Mr. Galmore, what is the defense's position? Ms. Grabert-

1 Lowenstein, what is the defense's position?

2 Mr. Galmore: Our position is can we take this
3 up in the morning?

4 The Court: Okay, I'm going to let them do that,
5 Ms. Lively. You're going to have a better evening, you're
6 prepared to go forward now, okay?

7 Ms. Lively: Yes, sir.

8 The Court: I am tired, we will do this at 9:15
9 and we will address it. As far as the charge is concerned
10 if you have a proposed charge it would be appropriate that
11 that issue please provide it for us, okay? Thank you,
12 court's at ease; I'll see you at 9:15.

13 Ms. Lively: Thank you, Your Honor.

14 (Whereupon, court was adjourned for the evening
15 at 8:30 p.m. and resumes on November 18, 2011 at 9:00 a.m.)

16 The Court: We've completed the testimony in
17 this case at this time other than one matter that I believe
18 Ms. Grabert-Lowenstein has as she has some documentary
19 evidence in the form ---

20 Ms. Grabert-Lowenstein: Yes, Your Honor, if I
21 could approach and have this marked, I believe as Defendant
22 2 for Mr. Palmer, and I, for the record I've shown this to
23 both counsel. This is the restraining order and I just ask
24 that it be admitted to refute the paper work that you took
25 judicial notice of.

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1 The Court: All right, now we have had a pre-
2 hearing conference in chambers concerning this. It is my
3 understanding that neither Ms. Lively nor Mr. Galtmore have
4 any objections to the introduction of this document; is
5 that correct, Ms. Lively?

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

7 The Court: Mr. Galtmore?

8 Mr. Galtmore: Yes, sir.

9 The Court: All right, very well.

10 (Whereupon, Defendant Palmer Exhibit Number 2
11 marked and entered into evidence.)

12 The Court: All right, I would also note for the
13 record that there has been a substantial amount of pre-
14 trial activity in this case in the form of motions
15 primarily an extended hearing, I think about a three-day
16 hearing on the issue, of the admissibility of polygraph
17 results.

18 There was also a hearing held before Judge
19 Culbertson regarding the enforcement of a proffer
20 agreement. The parties have agreed that without further
21 motion that those proceedings will be made a part and
22 parcel of the record in this case; is that correct, Ms.
23 Lively?

24 Ms. Lively: That is correct, Your Honor.

25 The Court: Is that correct, Mr. Galtmore?

1 Mr. Galmore: Your Honor, I understand that
2 there were also pre-trial matters, I think that was October
3 31st?

4 The Court: That was, that was my hearing; was
5 it not, October 31st?

6 Mr. Galmore: Yes, sir.

7 The Court: Well all of those matters are
8 included in the record.

9 Mr. Galmore: Yes, sir, thank you.

10 The Court: Okay, Ms. Grabert-Lowenstein, is
11 that your understanding as well and do you consent?

12 Ms. Grabert-Lowenstein: Yes, it is that all the
13 proceedings in this case will be a matter of record for any
14 potential appeal.

15 The Court: All right, and I have prepared
16 orders to that, to that extent.

17 Ms. Grabert-Lowenstein, I have here an order that
18 I have signed that says all hearings prior to and up to
19 trial, so forth and so on, but you also have here a consent
20 order where you and Ms. Lively have signed it relating to
21 the same thing ---

22 Ms. Grabert-Lowenstein: They are, Your Honor.

23 The Court: There's no place for me to sign it
24 and Mr. Galmore has not signed it.

25 Ms. Grabert-Lowenstein: Your Honor, the reason

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1 that I didn't ask Mr. Galtmore to sign the consent order is
2 the proceedings that were particular concern with me that
3 involving the withdrawal of the proxy and the polygraph
4 issue did not involve Mr. Galtmore's client.

5 The Court: Okay.

6 Ms. Grabert-Lowenstein: So I guess had asked --

7 -

8 The Court: You want me to sign this second
9 order as well, there's no place for me to sign it, it says
10 consent order?

11 Ms. Grabert-Lowenstein: Well, Your Honor, that
12 was, the other order was ---

13 The Court: Okay.

14 Ms. Grabert-Lowenstein: --- supposed to be
15 attached to it so that's what it's referring to, if we need
16 to make an adjustment we can but that's what it's referring
17 to.

18 The Court: All right, thank you very much,
19 Madam Clerk, if you would mark that, please? All right ---

20 Madam Court Reporter: Will this be Court's,
21 Your Honor?

22 The Court: Court's, please, will not go to the
23 jury.

24 Madam Court Reporter: That would be Court's 2.
25 (Whereupon, Court's Exhibit Number 2 marked for

1 identification.)

2 The Court: All right, and that brings us to
3 standard motions, Mr. Galmore?

4 Mr. Galmore: Yes, sir, Your Honor, at this time
5 we would renew our motion for a directed verdict. We made
6 that motion at the end of the State's case, we make it
7 again at the end of all evidence presented in the case. We
8 submit that the State has not produced any direct evidence
9 of Ms. Gorman's involvement either as the person that
10 inflicted the injuries or the person that aiding and
11 abetting and failed to act in Mr. Palmer's infliction of
12 these injuries.

13 There is another charge for unlawful conduct
14 towards a child, we submit that the State has not produced
15 any direct evidence that Ms. Gorman was the person
16 responsible for any unlawful conduct towards [REDACTED]

17 With that said the State has to present
18 substantial circumstances evidence, they have failed to do
19 so. The evidence that they have, even circumstantial
20 evidence, it does not point conclusively to the guilt of
21 Ms. Gorman. At best it raises a mere suspicion of her
22 guilt and, therefore, we ask the Court to reconsider the
23 directed verdict motions that we filed previously.

24 The Court: All right, and based upon the
25 reasons that I gave earlier I would respectfully deny your

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1 motion, okay.

2 Mr. Galmore: Yes, sir.

3 The Court: I think there's ample evidence to
4 take this to the jury. Ms. Grabert-Lowenstein?

5 Ms. Grabert-Lowenstein: Yes, Your Honor, our
6 position would be we're in a different position than Ms.
7 Gorman. The State took great pains to basically narrow the
8 time frame here and one thing that's different at this
9 juncture than from before is that we have based on the
10 medical testimony he wouldn't have been breathing if he had
11 been in a coma. Ms. Gorman's testimony is walked into a
12 small room and she heard normal breathing which was
13 significantly different than later when she and my client
14 walked in to check on [REDACTED] Based on that and based on
15 our written memorandum we would respectfully request to
16 grant Mr. Palmer a directed verdict at this juncture.

17 The Court: And again I would respectfully
18 decline your motion. I think that there is substantial
19 evidence by which a jury could return verdicts of guilty as
20 to these charges and I'm going to deny your motion.

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

22 The Court: All right, now, ladies and
23 gentlemen, I have provided you already, I did so on
24 yesterday, provided you with copies of my proposed charge.
25 As is my practice I will be providing that charge with, to

1 the charge or a transcript of that charge, so that's
2 verbatim what I intend to charge.

3 It is my understanding, Ms. Lively, that the
4 State has no objection to the charge; is that correct?

5 Ms. Lively: That is correct, Your Honor.

6 The Court: I would add that there was an
7 additional charge added this morning and that was the
8 character evidence and I've given you copies of that.
9 Other than that, Mr. Galmore, do you have any additions,
10 deletions, objections to the charge?

11 Mr. Galmore: No, sir.

12 The Court: Ms. Grabert-Lowenstein?

13 Ms. Grabert-Lowenstein: No, after review of it
14 and with the addition of the character evidence on behalf
15 of Mr. Palmer no objection.

16 The Court: All right, and I have likewise
17 prepared verdict forms that have been provided for you,
18 that is one verdict form for each charge and each
19 defendant, that being six verdict forms; any objection to
20 the form of the verdict?

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

22 The Court: Verdict form, Mr. Galmore?

23 Mr. Galmore: No, sir.

24 The Court: Ms. Grabert-Lowenstein?

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

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1 The Court: Very well, okay, those matters are
2 taken care of. Anything else that we need to address, Ms.
3 Lively, before we bring in this jury?

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

5 The Court: Mr. Galmore?

6 Mr. Galmore: No, sir, Your Honor.

7 The Court: Ms. Grabert-Lowenstein?

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

10 The Court: Very well, okay, are we ready to
11 bring in our jury, well let's do this, it's about five
12 minutes before I told them I'd be ready for them.
13 Let's just take a real quick break, everybody refresh
14 yourselves and be ready to go when we come back. I don't
15 know that all the jury is here yet.

16 (Whereupon, a recess was taken and the following
17 takes place on the record after the recess.)

18 (Whereupon, the jury returns to the courtroom at
19 10:00 a.m.)

20 The Court: All right, ladies and gentlemen of
21 the jury, it's good to see you all back in court this
22 morning. You have heard all the evidence that you will
23 consider in this case. It is now time for you to hear what
24 we call closing arguments in this trial.

25 The closing arguments like the opening remarks

1 are not evidence in the case and should not be considered
2 by you as evidence. The attorneys have the right to speak
3 to you concerning the evidence in the case and their view
4 of that evidence. They also have the right to speak to you
5 concerning the law as they understand the law in, that
6 would be applicable to this particular case, but as I told
7 you at the beginning you and you alone will determine the
8 value and effect of the evidence that you've heard in this
9 case and you will determine what the facts are in this
10 case.

11 You will also be guided in your deliberations by
12 the law as I give it to you.

13 Should the attorneys comment on a piece of
14 evidence that you don't remember or you didn't see in that
15 light you go by what you heard or saw. Likewise if the law
16 or their interpretation of the law it differs from mine you
17 must apply the law as I give it to you, so you should keep
18 that in mind as you listen to these closing remarks.

19 As soon as the closing remarks are completed I
20 will charge you as to the law. I do something different
21 than any of the other judges that I'm aware of in this
22 state, in that I appreciate the fact that we have brought
23 you here from your familiar surroundings and the jobs that
24 you do on a daily basis and we expect you to listen to an
25 explanation of the law that I give you and expect you to

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1 absorb what can be very complex legal principles and go
2 into the jury room and be able to apply it.

3 In that regard I have adopted a policy whereby I
4 have a transcript made reduced to writing the charge that I
5 intend to give you on the law. My law clerk, Mr. Taylor
6 Powell, who's seated behind me, and I have been working on
7 that throughout this trial. I will provide you with that
8 transcript for your use in your deliberations so you will
9 have the law with you.

10 I'm going to charge you during my charge how you
11 should apply that law. I just want to make sure that you
12 understand my comments here today that you should not focus
13 in on any one part of the law as I charge it to you, but
14 you should consider the whole charge on the law. Sometime,
15 you know, if you just look at one little segment you take
16 it out of context it can take you down the wrong road, but
17 what I want you to do is consider the entire document and
18 that's why I like to make sure the jurors have a complete
19 transcript of the law that's applicable to the case and
20 hope that will help you.

21 Ms. Lively, is the State ready?

22 Ms. Lively: Well, Your Honor, we would waive
23 going first in closing arguments, thank you.

24 The Court: All right, Mr. Galmore?

25 Mr. Galmore: Yes, sir.

1 The Court: Are you ready?

2 Mr. Galmore: Yes, sir.

3 The Court: Ms. Grabert-Lowenstein, are you
4 ready?

5 Ms. Grabert-Lowenstein: Yes, I'm ready, we have
6 determined that Mr. Galmore is going to go first.

7 The Court: All right, then, Mr. Galmore?

8 Closing Argument

9 By Mr. Galmore:

10 When I came up here and we started talking on
11 Tuesday morning in the opening statements the first thing
12 that I said to you was we don't know. Now we've had four
13 years from 2008 to 2011 and we still do not know.

14 We've had three indictments against Ms. Gorman,
15 we still don't know. We've had a week of testimony. We've
16 had parents; we've had his parents. We even had a witness
17 that they tried to sneak behind enemy lines and introduce
18 as a State's witness who was really a friend of Mr.
19 Palmer's, even with all of that we don't know.

20 We've had four doctors testify and they gave us
21 five different time lines for when these injuries could
22 have been inflicted; they don't know. They don't agree,
23 and the State has known from day one that they don't know
24 what happened in this case.

25 In the Solicitor's opening statements not one

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1 time, not one did she say you did it, we're going to prove
2 to you that he did it, we're going to prove to you that she
3 did it. They didn't even try to say that. What they've
4 said was we know something happened, it was traumatic, you
5 two are the primary care givers for this young boy,
6 therefore, one of you probably did it, well maybe both of
7 you did it, but that is not the standard in the law.

8 This happened when [REDACTED] was in you all's
9 primary care and custody and that's not even true. If we
10 go back to the four doctors with the five time frames they
11 can't say that these injuries happened when he was in Ms.
12 Gorman's custody because they don't know when the injuries
13 happened.

14 Each of the doctors gave you a different opinion.
15 Dr. Cacace testified, they said thirty six hours. Dr.
16 Roberts testified, she said one hour, and if I'm giving you
17 any of the evidence that's incorrect you can come back and
18 you can ask Madam Court Reporter to play that testimony
19 again, you'll hear it for yourself, and you can decide for
20 yourself if what I'm telling you is accurate.

21 Dr. Schandl testified three to seven days, but
22 taking into account that [REDACTED] was in the hospital for a
23 period of this time we did some math took out the period of
24 time that he was in the hospital it comes up to seventy two
25 hours.

1 Dr. Abel testified and Dr. Abel said if you look
2 at the cat scans the injuries seem to be three days old,
3 but if you look at the entire file the injuries seem to be
4 three hours old, so what's really going on.

5 These doctors have these injuries on a
6 probability curve and that means it's very likely, most
7 likely that these injuries happened within that zero to
8 three hour period. It could have been twelve hours,
9 twenty-four hours, thirty-six, seventy-two, but the further
10 back we go in days the lesser the chance that that is when
11 the injuries were inflicted. So when we take into account
12 all of these various times, and we're all trying to get to
13 the truth here, you know, nobody is trying to hide the
14 ball, we're all just trying to figure out what happened,
15 when we get to these various times it is very probable,
16 highly probable that Aydian was injured in that zero to
17 three hours prior to when 911 was called on the 14th at
18 6:06 p.m.

19 This is important because in the three hours
20 prior to 911 being called [REDACTED] was in Robert Palmer's
21 custody and care. He was in Robert Palmer's exclusive
22 custody and care. We have shown Ms. Gorman was at work;
23 Mr. Palmer was at home alone with [REDACTED] We brought the
24 time card, that's the best we can do to show that she was
25 actually at work.

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1 We brought you the bounced check from the IGA,
2 and thank God for once that somebody bounced a check, It's
3 the only time I'm ever happy to see a bounced check showed
4 you she was at the IGA.

5 Here's the problem for the State, well first
6 here's the problem for Mr. Palmer. You see how Carla got
7 up here and tried to say, you could have punched out and
8 had somebody to, you know, punch your time card for you.
9 You could have called in and had H.R., you know, adjust the
10 time for when you actually left the building. What Carla
11 is attempting to do is challenge the time frame because her
12 client's at home alone with the kid.

13 On the flip side Candice has to challenge the
14 check, and I think we went in this whole deal where this
15 check says 15:52, that's 3:52 and are you saying that, you
16 know, you cashed this check. Is she really trying to say
17 that you can get from the Bass Pro Shops on Highway 17,
18 down Highway 22 to Aynor in a matter of six minutes, I
19 don't think so. The truth is we're not responsible for the
20 time stamp on the back. I don't work at IGA, my client
21 don't work at IGA, they ran the check, this is the time
22 they put on it. We used a little bit of common sense to
23 figure out that maybe they didn't change the clock from
24 daylight savings time, it's an hour off.

25 Now common sense is a big thing, you all have it,

1 every last one of you came to this courtroom with your
2 common sense. You did not leave it when you became jurors.
3 You did not forget it when you took your oath.

4 When you are in the back you can argue and
5 dispute that this woman drove down Highway 22 in six
6 minutes or less and wrote a check in Aynor or you can use
7 your common sense and say, well it's more likely that this
8 check just has the wrong time on it because stores don't
9 set back the clock all the time, but this is all we can do
10 is bring you the most information that we have because we
11 are looking for the truth just as you are looking for the
12 truth.

13 All right, so the State of South Carolina knows
14 that they have a problem. When this case first comes up
15 they know they have a problem. We have ample evidence of
16 an injury; we have no evidence of who inflicted this injury
17 so what do they do? They put these two people on trial
18 together. Why are they on trial together, very simple?
19 He's going to say it wasn't me; she's going to say it
20 wasn't me.

21 You heard the testimony from, she says I don't
22 think he would do anything like that. He says the same
23 thing. The police try to get them to turn on each other.
24 When you have two people and only one of them could have
25 done it and both of them are saying it wasn't me inevitably

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1 they have no choice but to turn on each other and that's
2 what you saw yesterday. All of that, didn't you know he
3 had a restraining order against him, well didn't you know
4 that she couldn't pay her bills, has nothing to do with
5 this case at all, but it has become the bottom of the
6 barrel as far as the law is concerned, put them on there
7 together and let them tear each other apart. That is where
8 we are in this case.

9 You think we wanted to be on trial with Mr.
10 Palmer? We believe, and the Judge will tell you, her case
11 needs to be judged on its own merits. Her future, her
12 life, whether she committed this crime or not needs to be
13 judged on its own, not with him. I'm sorry for him, I'm
14 sorry whatever he's in to, but she needs to stand or fall
15 on her own, and if you look at this case and you look at
16 her and you consider that she was at work and you consider
17 that she was at the IGA she's clear of these charges, but
18 that's not good enough. Then the State of South Carolina
19 says, okay, we don't have any evidence that she hit [REDACTED]
20 so what do we do, we charge her with aiding and abetting
21 him hitting [REDACTED]

22 The State took us in a whole different direction,
23 somewhere where we didn't even need to be. They want a
24 conviction, they want one bad, but instead of basing that
25 conviction on evidence they want to base it on rumor. They

1 want to base it on assumptions; they want to base it on
2 sympathy. They want to base it on statistical probability
3 of who would have been around him so if that's the game
4 we're playing, that's fine, let's play it.

5 Let's talk about the evidence, let's talk about
6 the lack of evidence. You've heard several witnesses.
7 First you heard from Richard, [REDACTED] What did he
8 tell us? Quite frankly, not very much, and that makes
9 sense. He wasn't here. He never came to South Carolina.
10 He doesn't know much about the case. The only time he came
11 was when he got to Charleston and it was already too late.
12 He did tell us that Ms. Gorman called him after [REDACTED] went
13 to the hospital, and I asked him, well, sir, if you're
14 hosting a slumber party with some kids and one of them fell
15 and busted a arm or leg or something what do you do? Get
16 them some medical attention and contact the parents.

17 If you consider for one second the possibility
18 that Julia Gorman is actually innocent of these charges and
19 you look at what she did it is perfectly consistent with
20 what he said. Okay, you got a child that's injured, you
21 just got home, you cook, went in the room and found him
22 having a seizure, what do you do when you find a child
23 having a seizure? You call 911 and because it's not your
24 child you call the kid's parents, that's what she did.
25 That's what an innocent person would do, get some medical

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1 attention, let the parents know.

2 Now there's something else that Mr. Grimes
3 discussed, I'll just throw it out now and we'll go back to
4 it later, but he talked about there was this day when we
5 called and called and me and Cesalee called and we couldn't
6 get through, some mysterious missing day. Okay, we're
7 going to talk about that later but I just want you to keep
8 it in mind now.

9 What did Cesalee tell us? What did she give us
10 to advance the ball? Again not much, Cesalee was not here,
11 but Cesalee helped us tremendously because Cesalee laid a
12 foundation for why Ms. Gorman would say I thought my
13 daughter had something to do with it. That was Ms.
14 Gorman's instant assumption as soon as the ambulance was
15 called, as soon as they got to the hospital, as soon as
16 they said there's skull fractures here, the first thing she
17 thought, oh, my God, what did my daughter do. Why did she
18 come to that conclusion?

19 Cesalee conceded that she wasn't an easy child to
20 handle. We had testimony that there was a runaway incident
21 at the age of thirteen. We had testimony that Ms. Gorman
22 sent her out to live with her mother, that didn't work out
23 so well. They sent her out to live with another
24 grandmother, that didn't work out so well, put her in
25 foster care, didn't work out so well, She ends up knocked

1 up by the age of sixteen.

2 Now what is a parent supposed to do, you got a
3 child, you try to raise them, having problems raising them,
4 maybe my mama can do a better job, maybe his mama can do a
5 better job. The results it's okay, she's twenty-two now,
6 so that's all we can do as parents is raise them the best
7 we can, but that's not all.

8 Once they got down here, well before they even
9 got down here, they're living in a hotel room in Florida
10 and get down here the child is undernourished. Witness
11 after witness says he was small, his shots four months
12 behind. We had testimony about that. The medical records
13 fell off after nine months and did not pick back up until
14 Ms. Gorman took her grandson to Dr. Hutson, so from nine
15 months to sixteen months no medical care.

16 Now we've all had kids, well let me back that up,
17 I suspect that many of you have had children before, when
18 you were raising your kids did you have a nine month gap in
19 your medical records, I doubt it.

20 And then there was the incident with the
21 stroller, taking him down the steps, [REDACTED] fell in the
22 stroller. They didn't think it was that serious; they
23 didn't think anything of it. Again take into account for
24 just a second that Ms. Gorman may actually be innocent of
25 this charge, so when the police come around and say what

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1 happened the doctor just told us there's some head
2 injuries, she's thinking back, oh, my God, maybe it was
3 when she fell, when he fell in the stroller. I'm trying to
4 figure out what caused these injuries. I didn't see
5 anything. I don't think Robert is that kind of guy, must
6 have been when he fell and hit his head on the stroller or
7 maybe it was that time the dog knocked him over. If you
8 didn't do anything and you actually don't know what
9 happened and they're asking you you're going to try to give
10 them some kind of explanation. I'm trying to figure it
11 out, too. Maybe it was the stroller, maybe it was the dog,
12 maybe it was the pool, we don't know. All Julia Gorman did
13 was try to assist in figuring out what happened to her
14 grandson.

15 With all this going on there's no wonder that her
16 first thought what has Cesalee done now? Brought the baby
17 down here, dropped him, got him into some kind of trouble,
18 dropped him off and left. That's why you heard testimony
19 that he was, didn't seem like he had much energy, he was
20 lethargic. Ms. Gorman's thinking the whole time that
21 something is wrong with him from when he first got here in
22 June to when his mother left in July to when he has this
23 seizure on July 14th. In her mind all of this is
24 connected. She's not a doctor; she doesn't know what
25 happened, so when the doctor say it's skull fractures the

1 instant she, she instantly assumed that it was something
2 that happened before he was brought down here or it was
3 something that happened in the house when he fell in the
4 stroller.

5 If you asked her today what do you think
6 happened, you've got all this medical evidence and
7 testimony that it couldn't have been the dog, it couldn't
8 have been the stroller, Ms. Gorman, what do you think
9 happened, she'll still tell you I think Cesalee must have
10 had something to do with it even though we say here's the
11 plane ticket, Cesalee was not here. Her instant thought is
12 that she was the responsible party.

13 You heard from Dr. Hutson. He did a couple of
14 exams, got [REDACTED] shot record up to speed, and he did not
15 see any injuries or bruises. This is important because
16 they have Ms. Gorman charged with unlawful conduct towards
17 a child, the theory being that she beat him and caused
18 these bruises on him.

19 You heard from Lieutenant Rainbow, Horry County's
20 Fire Department, the first responder on the scene, and the
21 only government official to visit that house that day. I
22 asked him, did you see anything out of the ordinary when
23 you went in the house, blood on the walls, anything like
24 that? No. That's all the official report that we have
25 about what was going on in the household, a single person,

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1 but he told us something else. He told us that these
2 injuries were so significant that he didn't want to wait
3 for the ambulance. He got there first, the ambulance was
4 on another call, so they had to call a different ambulance
5 out to the scene. Medic 8, I'm going to meet you on the
6 side of the road, no need for you to pull into the
7 driveway. He grabs the little baby from Palmer, runs him
8 out the door, runs him to the head of the road, that is how
9 serious what was going on. At the time Ms. Gorman doesn't
10 know that.

11 Now why do I bring this up? Because the
12 testimony is when he's at Conway Hospital he's got bruises
13 on him. Nurse notes it, Dr. Cacace says, yeah, I reviewed
14 his notes and he kind of changed his, his testimony after a
15 few minutes, yes, I remember having that conversation he
16 did have some bruises on him. I think the bruises got on
17 him in the effort to take him to the hospital. This was
18 not a case where a person just lays there and waits for the
19 stretcher. This is a case where they pick him out and run
20 him out the door to meet the stretcher.

21 As you heard Ms. Gorman said while I was talking
22 to the doctors or the detectives at Conway Hospital they
23 had already airlifted [REDACTED] down to Charleston. They
24 weren't waiting on nothing, this was just that significant.
25 Now if it's that important that you got to run him out to

1 the door, out the door and down the street they're probably
2 not all worried about how he's being handled. He's
3 literally picked up and carried out the door.

4 You had testimony from Ms. Carmichael, the 911
5 dispatcher. Ms. Carmichael got us the tape and we played
6 the tape. Now again keep in mind for just a second that
7 Ms. Gorman is innocent. The Judge will tell you that she
8 is presumed innocent but I'm not talking about that, the
9 presumption of innocence means right now she's presumed
10 innocent. She is innocent unless and until you all say
11 otherwise, but think for a second. If you call 911 and you
12 don't actually know what's going on what do you do? You
13 tell them you need help; they say describe the symptoms and
14 you describe them. You do what the, what the dispatcher on
15 the phone tells you to do, she said let him breathe, fine,
16 let it go. Ms. Gorman describes how he's breathing. The
17 grunting noise that he's making and a doctor has testified
18 that he would have made these grunting noises if he was
19 already in the throws of this injury.

20 If you're guilty you don't call 911. If you're
21 guilty you don't jump in the ambulance with them and ride
22 down to Conway Hospital. Flight is evidence of guilt.
23 While they're going to the hospital she's going to the
24 airport, but that's not the case. If you're actually
25 innocent and your grandbaby for some unknown reason is

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1 being rushed to the hospital what do you do? You jump in
2 the ambulance and you ride along with them and you find out
3 what's going on and that is what she did. That is the
4 responsible thing to do; that is the adult thing to do.
5 That is what an innocent person would do.

6 Like I said once they got to the hospital they
7 got Dr. Cacace who told us thirty-six hours, got Dr.
8 Roberts who told us one hour. We got Dr. Schandl who says
9 three days maximum, and we got Dr. Abel who gave us two
10 answers. On the one hand it's three days if you look at it
11 this way, the other hand it's three hours if you look at it
12 that day, and that's their evidence. That's all the
13 evidence we have in this case.

14 They had more witnesses. They had Marsha
15 Bessant, not real sure why we had Marsha Bessant cause she
16 did not advance the ball.

17 They had DSS workers, I understand they have a
18 difficult job. They did not really have a role in this
19 case except to pass it off to the detectives but they
20 didn't give us any new information.

21 At this point with all the evidence that we have,
22 all of the medical records, the State is in a pretty tight
23 pickle because they have evidence of injury, they don't
24 have evidence of a person inflicting those injuries. We
25 know what happened, we don't know when it happened. We

1 don't know who did it, so that's where the rumors come in.
2 That's where Marsha Bessant comes in.

3 Let's talk about these different theories. Now
4 the first theory, and I want to give Candice credit, she
5 kind of backed up off of this theory because it don't make
6 any sense. The first theory is that Ms. Gorman struck and
7 killed her grandson on the Friday night, three days before
8 911 was called. Why? Because that Friday night is the
9 only time that she was alone with him. We had testimony
10 that Robert went out with a neighbor that Friday night and
11 then the neighbor's girlfriend came over. That's the only,
12 that's the only time that she's alone with the child.

13 To that end we have these indictments, and you'll
14 have these indictments in the back, let's see, theory
15 number one. This one is theory number one, that Ms. Gorman
16 inflicted this blow on Friday the 11th. It's even
17 scratched out on the back because it doesn't make any
18 sense. The 11th is changed to the 14th cause the time line
19 doesn't fit and that's why like I said I'd give Ms. Lively
20 credit she didn't go there.

21 Who went there, Mr. Palmer, his lawyer. Why did
22 she go with this theory that doesn't fit because it's the
23 only time that he's not around the child. She has to go
24 back to that theory even though it's been scratched out off
25 of this indictment.

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1 They then went with, well she's having some
2 stress in her life, all these financial problems, things
3 are tight. Into this comes these two people making things
4 even more difficult financially and she took it out on her
5 grandbaby, a moment of stress. Well finances were tight,
6 but they weren't tight for Ms. Gorman, she had a job. They
7 were tight for Mr. Palmer cause he didn't have a job. He
8 wanted to go out with his friends, kind of have to have
9 money to do that.

10 Now the official theory at this point is
11 indictment number two. This one is she did it on the 14th,
12 excuse me, on the 11th, scratched out to the 14th. This
13 one is the new theory it says that Ms. Gorman aided and
14 abetting him doing it. This indictment also scratched out
15 to the 14th. Now what's the difference to these things?

16 This first indictment the three day theory,
17 September 25t, 2008, grand jury indicted. The second
18 theory that he did it and she failed to act or cooperated
19 in some way May 27, 2010. Two years later, a year and a
20 half later the State of South Carolina has said we have a
21 new theory in the case, we don't think she beat this baby
22 three days earlier, we now think he did it on the 14th and
23 she helped to cover it up. Two horses, either she did it
24 or she didn't do it, that's how I grew up, but either she
25 did it or she helped him to do it. They don't know which,

1 they've indicted her for both. How can they ask you to
2 convict her when they don't know which one she did, if she
3 did either of them at all?

4 Now throughout the trial the mysterious fourth
5 theory came up, the fourth theory the Xyzal had something
6 to do with it, and you heard the testimony, the questioning
7 was we got a picture of the children's Tylenol, let me get
8 you that picture so there won't be any question about it.
9 We got the children's medicine right here, children's
10 Tylenol and his other medications. Where's the Xyzal, it's
11 in the diaper bag, I took it to the hospital when he went
12 to the hospital. That's a reasonable thing to do, if you
13 don't know what's happened and all you know is this kid is
14 in an ambulance headed down to Conway emergency room it is
15 a reasonably prudent thing to take his medications, drop
16 them in a bag and take them to hospital with you.

17 For those of you who have had children, and I'm
18 sorry I assumed earlier that all of you did, is it
19 reasonable to have some children's Tylenol in your house?
20 Yes, everybody who's ever had a child I'm sure you have
21 children's Tylenol in your house. If you don't have
22 children's Tylenol in your house you're probably being
23 neglectful to your children cause every kid is going to
24 need that, so there is no harm, there is no foul in having
25 these medications. There is no harm in giving him Xyzal.

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1 They tried to make a big issue, did you give him too much,
2 gave him double, triple the quantity of dosage or whatever,
3 I don't know what that's all about, but that is the
4 official fourth theory of this case.

5 Now let's talk about assumptions because we've
6 had a handful of those, too, and to be honest with you the
7 assumptions are the problem here. From the start of this
8 case they assumed they knew who did it. They assumed that
9 they knew what happened. They assumed that they knew when
10 it happened and the police acted on those assumptions which
11 turned out to be wrong and that's why we're here unsure of
12 who did what.

13 The first assumption was that it happened on
14 Friday night. We're now pretty sure that it didn't. We're
15 now pretty sure from the testimony from all of these
16 doctors that while it's possible that this injury could
17 have happened on Friday it is substantially more likely
18 that this injury happened three hours before 911 was
19 called.

20 The second assumption they knew who did it. We
21 see that video the policemen assume that this is a case of
22 shaken baby syndrome. That's a big phenomenon in the news,
23 I'm sure you've all heard about it, so they give her the
24 leprechaun and have her shake for a little while. The
25 problem with that is at the time that Detective Troxell

1 hands her the leprechaun and asks her how did you shake the
2 baby he knew that was not the cause of these injuries. It
3 is undisputed, I asked those doctors one by one any injury
4 to the neck, no. Why is that important, respectfully shake
5 him all day that's not going to cause the injuries to this
6 head. This head was hit by something or hit into
7 something, we don't know which, but shaking a baby is not
8 going to cause the injuries that you saw. They have not
9 alleged that shaking the baby caused those injuries. They
10 just threw that out there because the police felt that's
11 what happened.

12 Well that's why I asked Detective Troxell, did
13 you do a walk through? You felt that's what happened and
14 you felt like you had her on the ropes, she's shaking this
15 little leprechaun around and you feel like we've got our
16 girl right now, okay, you got her, ask her to write out in
17 detail what she did. Was it done? No. Ask her let's go
18 on back out here to the, to the, to the house and you can
19 walk us through where you were at and what you were doing,
20 was that done? No. When I try to tell you, and he asked
21 the question, show me how you shook the baby on Monday and
22 the answer was I didn't shake the baby on Monday. He knew
23 the time line didn't fit but it sounded too good to be
24 true, that's why he's asking about Monday. Our assumptions
25 are it happened on Friday. Our assumptions are it was

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1 shaken baby. The evidence is that it happened on Monday
2 and that it wasn't shaken baby.

3 Now the last assumption that they made is that
4 she's the person that did it and that is for you to decide.

5 This case is based on probability. What is the
6 chance that she was around when the injury was inflicted
7 or, theory two, that she was around and failed to act to
8 stop him or cover up him inflicting these injuries. That's
9 why the time line is important.

10 At the time that the injuries were inflicted,
11 zero to three hours, we can't give you any more information
12 than what we have. If she had a low jack or a tom tom in
13 her car we could have brought that in here and plugged it
14 up and you could have saw her driving down Highway 22 and
15 when. We just didn't have that much information. We gave
16 you what we had, time card, check, the testimony. I went
17 to the video store, walked around the IGA, that's all we
18 can tell you. We are trying to fill in the gaps.

19 Three hours before 6:06 p.m. Mr. Palmer is with
20 [REDACTED] one hundred percent of the time for the three hours
21 before 6 p.m. They try to put out there that he was
22 walking the dog and then they kept waving around this
23 trampoline, well isn't that, you know, eight hundred and
24 seventy-nine yards from the house, isn't that where he was
25 walking the dog, a quarter mile down the road, and on the,

1 on the property two, two houses away? That's how far he
2 walked the dog. Well that's not how far he walked the dog.
3 Ms. Gorman told you when she said, hey, there's a problem,
4 call 911 he was right there, he wasn't that far away.

5 They acted on their assumptions and they went
6 into that interview, and you all saw the tape and I'm going
7 to ask you to pay close attention to that tape, the police
8 knew when it happened. The police knew that the story that
9 they were getting Ms. Gorman to tell them could not
10 possibly fit what actually happened but they did it anyway.
11 Why did they do it? Because it was easy to do. You got
12 somebody on the ropes, the temptation to wrap it all up in
13 a big bow they couldn't help it.

14 You heard the tape and you'll have that in the
15 back and if you want it played again you ask the Judge can
16 you play it again. The tape says, Ms. Gorman says on the
17 tape "Can I take my medicine?" She asked Detective Weaver,
18 he didn't look at the medicine, no second thought about it,
19 no. Why is that? Because we're conducting an interview.
20 This is a police interrogation, please tell me one of you
21 has actually watched first forty eight, they don't stop the
22 interview and let you take some pills.

23 Asked Detective Troxell, I don't know how much
24 more disingenuous you can get, he says let me see that,
25 looks at it, oh, I don't remember what it said, I remember

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1 it had her name on it, I'm pretty sure it wasn't a poison
2 but, yeah, you can go ahead and take that. That's because
3 it says Zanax and he's over there thinking, okay, she's
4 about to take this Zanax, we give her about five more
5 minutes of stern talking to and she's going to fold like a
6 wet blanket. Well and that's exactly what happened, you
7 take an anti-anxiety drug, police are on you asking you
8 repeatedly could it have an accident, could it have been,
9 that didn't work, no, it's not an accident. We're going to
10 go cut your baby open and look at the skull, we're going to
11 show you these pictures. You can show me the pictures I
12 didn't do anything. Well what could you have done? You've
13 got to give me some answers, you've got to help me, Julie,
14 you've got to help me, I can't help you, and then here's
15 where the false confession, for the record I'm making air
16 quotes, here's where the false confession comes in.

17 They suggested could you have shaken the baby.
18 They pull out the leprechaun they say show us how you shook
19 him on Monday and she said I didn't shake him on Monday.
20 Show us what you did, so the next thing you know you got
21 that. Watch that tape as much as you want. Did they say,
22 Ms. Gorman, did you shake your baby to death? Yes, I did.
23 That would have been real clear, but they said could you
24 have shaken him, show us how you did it. I didn't do it on
25 Monday, well show us what you did anyway, and then once

1 that started happening things turned a hundred and eighty
2 degrees on the tape. All of a sudden you heard the words,
3 play the tape all you want, but your memory coming back to
4 you now. That's cause they were hearing what they wanted
5 to hear. You doing good, Julie, oh, I can help you now. I
6 don't need a father figure, my daddy was in my home. Do I
7 need reassurance from Detective Weaver? you're doing good,
8 Julie, keep going, Julie, we can help you. That's how they
9 got that tape and you can look at it all day long but what
10 you see on the tape is not what happened to [REDACTED] The
11 doctors have told you that.

12 The Judge will tell you what the law is. If I
13 say anything about the law and the Judge says something
14 different about the law go with what the Judge says, that's
15 why he's the Judge. I told you his job, he's the judge of
16 the law, you were the judge of the facts.

17 I want to talk to you about reasonable doubt.

18 The Court: Mr. Galmore, if you're going into
19 that, we've been at this for about an hour, and I don't
20 want to interrupt your, your, your argument, we need to
21 take a real quick break, okay, and we'll follow right back
22 up on that, okay.

23 Mr. Galmore: Yes, sir, Your Honor.

24 The Court: We'll be at ease for just a moment.

25 (Whereupon, the jury retired to the jury room at

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1 10:50 a.m.)

2 (Whereupon, a recess was taken and the
3 following takes place on the record after the recess.)

4 Ms. Lively: I didn't object to him arguing the
5 issue of the indictments, which are not evidence, but I am,
6 I want to put it on the record now that I do object to him
7 relaying as if it is a piece of evidence. I know Your
8 Honor tells the jury that when we get started with the case
9 and I would just ask that along with your charges that you
10 would once again include that as the jury in their
11 deliberations that they're not to consider the indictments
12 as evidence in this case.

13 The Court: I usually do not, I, my charge has
14 in there I remind you that the fact that the defendant was
15 arrested and charged and indicted is not evidence in this
16 case.

17 Ms. Lively: Okay, so it is in there?

18 The Court: Cannot be, yes, okay.

19 Ms. Lively: Okay.

20 The Court: This document is simply the formal
21 instrument which contains the charges.

22 Ms. Lively: Yes, sir.

23 The Court: Okay?

24 Ms. Lively: Yes, sir.

25 The Court: All right, if the jury is ready to

1 come back in now, please bring them back in.

2 (Whereupon, the jury returns to the courtroom at
3 10:59 a.m.)

4 The Court: All right, Mr. Galmore, you may
5 proceed.

6 Mr. Galmore: Yes, sir.

7 Mr. Galmore: (continuing)

8 Before the break we were talking about reasonable
9 doubt, and I wanted to talk about that with you because I
10 want you to have a clear understanding of what your duties
11 are as a juror. We selected you not as a group but as a
12 individual. You remember Monday when you came up, had to
13 go past the first attorney, had to go past the second
14 attorney, had to go past the third attorney before you got
15 to sit on the jury. We picked each of you and we picked
16 each of you because we felt that you, you, you, and you
17 could help us to understand what happened in this case.

18 Your job as jurors is not really to say if she's
19 guilty or not guilty; your job as jurors is to say has the
20 State of South Carolina met its burden of proof in this
21 case. Your job is not to be drawn in by sympathy, by
22 passions, by biases, by prejudices.

23 Your job is to examine the evidence and see if
24 the evidence meets the law beyond a reasonable doubt, so
25 when Ms. Lively gets up and shows you all these pictures of

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1 [REDACTED] at the pool, and [REDACTED] at the beach, and [REDACTED] on
2 the carousel, that's sympathy. We're not here to look for
3 a verdict based on sympathy.

4 When she shows you all these tubes in [REDACTED] and
5 all these scratches, bumps, and bruises, which they even
6 concede well that's an ant bite or that's an I.V. trying to
7 go in, or well some of this could be natural that toddlers
8 bump into things, I don't know what that, what that bruise
9 is. When we get into all that we're here looking at
10 evidence; we're not here looking at sympathy.

11 They're going to show these pictures from the
12 autopsy and they're going to want you to say, oh, poor
13 baby, and you should say that, but that does not translate
14 into a conviction for either person and I'm not here to
15 defend Robert Palmer at all, but it still does not
16 translate into a conviction for him.

17 The law says the State must prove each element of
18 each crime to your satisfaction, to your individual
19 satisfaction beyond a reasonable doubt and I explained
20 beyond a reasonable doubt to you on Tuesday as the whole
21 football field, greater weight or preponderance of the
22 evidence, clear and convincing evidence, beyond a
23 reasonable doubt, you're up here a hundred yards down the
24 field.

25 So I put to you two questions, very simple, this

1 is the heart of the issue, the whole week is about to get
2 narrowed down into two simple questions. Question number
3 one, and I want you to answer these questions before you
4 even get in that jury room. In a minute you're going to
5 hear from everybody else, the Judge is going to ask you to
6 go in your jury room but wait do not start your
7 deliberations, your deliberations cannot begin until we
8 send in all the exhibits . Once the exhibits get in the
9 back then you may begin, start the clock, that's when you
10 start talking to each other about what happened, but before
11 you talk to each other about what happened right now when
12 you're sitting in that chair you're talking to yourself,
13 close your eyes, close your ears, close off everything, and
14 answer within your own heart and within your own mind these
15 two questions.

16 Question number one, did she do it, very simple,
17 that is what this case comes down to, and the answer is
18 simple, say, yes, she did it, no, she didn't, or I don't
19 know. If you say, no, she didn't do this we think he did
20 it vote not guilty.

21 If you say well they just haven't shown us who
22 did it, we just simply do not know vote not guilty. Right
23 now you can answer that question in your head. I'm sure
24 all of you have already decided did she do it, yeah, I
25 think she did it, no, I didn't, no, I don't think she did,

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1 or I don't know, and whatever your answer is stick to it.

2 When you get in the back they're going to be nay
3 sayers, you're not looking at this right, I'm tired, it's
4 Friday, I haven't seen my kids all week, I'm sorry, I
5 hadn't seen my either, but that's not the point today. The
6 point is we can't send an innocent person to prison, so
7 when you answer that first question did she do it if you
8 say the answer is, no, stick to that conviction.

9 Now if you say the answer is, yes, I would
10 respectfully disagree with you, but you're the juror and
11 that is your job. I told you about roles and
12 responsibilities and the Judge is a judge of the law so if
13 I tell you something wrong about the law don't listen to
14 me, listen to him, that's his job, and if you look at this
15 case and you answer that question did she do it, yes,
16 you're the jury, you're the person that figures that out, I
17 respect your opinion.

18 If you think the answer is, yes, then you must go
19 to question number two. Question number one, did she do
20 it. Question number two, did the State of South Carolina
21 prove to you beyond a reasonable doubt that she did it,
22 again, yes or no. You can say, yeah, I think she did it
23 but they just didn't prove it, vote not guilty. That is
24 what your obligation is a juror. If you say they haven't
25 met this law that the judge gave me even though I think she

1 did it and she should burn in hell then you still can't
2 find her guilty if they did not meet the standard of the
3 law.

4 Now that standard is not some whimsical thing.
5 What the State has done is said we have evidence of injury,
6 we can narrow it down to one of these two people, it might
7 even say both of these people, I don't know, the theory
8 changes on a regular basis, but the bottom line is have
9 they proven it to you beyond a reasonable doubt.

10 What that means and the Judge will tell you this
11 and you will have this in your charge in the back, beyond a
12 reasonable doubt means are you firmly convinced of the
13 guilt of the accused. Question number one did she do it,
14 are you firmly convinced that she did it, that she struck

15 [REDACTED] Let's switch theories because the State has two
16 theories here, I have to argue against both, did she do it,
17 did she allow, abet, conspire, aid in Mr. Palmer striking

18 [REDACTED]
19 The testimony we've given you is that she went to
20 work, she came home, she looked in on him, he appeared to
21 be asleep, went and made dinner, came back, went to get him
22 up and he started having a seizure. Does that sound like
23 she's conspired with Mr. Palmer to allow him to abuse her
24 grandson? Are you firmly convinced that she did it? Are
25 you firmly convinced that she conspired with him to let him

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1 do it and not call 911 about it?

2 Unlawful conduct towards a child, the abuse, the
3 bruises, are you firmly convinced that this kid had a
4 history of abuse in Ms. Gorman's care, no. We had
5 testimony from James Palmer and Gail Palmer we just saw him
6 yesterday at the pool, in swimming trunks, he didn't have
7 bruises all over his body. Now the next day by the time he
8 gets to the hospital he does.

9 Funny thing about bruises, they can pop up any
10 time, anywhere, you don't have to do anything to get one.
11 Ms. Lively has got bruises on the back of her legs right
12 now. When she's up here doing that closing argument and
13 walk over to that table look at her shins, they got bruises
14 on them right now. Where did they come from, this is
15 important, what did they come from, they came from sitting
16 in a chair, real simple, sitting in a chair, got a bruise.
17 Is anybody calling 911 about that, yet and still they're
18 asking to put my client in prison over it.

19 Ms. Gorman has lived with this case for several
20 years now. She's offered every possible explanation for
21 how [REDACTED] could have been injured. She's told them
22 consistently I don't think Mr. Palmer is that kind of guy
23 but at the same time it wasn't me and if it's down to one
24 of the two of us then it had to be him. She doesn't want
25 to accuse him of it, still doesn't want to accuse him of

1 it, but it wasn't her.

2 She loved this child; she was responsible for
3 this child. You heard it on the tape, she fed him, she
4 clothed him, gave him his shot record, took him to the
5 doctor, took him to the hospital, probably took him to the
6 hospital too much if you, well if you ask me she took him
7 too much. If a child has ant bites I give them some
8 Benadryl and send them to sleep. It's the appropriate
9 thing to take your child to the hospital for, I mean to the
10 doctor's office for. If the child has a vomiting problem
11 give them some water and send them to sleep but it is
12 appropriate, you haven't been with this child that long,
13 you don't know this child's medical history, take him to
14 the hospital. She cared for [REDACTED] she loved [REDACTED] She
15 has not yet had a chance to mourn, why, because the first
16 thing they did was accuse her of it, and she's been on the
17 defensive ever since.

18 You didn't leave your common sense when you
19 signed up for jury duty. Use it today, ask yourself those
20 two simple questions, do you think she did it, are you
21 firmly convinced that she did it, are you firmly convinced
22 that she aided and abetted him doing it, and the fact that
23 they have two different theories tells you right there they
24 don't know. You can't be firmly convinced of anything.
25 Has the State proven it to you beyond a reasonable doubt;

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1 we submit to you that they have not. We ask you stay with
2 your convictions, even if you're in the back by yourself
3 and every other juror is jumping on you if you feel like
4 she didn't do it say so and mean it. I thank you for your
5 consideration, thank you.

6 The Court: Ms. Grabert-Lowenstein?

7 Ms. Grabert-Lowenstein: Thank you.

8 Closing Argument

9 By Ms. Grabert-Lowenstein:

10 Ladies and gentlemen of the jury, it's once again
11 my distinct honor to speak on behalf of Robert. You will
12 hear that Robert doesn't have to testify. We have a great
13 judicial system and one of the things is that the State has
14 to prove their case and we've done a lot to defend Robert
15 but he doesn't have to testify and you will be instructed
16 not to consider that. He has a right and has chosen to
17 rest on the state of the evidence.

18 There's been a lot of medical evidence presented
19 and as I said in my opening that's the what. We know what
20 happened and now we know that the who is not Robert.

21 Two people stand before you on the same charges.
22 You will have to examine the evidence as to both of them
23 and then find if they're guilty beyond a reasonable doubt.
24 I submit to you that Robert is innocent beyond a reasonable
25 doubt. We have proven he could not have committed the

1 injuries.

2 Let's take a look at the two individuals and what
3 the totality of the evidence shows and that totality of
4 evidence is going to show Robert to be not guilty of all
5 the charges. The testimony before you is that Robert is a
6 honorably discharged veteran, moved back to his home town
7 and county and to the close family that are here.

8 The testimony from him in terms of his interview
9 and from Ms. Gorman is he's the patient one. He didn't get
10 frustrated; he's the patient one.

11 How did he interact with [REDACTED] After his
12 family welcomed Cesalee and [REDACTED] when they visited he
13 took care of, he participated in the medical appointments.
14 He was part of the concern about getting care for [REDACTED]
15 He was concerned about the fussiness, cranky situation, you
16 know, you've got a toddler who has allergies and ant bites,
17 had been taken out of his element, all of this is, is
18 really pretty natural. Robert was just concerned about it,
19 concerned about it as a father, a father of a five year old
20 at the time.

21 What else does the evidence tell us? The
22 evidence is that Robert when Cesalee was going to leave
23 wanted [REDACTED] to stay. He didn't have any resentment, any
24 frustration. He could have said, no, just please take him,
25 but he didn't. He said, no, I want him to stay.

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1 Now you heard some testimony about a restraining
2 order, the last piece of evidence that was put in will show
3 that in 2007 despite a ex-wife who hadn't gone through with
4 divorce at that time despite, you know, her allegations
5 Robert was given liberal visitation with his, his minor
6 son. That's a non issue.

7 What do we know about what other people think of
8 Robert and children? You heard Adrian Robertson tell you
9 that Robert has interacted with all three of her children,
10 Caroline who's eleven, and Kylie and Karlie and I don't
11 remember which one is which age, but they're five and nine
12 months. She sees his reaction to them. She sees him
13 interact with them because they're at work and the most
14 important thing is she would trust, trust her eleven year
15 old, special needs, and most importantly non verbal child
16 with Robert. It speaks volumes. She had a chance to see
17 him. She has a chance to see him interact at work. If
18 there was any anger, any temper there, do you think that
19 she would say, it's fine if you're around my non verbal
20 child, no, tells you a lot about the substance of my
21 client.

22 I'm going to discuss some other things that are
23 going to show that when you show the contrast between these
24 two individuals it shows Robert to not be guilty of all the
25 charges.

1 Now let's start with the last three days, last
2 four days, last three days before the, the injuries of
3 [REDACTED]'s life. What do we know about Friday? We know that
4 Robert went out with a friend, a neighbor. We know that
5 Ms. Gorman had a, we had a discussion about that, and we
6 also know out of her own mouth to other witnesses that she
7 gave a dose of an antihistamine that was like four times
8 what should have been given. Why would she do that? This
9 caring person, would it be to keep [REDACTED] still? Would it
10 be to shut out the frustration he was becoming to her, yes.

11 On Sunday there was an invitation by the Palmer's
12 for everyone to come over to their house, have Sunday
13 dinner, go to the pool, and Robert got [REDACTED] ready, and,
14 you know, with a seventeen-month-old I don't think that's
15 probably an easy task, but he got him ready. He got him
16 dressed up really cute, and where was he because his,
17 Robert's father James had to pick them up, they were down
18 to one vehicle, where was he when they came to pick them
19 up, little bag in tow, and [REDACTED] holding his hand, little
20 bit of difficulty as often happens with getting him into
21 the car seat, any issues. Now I want you to remember Mr.
22 Palmer's reaction when I asked him if he would lie, no way
23 that this man would lie to protect his son, the truth is
24 the truth, if you'll remember what he said. Robert didn't
25 have any angst.

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1 They go over to the Palmer's and [REDACTED] is taken
2 to the pool. Now we have some lethargy, you know they're
3 still, they're concerned and, you know, we might have an
4 answer for part of that and that is that Ms. Gorman in her
5 interview said she had given the allergy medicine on the
6 12th also. It was given to him when they came back in from
7 being outside and what does he do, he immediately gets
8 drowsy, so the lethargy you see on Sunday, Friday,
9 Saturday, it all makes sense.

10 Important about Sunday is they had this little
11 boy, as little as I refer to him little shaver, light
12 skinned, had no bruises on him. The end, the, what
13 hopefully was a really pleasant day for everybody.

14 Now let's talk about Monday, Julie goes to work.
15 She had worked Saturday and Sunday. Mr. Palmer talks to
16 her and, you know, indicates that the lethargy is kind of
17 continuing and but, you know, [REDACTED] is okay. Both of them
18 indicated in their initial interview she got home at 4:30,
19 makes sense from the time card, excuse me, makes sense from
20 the check that that's exactly when she got home by the time
21 you add all that in because she was at the grocery store
22 about 4:00.

23 She never mentioned it to Detective Weaver or
24 Troxell, never, ever mentions that she had been there. She
25 comes in now and tries to say well I didn't get home until

1 much later, that's after she's heard all the medical
2 testimony. She wants to try to keep herself from that
3 house and she can't do it, she lied.

4 Further we know that when 911 is called when, you
5 know, Robert had been outside and, and now according to the
6 testimony and I guess Ms. Gorman is saying he came back in
7 when, when she called, you know, discovered [REDACTED] even
8 though they both said before that they were together.

9 Ladies and gentlemen, that time on Monday night
10 is important. Mr. Palmer was out of the house. He was out
11 of the house, didn't have to be out of the house long.
12 You'll remember Dr. Abel said could have happened in a
13 minute, the injuries could have happened in a minute.

14 Detectives never, ever measured this but had to
15 admit it was a long distance, approximately a quarter of a
16 mile, takes away from the State's theory that he could have
17 heard something.

18 Let's talk about what else happened that Monday.
19 Ms. Gorman instead of keeping a hold of [REDACTED] trying to
20 help him immediately hands him off to Robert and who's the
21 one that says call 911, Robert. You heard the 911 call,
22 the evidence is there were two people at that time in the
23 trailer, one who was stoically calm and had removed herself
24 from her grandchild, and the other who's saying where are
25 they, where are they, and basically indicates they took a

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1 long time to get there, and I believe in his interview he
2 said they took the scenic route to the hospital, that
3 indicating concern. Ms. Gorman handed [REDACTED] off much like
4 she handed him off when he was visiting when he would get
5 fussy, had never met him, is a grandmother and she handed
6 him off at the first little fuss. .

7 What else do we know about Ms. Gorman and how she
8 deals with stress? We know from a lot of different sources
9 she doesn't deal with it. We know from probably somebody
10 who knows it the best, Cesalee, that she deals with it by
11 bottling it up until she explodes and what does she do, she
12 explodes behind closed doors like a trailer, a toddler's
13 bedroom when the other occupant of that house, her
14 boyfriend, is not there.

15 She's compulsive about wanting to keep the place
16 neat, you'll see the place is neat, and from her own
17 statements, which we'll talk about in a moment, she didn't
18 like interference with cooking, cleaning, you know, things
19 that anybody when they've got a child around is going to
20 know there's going to be some issues. You got to have some
21 patience and she has zero.

22 I have invoked some pleasant memories and not
23 just painful ones when Cesalee described [REDACTED]'s sort of
24 personality. He was a mama's boy, just wanted love and
25 attention and affection. She confirmed that he would hold

1 his arms out want to be picked up and I asked her how loud
2 he was and she said sometimes his lungs were too good, just
3 exactly the type of thing that would set Ms. Gorman off.

4 You heard the interviews, you'll have an
5 opportunity to hear them again, but there's some excerpts
6 that I would like to talk to you about. When asked about
7 Saturday, when I walked, of course, when I walked in the
8 door, of course, [REDACTED] making his whine, whine, whine,
9 you know. It gets louder when I get home but that's just
10 the way he is, you know, if I walk in the door he starts.
11 I mean he just makes noises but it just seems like when a
12 woman walks in it just gets more loud and comes over and
13 starts trying to climb up my leg and, and cause he wants to
14 be carried and we can't carry him because we're trying to
15 break a habit. Right after that then she says sounds mean,
16 sounds ugly, but, you know, I can't clean or cook or do
17 anything if I've got a baby hooked to me, you know, so, you
18 know, I grab his finger and, you know, he takes my finger,
19 we walk around and, you know, I went over to the toys and
20 you know, sit down and, you know, talk to him and
21 everything and I cooked dinner.

22 She describes going to TBonz at Barefoot Landing.
23 He was tired and cranky because he kept itching and I gave
24 him some of the allergy medicine thinking maybe that would
25 help relieve the itching. She can't do anything when he's

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1 around.

2 One of the most poignant parts of her interview
3 is when she's asked to describe shaking and you saw that.
4 There's a lot beforehand about well I don't know if I
5 picked him up hard, I can't remember. She makes it real
6 clear that she didn't tell Robert about shaking. There's
7 one part I want you to remember and I want you to think
8 about it, and if you need to look at it again you can, when
9 to Detective Troxell she is describing shaking the baby
10 she, she first of all gets, you know, she's I held him out
11 like this. She also describes that, you know, well, you
12 know, as she, she starts to say she shook him and then she
13 kind of stops herself, her hands go up like this. Those
14 hands were fists to [REDACTED] poor skull, remember the
15 doctors talked about two impacts.

16 Concerning that Monday night and she's, she's
17 talking about they had checked on him, he was, he was fine.
18 In fact she confirmed he was breathing normally, so I went,
19 you know, and cooked dinner and Robert says to me, what do
20 you want to do with [REDACTED] I said let's eat dinner first,
21 you know, kind of peaceful instead of trying to feed him
22 and eat mine at the same time, so we ate, Robert took the
23 dog out and I went in the bedroom to wake him up. That's
24 when everything happened. That's what I'm saying, that
25 isn't, that isn't in the transcript.

1 The other thing the transcript is going to tell
2 you it's kind of an interesting paragraph and we haven't
3 really talked about it, but Detective Troxell and in
4 talking about how Ms. Gorman had taken up the
5 responsibility for him and was [REDACTED] a burden, she says
6 he's not a burden, you know, he's just not a burden.
7 Troxell says well I didn't mean it in a bad way, but it
8 changed your lifestyle a little bit; you're used to doing,
9 you and Robert doing what you wanted to do and when you
10 want to but now you've got to take care of a baby he, what
11 does Ms. Gorman say, that was a choice I made. I was
12 willing to change, sacrifice, you know, um, um, and you
13 did, you, you made, that's what Troxell says to her and
14 it's a sacrifice and you made those sacrifices, you know,
15 to change, and Weaver says because, then Weaver says
16 because of him, Julie, and she says, you know.

17 Now think about that, we've heard, she hasn't
18 seen her own two children since 2007, her, her younger
19 ones, we've heard about the tumultuous relationship she had
20 with Cesalee. She want to change that, did she attempt to
21 change that? Is that kind of what it was about? Was
22 [REDACTED] supposed to be a second chance and that failed, have
23 to really examine what that could mean.

24 The other important part of the transcript to
25 where she was caught in a lie, she says on three different

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1 occasions I would never hurt my children. Seven years ago
2 she split the lip of Kyle.

3 Ladies and gentlemen, when you examine from the
4 11th on you see that the frustration of a person who
5 couldn't handle it already, built up, situation on Friday
6 with Robert, the work. She was already angry that Cesalee
7 hadn't taken [REDACTED] with her; she's the one that didn't
8 want [REDACTED] to stay. You heard her testimony and I ask you
9 to remember the tone of voice that she talked about that
10 in.

11 She comes home on Monday and doesn't ask Robert
12 where's [REDACTED] now refer to him by some nickname, she says
13 where is [REDACTED] I don't even ask about my pets like that,
14 and that's where, you know, that tension just is builds and
15 builds and builds leading to her just losing it. We're not
16 saying that she didn't care at all about [REDACTED] What we
17 are saying is it was her frustration, her inability to cope
18 that caused the injuries.

19 Now we have the evidence, we've already talked
20 about that she handed him off at the time when 911 was
21 called. We also have evidence that Robert, not she, was
22 the first one at the bedside at Conway Medical. You also
23 have the evidence, and our detectives are smart, they,
24 they sized these two up right away. They realized that
25 Robert had cared for [REDACTED] that he was the one who had

1 been the caregiver and they couldn't fault it at all and
2 they knew, you know, that Julie was the one who got
3 frustrated and lost it.

4 Now Mr. Galtore has talked about her interview
5 and I think the interesting thing about the interview is
6 she protests about being tired, etcetera, and they both
7 probably were exhausted, but despite being too exhausted to
8 do the interview what does she do, she brings information
9 to blame it on her eighteen year old daughter that she's
10 had a tumultuous relationship with. She had the
11 forethought, and what does that tell you, and she talks
12 about everything else until penned down but [REDACTED] and what
13 happened.

14 I also believe that the evidence shows that
15 neither of these two individuals would lie to cover for the
16 other one. Certainly it shows that in terms of Robert. I
17 mean he's questioned, hey, anybody, and he says nobody,
18 nobody is worth going to jail for, and I think when you
19 look at Ms. Gorman's testimony she wouldn't have either.
20 She wasn't willing to do anything to leave the relationship
21 but she wouldn't lie for him.

22 When you combine the medical evidence that we've
23 already talked about that, you know, minutes in that short,
24 really, really short time span and the fact that the only,
25 the first evidence of bruising is at, at Conway Medical

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1 Center. There's nothing, nothing that points to my client
2 for any of the three charges; he's not guilty.

3 Now we've already talked about the frustration
4 that was building up in Julie. I want you to remember that
5 and I want you to in particular remember how she is
6 demonstrating shaking him.

7 You've already heard some discussion and you will
8 get an instruction on reasonable doubt and it's another one
9 of those things that is a lynch pin in our legal system and
10 why our legal system is, is so great. As Mr. Galmore's
11 already said, and I'll just emphasize it a little bit
12 different way, that burden is high. It's, it's not fifty-
13 fifty like in a civil case and it's not even clear and
14 convincing. It's high and the law here says have to be
15 firmly convinced and those words can mean things to
16 different people, so you may be asking yourself, okay, Ms.
17 Grabert-Lowenstein, how do I, how do I sort of equate that,
18 how do I figure out if I'm firmly convinced?

19 You figure it out when you are so firmly
20 convinced that you could look yourself in the mirror the
21 next morning and say I did the right thing. It's okay in
22 my head, my stomach, my heart, my soul, I made the right
23 decision.

24 Please realize what such a high burden it is and
25 the State respectfully has failed to show my client beyond

1 a reasonable doubt in any fashion committed the injuries to
2 [REDACTED] in any way helped to cover them up, in any way
3 assisted Ms. Gorman in committing the injuries. There's no
4 aiding and abetting here and the evidence is he did nothing
5 but nurture this child.

6 Now you can't give information that you don't
7 have and frankly Mr. Palmer is sitting there simply because
8 he couldn't because he didn't know give the information to
9 Detectives Weaver and Troxell that they wanted, sadly he
10 couldn't. You will hear, you heard his tape, he would
11 have, he wanted to, he was living with this and has been
12 living with it, he would have given that information if he
13 had it.

14 Mr. Palmer's odyssey to this case began in 2004
15 when he met Ms. Gorman. His odyssey in the case began when
16 he couldn't tell the detectives what they wanted to know.
17 Ladies and gentlemen, you have the power to stop that
18 odyssey. You have the power to say, Robert, it's over.
19 They have not proven beyond a reasonable doubt that you
20 committed those skull fractures or in any way knew about
21 them, that had information about them, or in any way
22 assisted.

23 Ladies and gentlemen, when you examine all the
24 evidence we are confident that you're going to find that
25 Robert was in no way involved or had any knowledge of any

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1 of the injuries, wasn't present, didn't hear anything, Ms.
2 Gorman didn't divulge anything to him, certainly in her
3 tape she makes it clear she didn't, and that he is not
4 guilty on all the charges.

5 On behalf of myself and my client I want to thank
6 you for your kind attention. It's now your hard work
7 begins and thank you. Please don't just react
8 instantaneously, these are ugly cases, these are tragic. I
9 know it's tragic for everybody, [REDACTED] and everybody who
10 loved him, and that includes my client, please examine all
11 the evidence, don't just react and say, oh, this is so
12 horrible, but look at the evidence and you'll find my
13 client not guilty, thank you.

14 The Court: Ms. Lively?

15 Ms. Lively: Thank you, Your Honor.

16 Closing Argument

17 By Ms. Lively:

18 When I started this case and I told you that a
19 homicide by child abuse case we have to look at the silent
20 witness, obviously the child who can't tell us what
21 happened to him, and we looked at that body as the body of
22 evidence, and that's where we're at, exactly where I told
23 you we would be on Tuesday.

24 When you look at that body of evidence neither
25 one of the defense attorneys can dispute the fact that

1 [REDACTED] was killed, okay. Let that sink in because you have
2 to start from that position and then we'll work our way
3 out. [REDACTED] Grimes died because he was killed, not an
4 accident, then we work our way out.

5 A lot of times that's what the detectives have to
6 do, that's what the doctors have to do, that's the reason
7 why you have all this information. You were provided every
8 piece of evidence and admissible relevant evidence to help
9 you come to your decision, and let me just address
10 something that I know, cause even myself as a prosecutor
11 when I deal with these type of cases I would love to be
12 able to tell you, I have the video tape, I have the
13 confession, we have got the DNA, the smoking gun, you know,
14 I would love to be able to bring that to you, but because
15 child abuse happens in private I don't have it. I told you
16 that when we started. That's the reason why homicide by
17 child abuse is such a unique statute. Our legislature has
18 noticed that and they know children are such vulnerable
19 victims they specifically put in the statute that the death
20 of a child under the age of eleven, very specific.

21 We're looking at tender age children who cannot
22 protect themselves, who suffer from an inflicted injury by
23 another and that injury is done with an extreme
24 indifference to human life, meaning that if you grab a
25 child and slam their head into the ground it would be

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1 obvious that this is dangerous to the child's health. If
2 you shook a child and threw him on the ground it would be
3 obvious that that's going to be dangerous to the child's
4 health. If you shook the child and he hit his head on the
5 side of a desk, pack and play, obvious this would be
6 dangerous to the child, so we have two people, but let's
7 back up.

8 We had three people in that house and a dog,
9 we'll throw the dog in there. We have three people and a
10 dog and we know the dog didn't do it, so we're going to
11 take Logan out of the picture. [REDACTED] is dead, we have
12 Gorman and Palmer.

13 Now I know, and I might be presuming this, I'm
14 going to go ahead and make this presumption, what might be
15 your concern right now, and I will tell you, the Judge has
16 the law for the State of South Carolina in exactly these
17 type of situations where you have to wrap your mind around
18 the fact that some people don't necessarily understand
19 beyond a reasonable doubt doesn't mean beyond all doubt.
20 It's a reasonable doubt.

21 What's reasonable here? We know he was killed,
22 somebody did it. He didn't it to himself; the dog didn't
23 do it. He couldn't have done it from climbing out of the
24 pack and play and falling or falling out of the bed. It
25 was inflicted. Okay, so we're over that, that's beyond a

1 reasonable doubt. Every doctor, even the defendants have
2 conceded that, okay, so here's where we go.

3 The Judge is going to give you the law on the
4 hand of one is the hand of all and there's a reason why
5 this law is firmly embedded in the State of South Carolina
6 and that is because of situations like this, and I'm just
7 going to tell you, a principal in a crime, the Judge is
8 going to read this to you, is one who either actually
9 commits the crime or who is present aiding, abetting, or
10 assisting in committing the crime. It does not matter who
11 actually commits the crime all are guilty, the hand of one
12 is the hand of all, and the Judge is going to tell you
13 that, so unless you think [REDACTED] did it to himself, the dog
14 gets free and goes on a Cujo rampage, then it is those two.
15 That's it, that's it, so I don't see where there's any
16 confusion, and I'll tell you, I'll give you an example, and
17 this example is actually going to be provided to you.

18 For example, two people can be guilty of killing
19 another person when only one of the two had a gun, there
20 was only bullet and only one of the two fired the shot that
21 caused the death, there you go. Now do you see why they're
22 both charged and why they both have the same type of
23 offenses.

24 Those indictments that Mr. Galtore laid out for
25 you, those aren't evidence. That's a legal document for

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1 charging purposes; they're not evidence. The Judge said
2 that when we started the case, so if he's trying to make
3 you think that there's some type of, you know, conspiracy
4 or something out there because I feel like I have to put
5 somebody in jail for killing this child, I think you have
6 more than enough evidence to see exactly what's going on
7 here.

8 They have pitted themselves against each other
9 because now their original plan to play dumb, I don't know
10 what happened, it had to be Cesalee didn't work, and this
11 is how we know it was a plan, ladies and gentlemen. We
12 have a child sixteen months old, never had an overnight
13 visit in the hospital, perfectly fine child, yeah, he
14 missed a few appointments maybe here and there. Even Dr.
15 Hutson who I mean he's just a local pediatrician, you know,
16 he's somebody who deals with kids on a daily basis, he said
17 I have people come in here with late shot records, it's not
18 a big deal, when I saw him he was normal. I checked him
19 for a stuffy nose, gave him Xyzal, I checked him for ant
20 bites, gave him a steroid cream. He was a normal child
21 perfectly fine.

22 Where's the squishy head? I mean if a kid walks
23 in and you've got a pediatrician who looks in their ears
24 and they look in the mouth and, you know, a toddler is not
25 very cooperative. Usually they're pulling away or doing

1 like this, you know, the doctor is like hold on, let me
2 see, hold on for a second, and he touches the back, she's
3 saying it's squishy all the way back here, it's kind of
4 weird that that would be where his skull fractures were
5 based on the autopsy, so consider that. It's pretty
6 convenient timing to say that's, that's where he was
7 squishy. She never said that before either, and you think
8 that a pediatrician who is a mandated reporter for abuse
9 and who is caring for a child is not going to notice
10 something like that, and he didn't see the child just once,
11 he saw him twice, and he saw him on July the 8th and he
12 said he didn't have any more skin rashes, that he was
13 pretty much better so he knew about the July 7th visit to
14 the E.R. but he was like, you know, he didn't have a fever
15 so I gave him his vaccinations. He was fine. Again
16 checked his ears, checked his throat and everything like
17 that, so everything we have up until this time is normal
18 toddler, normal toddler, normal toddler.

19 He's little, there's his parents, use your common
20 sense. I mean some kids are big, some kids are little. He
21 was saying mama, he was saying words. Even in the nine
22 months records that Dr. Abel says she reviewed said the
23 what Gorman told you didn't make sense because in his child
24 development records he was developing fine, said there was
25 nothing wrong with [REDACTED] What was wrong was what

1 happened because he got dropped off in a volatile
2 situation.

3 Why do I bring you information regarding what
4 their circumstances were? I don't have to prove a motive,
5 ladies and gentlemen, that's not something I'm required to
6 do beyond a reasonable doubt, but I know you want to ask
7 yourself why. Why would someone kill a seventeen-month-old
8 child, and I probably still will not be able to tell you
9 that, but I can tell you that that child was put in a
10 volatile situation with a volatile grandmother who was only
11 thirty-seven at the time, so a little young for a
12 grandmother, and her thirty-year-old boyfriend who wasn't
13 even taking care of his own kid.

14 His own parents admission were that we feel good
15 whenever [REDACTED] is with us. His own dad said if I had known
16 how it was over there I'd have gone and gotten [REDACTED]
17 tells you a lot.

18 They had to pay the last months rent for Julia
19 and Robert. You know that's a lot of stress and think
20 about it, he's young, he wants to go out with his friends,
21 which he did, and Julie even told you we fought about that.
22 I didn't like it, I told him he needed to be home. Well
23 not only was he home when she said but now he's home all
24 day long while she's working taking care of a kid he'd
25 never met before, a kid that he knew Julia didn't even like

1 because she didn't like her own daughter, didn't like the
2 daddy, and so here we have [REDACTED] mama's boy, whiney,
3 missed his poor mom, hadn't ever been away from her more
4 than maybe a day or two, and but it's his fault. He's
5 whiney, he's cranky, he's crawling on me, I can't cook, I
6 can't clean, I can't do this, I can't do that. Robert, I
7 had to stay home and take care of a kid now; I used to able
8 to, I don't know let's just say this, lay on the couch,
9 take a nap, watch I don't know, the outdoor channel, and
10 now I'm changing diapers, I'm feeding a toddler, and
11 whenever Julia gets home, remember his interview whenever
12 Detective Troxell, asked him well how was she whenever she
13 got home and he said, well she would ask about [REDACTED] but
14 then whenever he got a little bit further into it he said,
15 yes, she was very frustrated with her job, agitation was
16 every day, every day, so [REDACTED] after sixteen months with a
17 healthy life walks into this situation.

18 Cesalee was eighteen. If you want to blame her
19 for whatever decision she made in leaving that child there
20 I'm going to tell you now you heard her, you heard Marsha
21 Bessant who has nothing to gain in this case say she was an
22 attentive and loving mother, a little naive, yep, regrets
23 this more than anything in her life, yeah, but you can't
24 change it.

25 So let's talk about the aiding and abetting and

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1 how these two decided how they were going to handle [REDACTED]
2 First they were giving him too much Xyzal and, no, I'm not
3 saying Xyzal killed the child. Obviously if I did I'd have
4 a toxicologist her and we would be talking about his
5 toxicology report from the autopsy, none of that was ever
6 brought up, that's not what I'm saying. What I am saying
7 is that whenever people are tired of dealing with the
8 child, and I know that every single one of you has either
9 heard of this or you've seen it on the news, they will over
10 medicate a child with something like Benedryl or some type
11 of antihistamine because what does it do, makes them drowsy
12 and when they're drowsy, guess what, they're not whining,
13 they're not clinging to you. They're hopefully going to
14 bed. She admits to doing this to him on several different
15 occasions.

16 Dr. Hutson said he was only twenty pounds, he was
17 supposed to have half a teaspoon. One time she told the
18 E.R. he was taking a teaspoon and a half. Another time he
19 was taking two and a half teaspoons. She was shoving
20 whatever she could get into his mouth to get him to be
21 quiet. That's all I'm saying. She said it herself, so
22 we're already seeing a pattern here, ladies and gentlemen,
23 and the other thing is that Palmer is right there with her.
24 They're both doing it and on Saturday night when they went
25 out to dinner with the gift certificate to TBonzs they give

1 him a dose of that Xyzal. Let's get him asleep, we need to
2 have a dinner for ourselves. I know you went out last
3 night with your friend Cody, this is going to be our time,
4 but guess what, you got [REDACTED] he's not cooperating.
5 That, I mean telling you it's just building, this
6 frustration.

7 Julie goes to work on Sunday. Robert takes the
8 child to the pool. His parents even notice he's lethargic
9 and tired, probably from all of the Xyzal that he's been
10 on. Later that night but he eats, does all these things
11 that a doctor, all of our experts have said with those
12 massive skull fractures there's no way he could function,
13 eat, move, talk, nothing. He's moving, talking, or
14 babbling, drinking, in the pool, goes home, goes to sleep.

15 Now here's where we know for a fact that we've
16 got the two of them locked in in regards to this child.
17 They signed a temporary guardianship, and you're going to
18 get to see that as part of the evidence, that says we are
19 the sole caretakers of [REDACTED] Grimes. We are responsible
20 for his care. We are responsible for anything and
21 everything that happens to this child and he's dead.

22 Now let's talk about Julie's statements. She's
23 had three and a half years to think about how she was going
24 to fix that mess she made on July the 18th when she
25 admitted to abusing that child, when she admitted to every

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1 single person that what time she was home that day and that
2 she was home with that child. Remember it only takes a
3 minute to inflict these injuries to [REDACTED] and they were
4 inflicted injuries, don't let that get out of your mind.

5 She starts talking about the head squishy all
6 over, no medical evidence of that, no developmental issues,
7 whiny, fussy, very clingy, would climb up my leg but he's
8 not a bad child. Then they talk about the Xanax, you know,
9 Xanax calms you down, so if you're anxious and upset you're
10 more likely to freak out and start saying just anything to
11 get out of there. You take the Xanax you're calm, that's
12 when she admits to shaking [REDACTED] and remember, ladies and
13 gentlemen, we're looking for the perpetrator to give us the
14 truth here.

15 What do you think you saw in regards to what she
16 was telling you that day? She was minimizing. She gave us
17 just a taste of the rage that she had with that poor child,
18 that's it, and I think what's really interesting, too, is
19 that whenever you look at it she's the one along with
20 Robert who both said let's not wake him up tonight, let's
21 have dinner together, and I'm going to tell you right now
22 that was the moment when they both knew we don't want him
23 up, take care of it.

24 I can't tell you which one made the decision to
25 go into that room but I'm telling you that's when it

1 happened and it's interesting because that is exactly how
2 their statements, how they worked together with the police
3 to try and play dumb and say we're not going to tell
4 anybody exactly what happened, we're just going to claim we
5 don't know. That's where they come together right there
6 and I'm going to show you, because this is the important
7 thing is to not forget when you're dealing with the fact
8 that this child, based on every piece of medical evidence
9 was killed violently, inflicted blunt head trauma, that's
10 what did it. There is no other reasonable explanation, so
11 let's look at it.

12 What I've done to try and just help and also
13 because I know these things can get really convoluted with
14 all the evidence and the information you have, I tried to
15 break it down for you, and I'm going to pull this up for
16 you now. This might even kind of wake you up a little bit.

17 Ms. Heather, do you mind providing me with the
18 screen and I'm sorry ---

19 Ms. Grabert-Lowenstein: If we can have just a
20 moment, Your Honor?

21 Ms. Lively: I apologize, I should have warned
22 ya'll. Thank you.

23 Okay, so what I did was I've got a calendar and
24 wanted to show how short of a time cause sometimes whenever
25 you think two weeks, three weeks, a week, and then when you

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1 see it on like this it's amazing because you're like, well
2 Cesalee leaves on the 2nd, so we know she didn't hurt her
3 son, okay, so then we have, and he's already been seen by
4 Dr. Hutson, normal toddler, treated him for ant bites,
5 treat him for head cold, okay. The only one that says
6 something different is Julia.

7 Then we have nothing. Cesalee is gone, he goes
8 to the E.R. at Conway Medical Center, and that's what CMC.
9 is, for vomiting. He's looked at, again examined by
10 medical professionals who are there to make sure that this
11 kid doesn't have anything else going on. He's released;
12 he's fine.

13 The next day he goes to see Dr. Hutson for
14 vaccinations. Dr. Hutson looks at him; he's fine. He lets
15 him get the vaccinations because he doesn't have a fever.
16 He's completely resolved the head cold so he gets his
17 vaccinations. Now what we have from other information,
18 some of this I had to pull it and actually depend on what
19 the perpetrators are telling us what happened, and on
20 Friday night we have the first step of Palmer goes out in
21 the p.m. and Gorman is alone with [REDACTED] and as you heard
22 Julia this was a problem and they had talked about it
23 earlier that week. She wasn't happy about it.

24 Then on Saturday [REDACTED] with Gorman and Palmer at
25 TBoonz, once again she medicates him to keep him from

1 bothering the two of them.

2 Then on the 13th [REDACTED] at the pool with Gorman
3 and Palmer. He's there, he's a little lethargic, but he's
4 active. He's in the pool; he's eating. There's no
5 indication other than him being a little lethargic that
6 there's a problem.

7 And then, boom, Monday the 14th he's got to go to
8 the E.R., 911 called at 6:06 p.m. because that's really the
9 only time that through law enforcement I can give you as an
10 exact time because everything else I'm depending on the
11 perpetrators to tell me what happened.

12 We know he was hurt on that day and, yes, some of
13 it I'm having to use the perpetrators telling me what that
14 is just like Dr. Abel had to cause you look at the whole
15 picture, ladies and gentlemen, you don't pick it apart. If
16 you pick it apart you don't have a whole story. You put it
17 together it's clear.

18 So then what we have [REDACTED] is at MUSC on Tuesday
19 the 15th, inflicted head trauma, Horry County P.D. and DSS
20 involved. Now let me tell you something, you remember how
21 o.c.d. Ms. Gorman is cleaning up her house and things like
22 that, do you remember her saying that I left MUSC cause I
23 had to go get my car, but then I came back, let me tell you
24 what she did, her and Palmer.

25 At this time they realize how serious the

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1 injuries are, okay, because whenever they had the plan that
2 they were going to make sure [REDACTED] doesn't get out of that
3 bed so that they can have their dinner they didn't know how
4 bad it was, okay. They've been questioned, skull
5 fractures, skull fractures, immediate, symptomatic, no way
6 this could have been Cesalee, no way it could have been the
7 dog. They have to haul their butts back here to Horry
8 County and make sure they didn't leave anything in that
9 crime scene because Horry County P.D. did their job. They
10 got assigned the case; they go to MUSC; they see the baby;
11 they talk to the doctors; Julie and Robert right back here,
12 going through the house.

13 Isn't that reasonable? Why does she have to come
14 back here to get her car, her grandson is on life support
15 but they drive all the way back here and when the police
16 get there on the 16th that house is immaculate. There's
17 nothing. That's not a coincidence, ladies and gentlemen,
18 that's reasonable. That's a part of their plan to cover it
19 up.

20 Then [REDACTED] is baptized on the 16th; Julie
21 doesn't stay there for that. That's her choice, her only
22 grandson, that's fine, they pull the plug at 3:25.

23 On Thursday the 17th they're prepping [REDACTED]
24 giving him the medicines to keep his organs good and to
25 make sure that they can use them and give them to children

1 who need them and what is Julie and Robert doing, they're
2 going back home. They're getting their stories straight or
3 lack thereof, and they're exhausted, ladies and gentlemen,
4 so tired, her child, her grandchild is dead, oh, my gosh, I
5 can't take it, we need a break, let's shower and go out to
6 Beef-O-Bradys and to Fats Bar which is right here down the
7 street in Horry County, and let's have some drinks and
8 shoot some pool, we need a break. Their, her grandson is
9 dead but she needs a break.

10 On the 18th is whenever we get the interviews and
11 on the 19th autopsy, cause of death, inflicted head trauma,
12 not accidental, mode of death, homicide, and she's required
13 by law to make that determination, there we go.

14 Now on the date of his fatal injury, once again
15 this is information that we're getting from the
16 perpetrators here, and the interesting thing from yesterday
17 and I think ya'll might have seen how excited I got, but
18 the check is introduced by the defense and it says that,
19 oh, my gosh, for once I write a bad check and it's a good
20 thing, okay, and it says 15:52, which I went to law school
21 so I wouldn't have to do math so I always get confused with
22 that, but it's so that's 3:52, and so, you know, whenever,
23 or is it 3:57? I'll let ya'll decide that because I'm not
24 wearing my glasses, anyway I put it on there when I did
25 have my glasses on, and 3:57 p.m. she makes a purchase and

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1 is checking out so we know she's actually leaving at the
2 time whenever this is run through the register, cause
3 that's how it's done, but to make it fit her story that
4 she's been thinking about for three and a half years she
5 says, wow, in July of 2008 they must have forgot to change
6 to daylight savings time.

7 I think if you have to use your common sense more
8 likely than not the time that might be a little bit off is
9 her own check out of her own time clocking out, cause we
10 all know how that can sometimes be manipulated, than the
11 IGA who is documenting when they get financial records in
12 their place of business and when is it that we change the
13 time, April, end of March, this was July. It's not
14 reasonable, ladies and gentlemen, and not only that if you,
15 when you watched her interview she's telling you I was home
16 between 4 and 4:15. How many people did she tell that to,
17 every single medical professional who questioned her, the
18 DSS social workers who questioned her, people who were
19 doing their job, and do you think she'd remember two or
20 three days from then or do you think she'd remember better
21 three and a half years after the fact when she's had a
22 chance to sit here and listen to everybody else's
23 testimony, when she's had a chance to sit here and decide
24 how am I going to get myself out of that house because when
25 we first said we didn't know what happened that didn't

1 work. All right, so that's what we got.

2 And then, of course, he goes to Conway Medical
3 Center and has severe skull fractures and blood on the
4 brain, very small chance of any type of meaningful recovery
5 and, of course, we know how that ended up.

6 Now, ladies and gentlemen, this is what I'm
7 talking about the meeting of the minds of these two people.
8 This is where, and I know it's kind of hard to see, but
9 this is where their statements mirror one another and shows
10 that they talked about it because at first they said, no,
11 we didn't talk about anything, we were just tired, we just
12 would kind of take that time and rest driving back and
13 forth from MUSC. Your grandson and the boy that you've
14 been watching for the past two weeks is about to be, have
15 the plug pulled and you don't look at each other and say
16 what in the heck did you do to him, how in the world did he
17 get these skull fractures, no, instead they decided Cesalee
18 had to do it. I know what I'll do before we go out to
19 Beef-O-Bradys and go get some beers I'm going to go to the,
20 to the storage place and I'm going to go and get Cesalee's
21 notebook from about four or five years ago where it shows
22 how troubled she was whenever I kicked her out and sent her
23 to foster care and we're going to show that she had to do
24 it, good idea, so here we go.

25 They both said what do you want to do about

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1 [REDACTED] Palmer, she said, do you want to wake him now or do
2 you want to eat first. Gosh, I mean decisions, decisions,
3 not again, I've been working all day. Palmer is like I've
4 been dealing with him all day.

5 Maybe he had already woken up and that's why they
6 said, gah, what are we going to do with [REDACTED] He's
7 whining, he's in his pack and play, we've got to do
8 something with him, take care of it. Does it matter which
9 one actually did if they both had the same intent, and they
10 were his caregivers and he was killed?

11 Gorman, interesting she starts giving excuses for
12 herself through what she's supposedly talked to [REDACTED] and
13 Cesalee about at MUSC where she's saying is punishment
14 enough what I'm going through and then [REDACTED] comes to me
15 in front of Cesalee and said, you know, we've talked. They
16 didn't want anybody to go to jail. They said whoever did
17 this it's punishment enough, jail is a luxury. She's
18 already setting it up to where she's going to get away with
19 it. She's suffered enough, ladies and gentlemen. She had
20 to watch him for two weeks. She had to feed him for two
21 weeks.

22 Then she goes off on a completely different
23 tangent. I tried to comfort everybody cause that's what I
24 do; that's the kind of person I am. I tried to make fun of
25 it, you know, kind of get a little giggle. He's up there

1 playing with the dead dog that we cremated and we put
2 flowers on it, which is nice, I mean that's fine. He's up
3 with the turtle, you know, cause you had to find some sense
4 of humor, you had to find some things to laugh about, and I
5 know people deal with grief in different ways, ladies and
6 gentlemen, but I don't know where that's ever appropriate.

7 And whenever she was having all these problems
8 and before Cesalee even left she called Richard, the man
9 she told you she disliked, families didn't like each other,
10 didn't want anything to do with each other, I called him
11 and said, you need to get your wife and your young'un, not
12 and [REDACTED] and your young'un, you need to take them home.
13 She never bonded with them, ladies and gentlemen, never.

14 Then the shaking, like I said she was minimizing.
15 First she lies, she says, no, I never shook him, never
16 shook him, shake a baby, no, well, of course, because, you.
17 know, the shaking baby syndrome thing. No one here said he
18 died from shaking baby syndrome and I'm not trying to tell
19 you he did but every bit of abuse this child had to suffer
20 is absolutely relevant to what happened to him. He cries
21 every day, he's cranky every day. Were you frustrated, it
22 just happened, you shook him, is that possible, yes, that's
23 possible.

24 Then she talks about him, I was like, damn, every
25 time I walk in the house I'm going outside and as soon as I

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1 walk outside he stops crying, so what does she do about it?
2 She's going to try and make him a fresh little boy. She is
3 going to fix him.

4 Now the bruises, you know, I appreciate Mr.
5 Galmore looking at my legs and noticing that I have bruises
6 on them. I do, I have a tendency to jump up real quickly
7 and the back of my legs will hit the back of the chair.
8 What day is today, Friday, so I've been doing that all
9 week, but, ladies and gentlemen, I'm an adult. [REDACTED] was
10 not pinching himself, giving himself bruises. Are you
11 kidding me? If he was don't you think it wouldn't have
12 just started right before he needed up in the E.R. and, you
13 know, yeah, he was at the pool on Sunday, you know, but a
14 lot of those bruises were in the thigh, in the trunk area.
15 It's kind of weird. There was one here and so it's one of
16 those type of things that maybe if you're not looking for
17 it you don't see it. Even Dr. Cacace had to be reminded of
18 it but I'm telling you those medical professionals they
19 don't miss a thing. That's their job and that's what they
20 did, they documented.

21 Just like if Dr. Hutson had seen it he said he
22 would have documented. He's a mandated reporter. Not
23 noted on July 7th by Conway Medical Center when he went
24 there for vomiting and not noted again for Dr. Hutson on
25 July the 8th. It's just another piece of the puzzle and

1 it's another thing that the medical professionals have to
2 document and consider, he was being abused.

3 And then Palmer's statement to the police, he
4 doesn't offer us a whole lot. He admits that he had
5 alcohol the night before, then he talks about describing
6 [REDACTED] It seemed like it wasn't going to stop, the
7 whining, and then Weaver asked her what about Julie, how
8 was she, does she come home agitated or upset. Yeah, it's
9 like an every day thing, you know, I mean that's not a good
10 relationship or good situation for [REDACTED] to be in, and he
11 said I didn't know all this stuff about Cesalee and once
12 again there goes the decision to throw Cesalee under the
13 bus.

14 They've talked about it, ladies and gentlemen.
15 He says himself I didn't know all this stuff about Cesalee.
16 I didn't want her to come in the first place, her and Julie
17 couldn't get along. I didn't know this stuff about
18 Cesalee. Well when do you think he knew about it, when
19 they were driving back and forth from MUSC decided they
20 were going to find that notebook of hers, decided they were
21 going to say Cesalee did it, and how do we know that's what
22 they decided, right here. Page 31, the last couple of days
23 ya'll didn't talk about what ya'll felt happened to [REDACTED]
24 yeah. What we said was I guarantee it was Cesalee and then
25 whenever they kept beating on him and beating on him about

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1 it saying it's not possible, it's not possible, wasn't the
2 dog, wasn't the stroller, wasn't Cesalee, he says I'm not
3 going to change my story, I did nothing to this child,
4 never calls him [REDACTED] I did nothing to this child, take
5 me to jail, I don't care, I won't see [REDACTED] for however
6 long, take me to jail because I'm sticking to my story.

7 Julie thinks she can manipulate it a little bit
8 better so she gets into a little bit more information, but
9 Palmer he sticks with it.

10 Now here we go. Gorman goes and gets the
11 notebook on Cesalee. Palmer said the story is going to
12 stay the same, forty hours later I'm not going to change
13 it, Cesalee did it. She has problems, she's impatient even
14 though we know from Marsha Bessant that she observed them,
15 she has nothing to gain in this case, she said Cesalee was
16 attentive, claims that Cesalee hates child. Do you
17 remember Julie kept saying I was driving her to the airport
18 and she just, I kept giving her the chance to take [REDACTED]
19 with her, she just wanted to wipe her hands of him. She
20 convinced herself that he was a throw away child. That's
21 how she got tasked what happened to him.

22 [REDACTED] was already messed up, had a squishy head,
23 blame Cesalee, she's an easy target. She's not here, we'll
24 blame her.

25 Then Gorman stories from the week of the 14th to

1 yesterday I mean are we talking about the same person. You
2 mean to tell me that you're getting ready to be charged
3 with a crime and you're not going to sit there and tell law
4 enforcement that you went to the IGA, which we know she
5 did, so that's fine but she did leave that out, but it's
6 maybe because she stopped by there on the way home so she
7 started talking about when did you get home, around 4 or
8 4:15, around 4 or 4:15.

9 Then she says she leaves again, goes to the video
10 store. She doesn't get home to around 5:30, cooks dinner
11 and eats, Palmer walks out with the dog, checked on [REDACTED]
12 and he was seizing. She has to remove herself, don't let
13 her fool you, ladies and gentlemen. She admitted on that
14 stand she lied.

15 They did it. Gorman financially strapped, tired
16 and frustrated, working those long hours, losing Robert.
17 Remember Marsha said she would call, she could barely
18 breathe she was so upset, I'm going to loose him, I'm going
19 to loose him. She hated Cesalee, hated Richard, hated job.
20 [REDACTED] was depressed, now had sad is that, she actually
21 described the child as being a depressed child. Well,
22 yeah, he was left with somebody who didn't want him. He
23 was a throw away child.

24 Palmer unemployed, caring for a toddler that
25 wasn't even his blood relative, wanted to be free. He

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1 resented [REDACTED] ladies and gentlemen. He probably put up
2 with it but he was taking handouts from his own parents.
3 He was dependent on Gorman financially. She was his meal
4 ticket. That's why he didn't turn on her. That's why they
5 made the decision to do what they did. He had marital and
6 custody problems. He didn't have custody of his child
7 then, his parents were the one's caring for him, his own
8 child, and then Marsha Bessant, like I said, Gorman after
9 all this had happened and she goes and visits her she says
10 still the dog did it, so we've moved from Cesalee to back
11 to the dog and then she asked Bessant will you send me
12 pictures of Robert and [REDACTED] is dead in the ground.

13 Okay, so here we go, there's Logan, the dog did
14 it. When Cesalee's scenario is absolutely completely
15 medically impossible there's the killer dog, not possible.

16 The next scenario, the stroller and the stairs
17 did it, but guess what, ladies and gentlemen, that happened
18 when Cesalee was here. The child was never hurt, never
19 taken to the hospital, never lost consciousness, nothing.
20 According to Cesalee he said, do again, do again.

21 I've talked to you about Dr. Hutson, reasons for
22 the visit. I'm not going to go into that again because
23 I've gone through that.

24 First responder, first responders are great
25 because they, they're not going in there looking for blood.

1 I mean if it's all over the walls I guarantee you're going
2 to see it in their report, but they're going in there
3 because there is a little tiny child seizing. What do you
4 think their focus is, they went in there grabbed the child,
5 and hauled out of there. That's what they were doing. He
6 said all he asked was is there any history, is there
7 anything I need to know, falls, sickness, anything like
8 that, no, no, no, he was just napping.

9 Erica Rosenthal same thing, she's working on the
10 child, any history of falls, sickness, anything like that,
11 Gorman, no, no, no, no, no, but she's sitting in the front
12 seat and just, I've raised several children and never one
13 this bad. How does that help? What does that mean? It
14 means exactly what it says, she didn't want him.

15 He was given oxygen and Valium for the seizures
16 to make it stop before they got to the E.R. There's
17 absolutely no evidence he was given any cpr, no intubation
18 at the time. As a matter of fact you heard from Tina
19 Millan, she was the one that actually gave him or they put
20 the tube in at Conway Medical Center. [REDACTED] arrives at
21 6:58 p.m.; his Glasgow Coma Score is a five, a five. Tina
22 said in order for you to think you're going to get some
23 type of meaningful recovery if you're under a nine it is
24 bad. He was a five.

25 So Tina is in there, what do we do? Gorman tells

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1 her mama is a drug addict and just dropped him off, what
2 does that have to do with anything, already starting to
3 plot the Cesalee idea.

4 She notes several bruises to the child. She was
5 told the child never fell. She was told that Xyzal was
6 given to him two days before or three days before, two and
7 a half teaspoons. Dr. Cacace he hasn't seen the kid in
8 three and a half years and he seemed a little apologetic
9 when he couldn't remember some stuff but his records are in
10 the evidence and you can look at them yourself, he was in
11 great condition, severe force resulting in skull fractures,
12 and this is where we're starting to get an idea how violent
13 the act had to be to kill [REDACTED] okay. This is what
14 really puts it in perspective.

15 He said if it's not a motor vehicle accident, not
16 a two story fall on the head, both sides, then, of course,
17 you've got major antennas raising here, what happened to
18 this poor child? He's doing his job; he's trying to treat
19 the child so what do they do, they have to ask, what
20 happened, has he got any history, is there anything we need
21 to know, I mean what is going on with this kid, nothing.

22 He says he's never had a patient with these type
23 of injuries able to eat and function, reviewed the C.T.
24 scans. You heard a lot about the lack of gray white
25 differentiation in the brain which just means that the

1 brain has suffered such a traumatic injury it's already
2 started to die. Do you remember what Dr. Roberts said,
3 she's the neuro-radiologist, that's all she deals with are
4 brains, okay, so what she says is when she sees that she,
5 there's not much of a chance. The brain has already
6 started to die; the swelling is too bad. There's no oxygen
7 flowing to the brain anymore; the blood is swelling.
8 That's what happens. It's all reactive; it works together,
9 the fractures, the force, the brain injury, it's all one
10 thing.

11 Transferred to MUSC, Dr. Abel, Director of
12 Violence Prevention, that's what she does, she gave you her
13 opinions within a reasonable degree of medical certainty
14 intentional blunt force trauma, head had to impact a
15 surface, violent and forceful act to result in multiple
16 fractures and brain bleeding, an act so violent the force
17 would be obvious to an observer that the child is in
18 danger, not an accident, ladies and gentlemen.

19 You wouldn't get these injuries from a fall
20 unless from a three story building and her opinion was
21 based on everything because that's what she does, the
22 history. She looks at all of the medical records. She
23 talks to everybody who's the caretaker for the child, who
24 laid hands on the child. She has to make a decision and
25 she says based on everything she had in front of her, based

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1 on the fact the child was eating that day, able to move and
2 function that day, there would be no more than three hours
3 before he was presented at the E.R. and he actually got to
4 the E.R. at 6:58 p.m, so the only two people who had care
5 and custody of him was Julie and Robert, that's it.

6 But, no, we have more, because she said that the
7 maternal grandmother didn't give me anything, Palmer didn't
8 give me anything. We're still in the dark here. They
9 wouldn't be able to eat breakfast or lunch with these
10 fractures, foaming at the mouth, playing or eating, loss of
11 breathing, all these horrible things that unfortunately
12 [REDACTED] suffered, and once again this is what I'm telling
13 you they both told them, same history, 6:00, they went to
14 get him, he's having a seizure, oh, my god, how did this
15 happen, denied injury the day he went to the E.R., both
16 said he had fallen out of a stroller and a puppy had pushed
17 him over about two weeks before, neither incident required
18 medical attention. Then she goes on to add, you know
19 what's, he's really clingy, whiney, and only says one word.
20 That's her description of [REDACTED]

21 Dr. Schandl, she's required to come up with the
22 manner of death, homicide, clearly, complex fractures,
23 okay, not a linear. If, if a toddler has a bad fall
24 usually they'll have just one side of their head and like
25 she said one of those straight fractures, his head was

1 crushed and I didn't want to have to show the autopsy
2 photos even though, you know, they say, oh, we want to
3 throw gore and everything, trust me, that is the worst part
4 other than having to deal with the fact that I have a dead
5 child that I have to deal with is having to look at those
6 photos, but if I don't show them to you do you think you
7 could picture what I'm talking about, the severity of the
8 force, what was done to this child. They had fractures
9 everywhere, looks like a ceramic pot that was just dropped
10 and just cracked everywhere.

11 She gives a time line but she says the problem is
12 is that when you have a patient who is on life support it's
13 difficult to date so she goes three days to a week from the
14 time he donated his organs, so that would be from July 11th
15 on. Once again we still only have two caregivers for
16 [REDACTED] so the time line is not that problematic. The time
17 line isn't when you look at there are only two people
18 caring for the child and he was killed, don't forget that,
19 don't get caught up in that.

20 And there's no reasonable explanation for the
21 injuries, not from a simple fall, no lacerations on the
22 skull and I had to ask this myself, I'm like, my gosh, if
23 he had such a terrible blow to his head why wouldn't you
24 see it on the outside. It's because their skulls are
25 pliable and also if you think about it the more pliable

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1 something is the harder it is to actually break it, adding
2 to that force that he suffered.

3 Neurologist knows the brain and what to look for,
4 multiple skull fractures, traumatic force resulting in the
5 brain bleed. All occurred at the same time, no old
6 injuries, and that's really important because if there was
7 anything old she would have told us then maybe we'd have
8 some concerns about a time line and other people who had
9 access to the child but everything was acute, meaning it
10 happened at the same time, no healing, and the child
11 couldn't injure himself, so once again there were three
12 people there, he's dead.

13 He would not be able to function normally for any
14 period of time once that was inflicted on him and
15 immediately symptomatic.

16 Ladies and gentlemen, within the defendants lies
17 are the seeds of the truth and the reason why I always find
18 interest in that is because just like what Ms. Gorman was
19 telling ya'll about what happened shaking [REDACTED] and about
20 the whining, the frustration that they both had with this
21 child, they both got right up to the plate to tell what
22 happened when they knew Cesalee and that idea was thrown
23 out the window but they just wouldn't do it. They didn't
24 confess; they didn't have to because my silent witness
25 [REDACTED] Grimes has told you what the truth is.

1 Confession of the abuse, I'm not going to go
2 through that, shaking, shaking, shaking, extending my arms
3 out, my, oh, this is one thing I thought was interesting,
4 at the bottom it says I never extended my arms out. It
5 always, oops, I said always so that would insinuate more
6 than one. I mean my arms are here; he's here. I don't
7 know how hard or anything and that's it.

8 I found this picture in a, in some of my
9 materials because sometimes I don't think people can
10 visually see that someone would do this to a child, and I
11 don't know that this happened here either because once
12 again I don't have to prove the mechanism of what killed
13 the child. I just have to prove beyond a reasonable doubt
14 that he was killed, he was in the care of these two
15 individuals and they either helped cover it up, knew about
16 it, failed to protect him, or inflicted the injury, the
17 hand of one is the hand of all, and I believe you have more
18 than enough evidence to make that conclusion beyond a
19 reasonable doubt.

20 Here's another one, shaking plus impact blunt
21 force trauma to the head, flopping him back and forth this
22 way, maybe crushing him into a pack and play. Pack and
23 play's are not very, they're not actually intended for a
24 long term use by a child to be sleeping in. They don't
25 have a lot of padding in them.

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1 These are just possibilities because I want to
2 make sure that I can give you the information to where you
3 can wrap your mind around the idea that this happens and
4 this is hard to see. I had to show an extreme indifference
5 to human life so I put some other examples up here because
6 I, I want you to understand. For instance a caretaker for
7 a child when you see the child fall into a pool and you
8 walk away obviously that's indifference. Beating a child's
9 head against the floor and then putting the child back into
10 the bed so he won't bother you, interrupt your dinner.
11 Shaking and throwing a child against a surface and the
12 child loses consciousness. Covering a child's nose and
13 mouth to stop the crying ending in suffocation. Those
14 things happen, ladies and gentlemen.

15 Now here's what we've got, the defense makes all
16 these claims, but really there's no evidence that can pull
17 you away from the simple fact that he was killed and it was
18 in their care. They had a plan to blame it on Cesalee and
19 then if the Cesalee thing didn't work they were just going
20 to say we don't know and they were going to hope that one
21 day being in front of twelve individuals that they were
22 going to try and muddy the waters enough to where you'd let
23 them get away with murder, and that's where we're at right
24 now.

25 They've put themselves alone with [REDACTED] on July

1 14th, non accidental injuries, no credible explanation for
2 his skull fractures, medical evidence confirmed he'd be
3 immediately symptomatic, and I'm not going to go through
4 these cause I've talked about them a lot, but it just goes
5 back through the details.

6 We can get away with murder just deny, deny,
7 deny, blame it on Ceaslee and we can get away with murder,
8 and I know you don't want to think people think that,
9 ladies and gentlemen, but when they realized that they're
10 on the line for what happened to that child that's when
11 desperation kicks in and that's exactly what happened.
12 That's why they drove home and cleaned up that house before
13 they drove back to MUSC. That's why they blamed it Cesalee
14 and pulled that notebook out to point the finger at her to
15 divert the attention away from what happened to that child
16 in that small little trailer, thirteen feet and nine
17 inches, hollow doors. I'm telling you when that happened
18 it was obvious what happened, let him sleep while we eat
19 some dinner.

20 Now he's a silent witness, ladies and gentlemen,
21 and you know I don't know how you don't address the fact
22 that we have to back up and remember that a child is dead
23 here and I'm not saying it for the sympathy. I'm saying it
24 because it's the truth and I don't know why it's a bad
25 thing that as a prosecutor I have to bring everybody back

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1 down to the reality that a child was killed and that these
2 two individuals did it, no one else. No one else was there
3 that could have done it; they knew it happened. Just like
4 if I were to give you DNA and they said one in eight
5 hundred quadrillion, you know, they have this crazy numbers
6 and you see that on evidence and CSI. I have better odds
7 than that because they themselves put themselves in there
8 with [REDACTED] no one else.

9 Now beyond a reasonable doubt isn't beyond all
10 doubt and you can be reasonable if I tell you that behind
11 that door is a big gray animal with floppy ears, a trunk,
12 that lives in Africa, likes peanuts and you might see it at
13 the zoo. Do I have to walk that elephant through those
14 doors and put it right here in front of you for you to know
15 that's what I'm talking about. Like I said I don't have
16 the video, I'm sorry, but I've got his body, I've got his
17 crushed skull, and I've got his two caretakers, and that's
18 all you need and they lied.

19 So, ladies and gentlemen, when you look at all
20 the evidence, and take your time cause it's a lot, you're
21 going to be firmly convinced that they were involved,
22 caused the death of [REDACTED] Grimes. They neglected him; he
23 was bruised. We don't know why they didn't just send him
24 home to his mom, I don't know, but that's why we're here
25 cause they made the decision to get him out of the way so

1 they could go back to their lifestyle and the first thing
2 they did when he was gone was get right back into the swing
3 of things. They went out with their friends, shot pool,
4 life is good, back to normal, and [REDACTED] is dead.

5 Find them guilty, ladies and gentlemen, don't let
6 their lies and their selfishness let them walk out of this
7 courtroom, thank you.

8 The Court: Ladies and gentlemen, I have taken
9 liberty of getting you some lunch. We'll wait until after
10 you've had a chance to take a break and have a little lunch
11 before I charge. If you would take them into the jury
12 room, Bobby. Again I ask you not to begin any
13 deliberations at all until I've charged you on the law.
14 We're at ease.

15 (Whereupon, the jury retired to the jury room at
16 12:15 p.m.)

17 (Whereupon, court was recessed for lunch.)

18 The Court: All right, as to the charge there
19 are no additions; is that correct?

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

21 The Court: Mr. Galmore, you've had a chance to
22 review it as well?

23 Mr. Galmore: Yes, sir.

24 The Court: No additions or deletions or
25 corrections?

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1 Mr. Galmore: No, sir.

2 The Court: And Ms. Grabert-Lowenstein, you as
3 well?

4 Ms. Grabert-Lowenstein: Absolutely, Your Honor.

5 The Court: All right.

6 (Whereupon, Court's Exhibit Number 3 marked for
7 identification.)

8 (Whereupon, the jury returns to the courtroom at
9 1:20 p.m.)

10 The Court: All right, we have all of our jurors
11 and our alternate back in the courtroom.

12 **Jury Charge**

13 Ladies and gentlemen, let me remind you that
14 during this trial you and I have certain duties to perform
15 and as trial judge it's my responsibility to reside over
16 the trial of this case and I also have the duty to rule on
17 the admissibility of the evidence ordered during this
18 trial.

19 You are to consider only the competent evidence
20 before you. If there was any testimony ordered stricken
21 from the record in this case during this trial you must
22 disregard that testimony. You are to consider only the
23 testimony which has been presented from this witness stand,
24 any exhibits which have been made a part of the record in
25 this case and any stipulations or agreements of counsel.

1 I have the additional duty to charge you the law
2 applicable to this case. As the presiding judge, I am the
3 sole judge of the law of this case, and it's your duty as
4 jurors to accept and apply the law as I now state it to
5 you. If you already have an idea as to what the law is or
6 what the law ought to be and it does not agree with what I
7 now tell you the law is, you must abandon that idea because
8 you are sworn to accept the law and apply the law exactly
9 as I state it to you.

10 In every case tried in this court before a jury,
11 the jury becomes the sole and exclusive judge of the facts
12 in a case. A trial judge cannot intimate, state, comment,
13 on, or make any statement to a trial jury about the facts
14 in a case. Since you, the jury, are the sole judge of the
15 facts in this case, you are not to infer from what I have
16 said during the progress of this trial in ruling on the
17 admissibility of evidence, or otherwise, or anything that I
18 say now during the course of this instruction to you, that
19 I have any opinion about the facts in this case. The law
20 does not allow me to have an opinion about the facts in
21 this case. This is a matter solely for you, the jury, to
22 determine. As jurors, it is your duty to determine the
23 effect, value, weight, and truth of the evidence presented
24 during this trial.

25 The indictments in this case charge the

1 defendants with homicide by child abuse, aiding, and/or
2 abetting homicide by child abuse, and unlawful conduct
3 towards a child. I remind you that the fact that the
4 defendants were arrested, charged, and indicted in this
5 case, is not evidence in this case and cannot be considered
6 by you as evidence of guilt in this case, nor does it
7 create any presumption or inference of guilt. These
8 documents simply are the formal written instruments which
9 contain the charges made against the defendants. They are
10 the formal documents by which this case is brought into
11 this court.

12 The indictments in this case allege several
13 different offenses against the defendants. The charges are
14 under:

15 Indictment No. 2008-GS-26-3656, Defendant Julia
16 Shawnette Gorman is charged with the, with homicide by
17 child abuse under SC Code Section 16-3-85(a)(1);

18 Indictment No. 2010-GS-26-02194, states the
19 Defendant Julia Shawnette Gorman is charged with aiding
20 and/or abetting homicide by child abuse under SC Code
21 Section 16-3-85(a)(2);

22 Indictment No. 2010-GS-26-841, states the
23 Defendant Julia Shawnette Gorman is charged with unlawful
24 conduct towards a child under SC Code Section 63-5-0070;

25 Indictment No. 2010-GS-26-2196, states that the

1 Defendant Robert Andrew Palmer is charged with homicide by
2 child abuse under SC Code Section 16-3-85(a)(1);

3 Indictment No. 2010-GS-26-02195, states Defendant
4 Robert Andrew Palmer is charged with aiding and/or abetting
5 homicide by child abuse under SC Code Section 16-3-
6 85(a)(2);

7 And finally, Indictment Number 2008-GS-26-4120,
8 alleges Defendant Robert Andrew Palmer is charged with
9 unlawful conduct towards a child under SC Code Section 63-
10 5-0070.

11 Each indictment contains a separate and distinct
12 offense. You must decide each indictment separately on the
13 evidence and the law applicable to it uninfluenced by your
14 decision as to any other indictment. The defendants may be
15 convicted or acquitted on any or all of the offenses
16 charged. You'll be asked to write a separate verdict of
17 guilty or not guilty for each indictment for each
18 defendant.

19 I charge you that there are two defendants in
20 this case, each of whom is charged with homicide by child
21 abuse, aiding and abetting, and/or abetting homicide by
22 child abuse, and unlawful conduct towards a child. The
23 case of each defendant and the evidence and the law
24 concerning that defendant should be considered separately
25 and individually. Your verdict does not have to be the

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1 same for both defendants. The fact that you may find one
2 defendant guilty or not guilty should not control your
3 verdict as to the other defendant. Where more than one
4 person is charged with a crime, if the evidence warrants
5 it, you may convict one and acquit the other, or you may
6 acquit both, or you may convict both. It will depend upon
7 your view of the testimony and the evidence. You must take
8 each defendant and consider the evidence as to that
9 defendant and my instructions to you on the law. You will
10 then write a separate verdict of guilty or not guilty for
11 each individual defendant.

12 The defendants have pled not guilty to these
13 indictments, and that plea puts the burden on the State to
14 prove the defendants guilty. A person charged with
15 committing a criminal offense in South Carolina is never
16 required to prove themselves innocent.

17 I charge you that it is an important rule of the
18 law that the defendant in a criminal matter, no matter what
19 the seriousness of that charge may be, will always be
20 presumed to be innocent of the crime for which the
21 indictment was issued unless guilt has been proven by
22 evidence satisfying you of that guilt beyond a reasonable
23 doubt. This presumption of innocence does not end when you
24 begin your deliberation, but it accompanies the defendant
25 throughout the trial until you reach a verdict of guilt

1 based on evidence satisfying you of that guilt beyond a
2 reasonable doubt.

3 The presumption of innocence is like a robe of
4 righteousness placed about the shoulders of the defendant
5 which remains with the defendant until it has been stripped
6 from the defendant by evidence satisfying you of the
7 defendant's guilt beyond a reasonable doubt.

8 The presumption of innocence is not a mere legal
9 theory. It is not just a legal phrase. It is a
10 substantial right to which every defendant is entitled
11 unless you, the jury, are satisfied from the evidence of
12 the defendant's guilt beyond a reasonable doubt.

13 What is reasonable doubt in the law? A
14 reasonable doubt is the kind of doubt that would cause a
15 reasonable person to hesitate to act. The State has the
16 burden of proving the defendant's guilty beyond a
17 reasonable doubt. Some of you may have served as jurors in
18 civil cases where you were told that it is only necessary
19 to prove that a fact is more likely true than not true,
20 such as by the greater weight or preponderance of the
21 evidence. In criminal cases the State's proof must be more
22 powerful than that. It must be beyond a reasonable doubt.

23 Proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced of the defendant's guilt.
25 There are very few things in this world that we know with

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1 absolute certainty, and in criminal cases the law does not
2 require proof that overcomes every possible doubt. If,
3 based on your consideration of the evidence, you are firmly
4 convinced that the defendants are guilty of the crimes
5 charged you must find the defendants guilty. If on the
6 other hand, you think that there is a real possibility that
7 the defendants are not guilty, you must give the defendants
8 the benefit of the doubt, and find them or him or her not
9 guilty.

10 Now there are two types of evidence which are
11 generally presented during a trial, direct evidence and
12 circumstantial evidence.

13 Direct evidence is the testimony of a person who
14 claims to have a actual knowledge of a fact, such as a
15 eyewitness. It is evidence which immediately establishes
16 or proves the main fact to be proven.

17 Circumstantial evidence is proof of a chain of
18 facts and circumstances indicating the existence of a fact.
19 It is evidence which immediately establishes collateral
20 facts from which the main fact may be inferred.

21 Circumstantial evidence is based on inferences, or
22 inference and not on personal knowledge or observation.

23 The law makes absolutely no distinction between
24 the weight or value to be given to either direct or
25 circumstantial evidence. Nor is a greater degree of

1 certainty required of circumstantial evidence than of
2 direct evidence. You should weigh all of the evidence in
3 the case. After weighing all of the evidence if you are
4 not convinced of the defendant's guilt beyond a reasonable
5 doubt you must find the defendants not guilty.

6 Necessarily, you must determine the credibility
7 of witnesses who have testified in this case. Credibility
8 simply means believability. It becomes your duty as jurors
9 to analyze and to evaluate the evidence and determine which
10 evidence convinces you of its truth.

11 In determining the believability of witnesses who
12 have testified in this case, you may believe one witness
13 over several witnesses or several witnesses over one
14 witness. You may believe a part of the testimony of a
15 witness and reject the remaining part of the testimony of
16 that same witness. You may believe the testimony of a
17 witness in its entirety. You may consider, or reject the
18 testimony of a witness in its entirety. You may consider
19 whether any witness has exhibited to you any interest,
20 prejudice, bias, or other motive in this case. You may
21 also consider the appearance and manner of a witness while
22 on the witness stand, sometimes we refer to that as a
23 person's demeanor.

24 The defendant has presented evidence of his or
25 her good reputation and character to show that it would be

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1 inconsistent with the defendant committing the crime. The
2 weight you give that testimony, like all other testimony in
3 the case, is for you to decide in your good judgment. You
4 may consider testimony of the defendant's good character
5 along with all the other evidence in deciding whether or
6 not the defendant committed the crime.

7 The rules of evidence ordinarily do not permit
8 witnesses to testify to opinions or conclusions. An
9 exception to this rule exists for witnesses we call expert
10 witnesses. A witness who, by education and experience, has
11 become expert in some art, science, profession, or calling
12 may state an opinion as to relevant and material matters in
13 which the witness claims to be an expert, and may also
14 state the reasons for the opinion.

15 You should consider any expert opinion received
16 in evidence in this case and, like any other evidence, give
17 it the weight you think it deserves. If you decide that
18 the opinion of an expert witness is not based on sufficient
19 education and experience, or if you conclude that the
20 reasons given in support of the opinion are not sound, or
21 that the opinion is outweighed by other evidence, you may
22 disregard the opinion entirely.

23 An expert witness' testimony is to be given no
24 greater weight than that of other witnesses simply because
25 the witness is an expert. Further, you are not required to

1 accept an expert's opinion, even though it's not
2 contradicted.

3 I instruct you and emphasize that the fact the
4 defendant did not testify is not a factor to be considered
5 by you in any way in your deliberation and in your
6 consideration on the question of the guilt or innocence of
7 that defendant. It must not be considered by you in any
8 manner whatsoever. A defendant has a constitutional right
9 to remain silent, and the assertion of this right must not
10 be considered by you in your deliberations. I repeat,
11 under your oath, you are to draw no conclusion whatsoever
12 from the fact that the defendant in this case did not
13 testify. The fact that the defendant did not testify
14 should not even be discussed in the jury room. The burden
15 of proof, as I have stated to you, is on the State. The
16 defendant is not required to prove his or her innocence.
17 The burden of proof remains on the State to prove guilt
18 beyond a reasonable doubt.

19 Now the defendants are charged with homicide by
20 child abuse. The child [sic] must prove beyond a
21 reasonable doubt that the defendants caused the death of a
22 child under the age of eleven while committing child abuse
23 or neglect.

24 Child abuse or neglect is an act or failure to
25 act which causes harm to the child, child's physical health

1 or welfare.

2 Harm to the child's physical health or welfare
3 means that the defendants either: (1) inflicted, or allowed
4 to be inflicted, on the child physical injury; (2) failed
5 to supply the child with adequate food, clothing, shelter,
6 or health care and this failure caused a physical injury or
7 condition which caused death; or (3) abandoned the child
8 causing the child's death.

9 The State must also prove beyond a reasonable
10 doubt that death occurred under circumstances showing an
11 extreme indifference to human life.

12 The State may also prove homicide by child
13 neglect by proving beyond a reasonable doubt that the
14 defendant knowingly aided and abetted another person to
15 commit child abuse or neglect which resulted in the death
16 of a child under the age of eleven.

17 Aid means to help, to promote the course or
18 accomplishment of, to give support to, or give assistance
19 to.

20 Abet means to encourage or appear to favor
21 support.

22 A person who was present at the scene of the
23 crime and intentionally, or through common plan aided,
24 abetted, or assisted in the commission of that crime
25 through some overt act, is guilty as an accomplice. To be

1 liable as an accomplice, the defendant must have knowledge
2 of the principal's criminal conduct. Mere presence at the
3 scene of the crime is not sufficient to establish guilt as
4 an accomplice.

5 Intentionally means willfully, intending the
6 result which actually occurs, not accidentally or
7 involuntary.

8 If a crime is committed by two or more people who
9 are acting together in committing a crime, the act of one
10 is the act of all. A person who joins with another to
11 commit an unlawful is criminally responsible for everything
12 done by the other person which happens as a probable or
13 natural consequence of the acts done in carrying out the
14 common plan and purpose. For example, two people can be
15 guilty of killing another person when only one of the two
16 had a gun, there was only one bullet, and only one of the
17 two fired the shot that caused the death. If two or more
18 people are together, acting together, assisting each other
19 in committing the offense, the act of one is the act of
20 all, or, as it is sometimes said, the hand of one is the
21 hand of all.

22 Prior knowledge that a crime is going to be
23 committed, without more, is not sufficient to make a person
24 guilty of that crime. Mere knowledge that another person
25 is going to commit a crime, even if the defendant is

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1 present when the crime is committed, is not sufficient to
2 convict the defendant as a principal. Guilt as a principal
3 is shown by actual or constructive presence at the scene as
4 a result of prior arrangement. Therefore, a finding of a
5 prior arranged plan or common scheme is necessary for a
6 finding of guilt as a principal. The State must prove
7 beyond a reasonable doubt by competent evidence the theory
8 of the hand of one is the hand of all.

9 A principal in a crime is one who either actually
10 commits a crime or who is present aiding, abetting, or
11 assisting in committing the crime. When a person does an
12 act in the presence of and with the assistance of another,
13 the act is done by both. Where two or more, acting with a
14 common plan or intent, are present at the commission of a
15 crime, it does not matter who actually commits the crime.
16 All are guilty. The hand of one is the hand of all.
17 Presently, present at the commission of a crime means to be
18 sufficiently near to aid and abet and assist in the
19 commission of the crime. However, again mere presence at
20 the scene of a crime is not sufficient to convict one as a
21 principal on the theory of aiding and abetting. Intent is
22 also a necessary element, for there must have been a common
23 design or intent to commit the crime and the crime must
24 have been committed pursuant thereto with the person aiding
25 and abetting by some overt act. Intent means intending the

1 result which actually occurs, not accidentally or
2 involuntarily. Intent may be shown by acts and conduct of
3 the defendant and other circumstances which you may
4 naturally and reasonably infer intent, from which you may
5 naturally and reasonably infer intent. The State must
6 prove these elements beyond a reasonable doubt.

7 The defendants are charged with unlawful conduct
8 towards a child. The defendant must, the State must first
9 prove, beyond a reasonable doubt that the defendants had
10 charge or custody of the child, were the parents or
11 guardians of the child, or are, or responsible for the care
12 and support of the child.

13 A person responsible for a child's welfare
14 include the child's parents, guardian, or foster parent, an
15 operator, employee, or care giver of a public or private
16 residential home, institution, agency, or child day care
17 center facility, or an adult who has assumed the role or
18 responsibility of a parent or guardian for a child, but
19 does not necessarily have legal custody of the child. This
20 does not include a person whose only role is as a care
21 giver and whose conduct, or contact, is only incidental
22 with the child, such as a babysitter.

23 The State must also prove beyond a reasonable
24 doubt that the defendants placed the child; (1) placed the
25 child at unreasonable risk of harm affecting the child's

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1 life, physical or mental health, or safety; (2) unlawfully
2 or maliciously did, or caused to be done, any bodily harm
3 to the child so that the life or health of the child is
4 endangered or likely to be endangered; and (3) willfully
5 abandoned the child.

6 Abandon means that the defendant willfully
7 deserted the child or willfully surrendered physical
8 possession of the child without making adequate
9 arrangements for the child's need or continuing care of the
10 child. Child means a person under the age of eighteen for
11 that statute.

12 Now, ladies and gentlemen, I intend to provide
13 you, as I said, a copy of these instructions in written
14 form. During your deliberations you may refer to the
15 instructions to guide your decision making. You must
16 consider the instructions as a whole, as I have said, and
17 not follow some and ignore the others. Please, return the
18 instructions to the Court at the time your verdict is
19 rendered.

20 Now there are six possible verdicts which you may
21 find in this case as to each defendant. Guilty or not
22 guilty of homicide by child abuse as to the Defendant Julia
23 Shawnette Gorman; guilty or not guilty of homicide by child
24 abuse as to Defendant Robert Andrew Palmer; guilty or not
25 guilty of aiding and/or abetting homicide by child abuse as

1 to the Defendant Julia Shawnette Gorman; guilty or not
2 guilty aiding and abetting homicide by child abuse as to
3 the Defendant Robert Andrew Parker, Palmer; guilty or not
4 guilty of unlawful conduct towards a child as to the
5 Defendant Julia Shawnette Gorman; and guilty or not guilty
6 of unlawful conduct towards a child as to the Defendant
7 Robert Andrew Palmer.

8 Now there is no significance whatsoever in the
9 order in which I state these possible verdicts, it just
10 simply means that one has to be stated before the other.

11 Now, ladies and gentlemen, your verdict must be a
12 unanimous verdict. Mr. Foreperson, when the jury agrees on
13 the verdict, I want you to enter the verdict on the verdict
14 forms which I have provided for you. Then you will knock
15 on the jury room door and inform the bailiff that you have
16 reached a verdict and at that time we will receive you back
17 into the jury room, now, or the court room.

18 I'm going to ask you not to begin your
19 deliberations. When you return to your jury room do not
20 begin your deliberations until I signal you to do so. The
21 way that I will signal you to do so is I will have
22 delivered to you the exhibits in this case and a copy of my
23 charge and the verdict forms. When you receive those
24 materials you may begin or proceed with your deliberations;
25 do you understand that, Mr. Kidd?

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1 Mr. Foreperson: Yes, sir.

2 The Court: Very well, all right. Mr. Ropp, if
3 you would take the jurors to the jury room, would you
4 segregate the remaining alternate for me, place him in a
5 different room, and I will deal with him in just a moment.

6 (Whereupon, the jury retired to the jury room at
7 1:47 p.m.)

8 The Court: Again any additions or deletions or
9 objections to the charge from the State?

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

11 The Court: From the Defendant Gorman?

12 Mr. Galmore: No, sir.

13 The Court: From the Defendant Palmer?

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

15 The Court: All right, would you, please, ladies
16 and gentlemen, get all, the Clerk tells me she has the
17 exhibits in order, but if you would check that, look at
18 them and make sure and we will get those back to them. I
19 have had my charge marked as Court's Exhibit Number 3 and
20 it will be submitted with the exhibits, okay.

21 (Whereupon, the exhibits in the case were
22 determined to be in order.)

23 The Court: Becky, Roy, could ya'll just take
24 those back to them and once you do have Bobby bring Mr.
25 Kobe, the alternate.

1 (Whereupon, the verdict forms and exhibits were
2 delivered to the jury room at 1:52 p.m. with instructions
3 to begin deliberations)

4 The Court: We're at ease.

5 (Whereupon, the alternate enters the courtroom.)

6 The Court: Thank you so much for serving on
7 this jury. We have reached the point that the jury has
8 been asked to begin deliberations. Once I hit that point I
9 don't interject another juror, in case something breaks
10 down we just declare a mistrial, unfortunately have to do
11 that, cause you've missed too much, so you are, have
12 fulfilled your obligation. Thank you again for being here,
13 you're welcome to stay with us and see the outcome if you
14 wish or you can leave, either one that you wish, but thank
15 you for your service, you're excused.

16 (Whereupon, the alternate exits the court room.)

17 (Whereupon, the jury knocked with a verdict at
18 3:40 p.m.)

19 The Court: The attorneys and the defendants are
20 in the courtroom today. I'm informed, at this point I'm
21 informed that we do have a verdict. Let me admonish all
22 spectators and parties that are here that this jury has
23 worked hard. They have been here all week to reach a
24 verdict. When that verdict is announced anyone who commits
25 any sort of emotional outburst, makes any comment, any

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1 physical display, will be in contempt of this court. If
2 you feel that you cannot contain yourselves during the
3 reading of the verdict, whatever that verdict may be, I
4 have no idea what it is, I suggest that you exit the
5 courtroom at this time and I'll give you an opportunity to
6 do so, but if you remain in this courtroom you're expected
7 to respect this jury's verdict and show no emotion during
8 the reading of the verdict or following the reading of the
9 verdict. Is that clearly understood by anyone, anyone need
10 further explanation? Does anyone need to leave? All
11 right, bring in the jury.

12 (Whereupon, the jury entered the courtroom at
13 3:51 p.m. to deliver its verdict as to Defendant Gorman and
14 Defendant Palmer.)

15 The Court: Mr. Foreman, have you reached a
16 verdict?

17 The Foreman: Yes, we have, sir.

18 The Court: Have you reached a verdict as to
19 each defendant and each indictment?

20 The Foreman: Yes, sir.

21 The Court: And was it a unanimous verdict?

22 The Foreman: Yes, sir.

23 The Court: As to each defendant and to each
24 indictment?

25 The Foreman: Yes, sir.

1 The Court: All right, would you, please,
2 receive the verdict, Madam Clerk?

3 (Whereupon, the verdict was received by the Clerk
4 and reviewed by the Court.)

5 The Court: Publish the verdicts.

6 Madam Clerk: Indictment Number 2008-GS-26-4120,
7 State of South Carolina County of Horry v. Robert Andrew
8 Palmer, as to the charge of unlawful conduct towards a
9 child we the jury unanimously find the defendant guilty.

10 Indictment Number 2010-GS-26-2195, The State of
11 South Carolina v. Robert Andrew Palmer, as to the charge of
12 aiding and abetting homicide by child abuse we the jury
13 unanimously find the defendant guilty.

14 Indictment Number 2010-GS-26-2196 State of South
15 Carolina v. Robert Andrew Palmer, as to the charge of
16 homicide by child abuse we the jury unanimously find the
17 defendant guilty.

18 Indictment Number 2010-GS-26-841 State of South
19 Carolina v. Julia Shawnette Gorman, as to the charge of
20 unlawful conduct towards a child we the jury unanimously
21 find the defendant guilty.

22 Indictment Number 2010-GS-26-2194 State of South
23 Carolina v. Julia Shawnette Gorman, as to the charge of
24 aiding and abetting homicide by child abuse we the jury
25 unanimously find the defendant guilty

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1 Indictment Number 2008-GS-26-3756 State of South
2 Carolina v. Julia Shawnette Gorman, as to the charge of
3 homicide by child abuse we the jury unanimously find the
4 defendant guilty.

5 Dated by Foreperson Robert E. Kidd, dated
6 November 18, 2011.

7 Ladies and gentlemen of the jury, if this is your
8 verdict so signify by raising your right hand.

9 (Whereupon, all jurors responded affirmatively.)

10 Madam Clerk: Thank you. If this is, if this is
11 your verdict so signify by raising your right hand and this
12 would be your verdict as to each count?

13 (Whereupon, all jurors responded affirmatively.)

14 Madam Clerk: Thank you.

15 The Court: Any request for individual voir
16 dire, Mr. Galmore?

17 Mr. Galmore: Yes, sir.

18 The Court: All right, Ms. Grabert-Lowenstein?

19 Ms. Grabert-Lowenstein: Yes, Your Honor, as to
20 each count.

21 The Court: All right, very well.

22 Madam Clerk: When I call your juror number if
23 you will, please, stand.

24 As to Robert Andrew Palmer on the charge of
25 unlawful conduct towards a child, juror number 168; is this

1 your verdict?

2 Jury Member Number 168: It is.

3 Madam Clerk: Is this still your verdict?

4 Jury Member Number 168: Yes.

5 Madam Clerk: Thank you, as to aiding and
6 abetting homicide by child abuse, if you will please remain
7 standing, I'm sorry, juror number 168; is this your
8 verdict?

9 Jury Member Number 168: Yes.

10 Madam Clerk: Is this still your verdict?

11 Jury Member Number 168: Yes.

12 Madam Clerk: Thank you, as to the charge of
13 homicide by child abuse on the case of Robert Andrew
14 Palmer; is this your verdict?

15 Jury Member Number 168: Yes.

16 Madam Clerk: Is this still your verdict?

17 Jury Member Number 168: Yes.

18 Madam Clerk: Thank you, as to the charge of
19 unlawful conduct towards a child the Defendant Julia
20 Shawnette Gorman; is this your verdict?

21 Jury Member Number 168: Yes.

22 Madam Clerk: Is this still your verdict?

23 Jury Member Number 168: Yes.

24 Madam Clerk: Thank you, as to the charge of
25 aiding and abetting homicide by child abuse in the case of

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1 Julia Shawnette Gorman; is this your verdict?

2 Jury Member Number 168: Yes.

3 Madam Clerk: Is this still your verdict?

4 Jury Member Number 168: Yes.

5 Madam Clerk: Thank you, as to the charge of
6 homicide by child abuse as to the Defendant Julia Shawnette
7 Gorman; is this your verdict?

8 Jury Member Number 168: Yes.

9 Madam Clerk: Is this still your verdict?

10 Jury Member Number 168: Yes.

11 Madam Clerk: Thank you, juror number 220, as to
12 Defendant Robert Andrew Palmer on the charge of unlawful
13 conduct towards a child; is this your verdict?

14 Jury Member Number 220: Yes.

15 Madam Clerk: Is this still your verdict?

16 Jury Member Number 220: Yes.

17 Madam Clerk: Thank you, as to the charge of
18 aiding and abetting homicide by child abuse for the
19 Defendant Robert Andrew Palmer; is this your verdict?

20 Jury Member Number 220: Yes.

21 Madam Clerk: Is this still your verdict?

22 Jury Member Number 220: Yes.

23 Madam Clerk: As to the charge of homicide by
24 child abuse for the Defendant Robert Andrew Palmer; is this
25 your verdict?

1 Jury Member Number 220: Yes.

2 Madam Clerk: Is this still your verdict?

3 Jury Member Number 220: Yes.

4 Madam Clerk: Thank you, as to the charge of
5 unlawful conduct towards a child for the Defendant Julia
6 Shawnette Gorman; is this your verdict?

7 Jury Member Number 220: Yes.

8 Madam Clerk: Is this still your verdict?

9 Jury Member Number 220: Yes.

10 Madam Clerk: As to the charge of aiding and
11 abetting homicide by child abuse as to Defendant Julia
12 Shawnette Gorman; is this your verdict?

13 Jury Member Number 220: Yes.

14 Madam Clerk: Is this still your verdict?

15 Jury Member Number 220: Yes.

16 Madam Clerk: As to the charge of homicide by
17 child abuse for the Defendant Julia Shawnette Gorman; is
18 this your verdict?

19 Jury Member Number 220: Yes.

20 Madam Clerk: Is this still your verdict?

21 Jury Member Number 220: Yes.

22 Madam Clerk: Thank you, juror number 332, as to
23 the Defendant Robert Andrew Palmer as to the charge of
24 unlawful conduct towards a child; is this your verdict?

25 Jury Member Number 332: Yes.

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1 Madam Clerk: Is this still your verdict?

2 Jury Member Number 332: Yes.

3 Madam Clerk: Defendant Robert Andrew Palmer as
4 to the charge of aiding and abetting homicide by child
5 abuse; is this your verdict?

6 Jury Member Number 332: Yes.

7 Madam Clerk: Is this still your verdict?

8 Jury Member Number 332: Yes.

9 Madam Clerk: Defendant Robert Andrew Palmer as
10 to the charge of homicide by child abuse; is this your
11 verdict?

12 Jury Member Number 332: Yes.

13 Madam Clerk: Is this still your verdict?

14 Jury Panel Member: Yes.

15 Madam Clerk: Defendant Julia Shawnette Gorman
16 as to the charge of unlawful conduct towards a child; is
17 this your verdict?

18 Jury Member Number 332: Yes.

19 Madam Clerk: Is this still your verdict?

20 Jury Member Number 332: Yes.

21 Madam Clerk: Defendant Julia Shawnette Gorman
22 as to the charge of aiding and abetting homicide by child
23 abuse; is this your verdict?

24 Jury Member Number 332: Yes.

25 Madam Clerk: Is this still your verdict?

1 Jury Member Number 332: Yes.

2 Madam Clerk: Defendant Julia Shawnette Gorman
3 as to the charge of homicide by child abuse; is this your
4 verdict?

5 Jury Member Number 332: Yes.

6 Madam Clerk: Is this still your verdict?

7 Jury Member Number 332: Yes.

8 Madam Clerk: Thank you, Juror Number 113,
9 Defendant Robert Andrew Palmer as to the charge of unlawful
10 conduct towards to a child: is this your verdict?

11 Jury Member Number 113: Yes.

12 Madam Clerk: Is this still your verdict?

13 Jury Member Number 113: Yes.

14 Madam Clerk: Defendant Robert Andrew Palmer as
15 to the charge of aiding and abetting homicide by child
16 abuse: is this your verdict?

17 Jury Member Number 113: Yes.

18 Madam Clerk: Is this still your verdict?

19 Jury Member Number 113: Yes.

20 Madam Clerk: Defendant Robert Andrew Palmer as
21 to the charge of homicide by child abuse is this your
22 verdict?

23 Jury Member Number 113: Yes.

24 Madam Clerk: Is this still your verdict?

25 Jury Member Number 113: Yes.

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1 Madam Clerk: As to Defendant Julia Shawnette
2 Gorman as to the charge of unlawful conduct towards a
3 child; is this your verdict?
4 Jury Member Number 113: Yes.
5 Madam Clerk: Is this still your verdict?
6 Jury Member Number 113: Yes.
7 Madam Clerk: Defendant Julia Shawnette Gorman
8 as to the charge of aiding and abetting homicide by child
9 abuse: is this your verdict?
10 Jury Member Number 113: Yes.
11 Madam Clerk: Is this still your verdict?
12 Jury Member Number 113: Yes.
13 Madam Clerk: Defendant Julia Shawnette Gorman
14 as to charge of homicide by child abuse: is this your
15 verdict?
16 Jury Member Number 113: Yes.
17 Madam Clerk: Is this still your verdict?
18 Jury Member Number 113: Yes.
19 Madam Clerk: Were you 332?
20 Jury Panel Member: 113.
21 Madam Clerk: 113 -- 157, Defendant Robert
22 Andrew Palmer as to the charge of unlawful conduct towards
23 a child; is this your verdict?
24 Jury Member Number 157: Yes.
25 Madam Clerk: Is this still your verdict?

1 Jury Member Number 157: Yes.

2 Madam Clerk: Defendant Robert Andrew Palmer as
3 to the charge of aiding and abetting homicide by child
4 abuse; is this your verdict?

5 Jury Member Number 157: Yes.

6 Madam Clerk: Is this still your verdict?

7 Jury Member Number 157: Yes.

8 Madam Clerk: Defendant Robert Andrew Palmer as
9 to the charge of homicide by child abuse; is this your
10 verdict?

11 Jury Member Number 157: Yes.

12 Madam Clerk: Is this still your verdict?

13 Jury Member Number 157: Yes.

14 Madam Clerk: Defendant Julia Shawnette Gorman
15 as to the charge of unlawful conduct towards a child; is
16 this your verdict?

17 Jury Member Number 157: Yes.

18 Madam Clerk: Is this still your verdict?

19 Jury Panel Member: Yes.

20 Madam Clerk: Defendant Julia Shawnette Gorman
21 as to the charge of aiding and abetting homicide by child
22 abuse; is this your verdict?

23 Jury Member Number 157: Yes.

24 Madam Clerk: Is this still your verdict?

25 Jury Member Number 157: Yes.

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1 Madam Clerk: Defendant Julia Shawnette Gorman
2 as to the charge of homicide by child abuse: is this your
3 verdict?

4 Jury Member Number 157: Yes.

5 Madam Clerk: Is this still your verdict?

6 Jury Member Number 157: Yes.

7 Madam Clerk: Thank you, juror number 92,
8 Defendant Robert Andrew Palmer as to the charge of unlawful
9 conduct towards a child: is this your verdict?

10 Jury Member Number 92: Yes.

11 Madam Clerk: Is this still your verdict?

12 Jury Member Number 92: Yes.

13 Madam Clerk: Defendant Robert Andrew Palmer as
14 to the charge of aiding and abetting homicide by child
15 abuse: is this your verdict?

16 Jury Member Number 92: Yes.

17 Madam Clerk: Is this still your verdict?

18 Jury Member Number 92: Yes.

19 Madam Clerk: Defendant Robert Andrew Palmer as
20 to the charge of homicide by child abuse: is this your
21 verdict?

22 Jury Member Number 92: Yes.

23 Madam Clerk: Is this still your verdict?

24 Jury Panel Member: Yes.

25 Madam Clerk: Defendant Julia Shawnette Gorman

1 as to charge of unlawful conduct towards a child: is this
2 your verdict?

3 Jury Member Number 92: Yes.

4 Madam Clerk: Is this still your verdict?

5 Jury Member Number 92: Yes.

6 Madam Clerk: Defendant Julia Shawnette Gorman
7 as to the charge of aiding and abetting homicide by child
8 abuse: is this your verdict?

9 Jury Member Number 92: Yes.

10 Madam Clerk: Is this still your verdict?

11 Jury Member Number 92: Yes.

12 Madam Clerk: Defendant Julia Shawnette Gorman
13 as to the charge of homicide by child abuse: is this your
14 verdict?

15 Jury Member Number 92: Yes.

16 Madam Clerk: Is this still your verdict?

17 Jury Member Number 92: Yes.

18 Madam Clerk: Thank you. Juror number 109, as
19 to Defendant Robert Andrew Palmer on the charge of unlawful
20 conduct towards a child: is this your verdict?

21 Jury Member Number 109: Yes.

22 Madam Clerk: Is this still your verdict?

23 Jury Member Number 109: Yes.

24 Madam Clerk: Defendant Robert Andrew Palmer as
25 to the charge of aiding and abetting homicide by child

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1 abuse: is this your verdict?

2 Jury Member Number 109: Yes..

3 Madam Clerk: Is this still your verdict?

4 Jury Member Number 109: Yes.

5 Madam Clerk: Thank you, Defendant Robert Andrew
6 Palmer as to the charge of homicide by child abuse: is this
7 your verdict?

8 Jury Member Number 109: Yes.

9 Madam Clerk: Is this still your verdict?

10 Jury Member Number 109: Yes.

11 Madam Clerk: Thank you, Defendant Julia
12 Shawnette Gorman as to the charge of unlawful conduct
13 towards a child: is this your verdict?

14 Jury Member Number 109: Yes.

15 Madam Clerk: Is this still your verdict?

16 Jury Member Number 109: Yes.

17 Madam Clerk: As to Julia Shawnette Gorman as to
18 the charge of aiding and abetting homicide by child abuse:
19 is this your verdict?

20 Jury Member Number 109: Yes.

21 Madam Clerk: Is this still your verdict?

22 Jury Member Number 109: Yes.

23 Madam Clerk: Defendant Julia Shawnette Gorman
24 as to the charge of homicide by child abuse: is this your
25 verdict?

1 Jury Member Number 109: Yes.

2 Madam Clerk: Is this still your verdict?

3 Jury Member Number 109: Yes.

4

5 Madam Clerk: Thank you. 237, Defendant Robert
6 Andrew Palmer as to the charge of unlawful conduct towards
7 to a child; is this your verdict?

8 Jury Member Number 237: Yes.

9 Madam Clerk: Is this still your verdict?

10 Jury Member Number 237: Yes.

11 Madam Clerk: Defendant Robert Andrew Palmer as
12 to the charge of aiding and abetting homicide by child
13 abuse; is this your verdict?

14 Jury Member Number 237: Yes.

15 Madam Clerk: Is this still your verdict?

16 Jury Member Number 237: Yes.

17 Madam Clerk: Defendant Robert Andrew Palmer as
18 to the charge of homicide by child abuse; is this your
19 verdict?

20 Jury Member Number 237: Yes.

21 Madam Clerk: Is this still your verdict?

22 Jury Member Number 237: Yes.

23 Madam Clerk: Defendant Julia Shawnette Gorman
24 as to the charge of unlawful conduct towards a child; is
25 this your verdict?

1 Jury Member Number 237: Yes.

2

3 Madam Clerk: Is this still your verdict?

4 Jury Member Number 237: Yes.

5 Madam Clerk: Defendant Julia Shawnette Gorman
6 as to the charge of aiding and abetting homicide by child
7 abuse; is this your verdict?

8 Jury Member Number 237: Yes.

9 Madam Clerk: Is this still your verdict?

10 Jury Member Number 237: Yes.

11 Madam Clerk: Defendant Julia Shawnette Gorman
12 as to the charge of homicide by child abuse; is this your
13 verdict?

14 Jury Member Number 237: Yes.

15 Madam Clerk: Is this still your verdict?

16 Jury Member Number 237: Yes.

17 Madam Clerk: Thank you. Juror number 107,
18 Defendant Robert Andrew Palmer as to the charge of unlawful
19 conduct towards a child; is this your verdict?

20 Jury Member Number 107: Yes.

21 Madam Clerk: Is this still your verdict?

22 Jury Member Number 107: Yes.

23 Madam Clerk: Defendant Robert Andrew Palmer as
24 to the charge of aiding and abetting homicide by child
25 abuse; is this your verdict?

1 Jury Member Number 107: Yes.

2 Madam Clerk: Is this still your verdict?

3 Jury Member Number 107: Yes.

4 Madam Clerk: Defendant Robert Andrew Palmer as
5 to the charge of homicide by child abuse; is this your
6 verdict?

7 Jury Member Number 107: Yes.

8 Madam Clerk: Is this still your verdict?

9 Jury Member Number 107: Yes.

10 Madam Clerk: Defendant Julia Shawnette Gorman
11 as to the charge of unlawful conduct towards a child; is
12 this your verdict?

13 Jury Member Number 107: Yes.

14 Madam Clerk: Is this still your verdict?

15 Jury Member Number 107: Yes.

16 Madam Clerk: Defendant Julia Shawnette Gorman
17 as to the charge of aiding and abetting homicide by child
18 abuse; is this your verdict?

19 Jury Member Number 107: Yes.

20 Madam Clerk: Is this still your verdict?

21 Jury Panel Member: Yes.

22 Madam Clerk: Defendant Julia Shawnette Gorman
23 as to the charge of homicide by child abuse; is this your
24 verdict?

25 Jury Member Number 107: Yes.

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1 Madam Clerk: Is this still your verdict?

2 Jury Member Number 107: Yes.

3 Madam Clerk: Thank you. Juror number 18,
4 Defendant Robert Andrew Palmer as to the charge of unlawful
5 conduct towards a child; is this your verdict?

6 Jury Member Number 18: Yes.

7 Madam Clerk: Is this still your verdict?

8 Jury Member Number 18: Yes..

9 Madam Clerk: Defendant Robert Andrew Palmer as
10 to the charge of aiding and abetting homicide by child
11 abuse; is this your verdict?

12 Jury Member Number 18: Yes.

13 Madam Clerk: Is this still your verdict?

14 Jury Member Number 18: Yes.

15 Madam Clerk: Defendant Robert Andrew Palmer as
16 to the charge of homicide by child abuse; is this your
17 verdict?

18 Jury Member Number 18: Yes.

19

20 Madam Clerk: Is this still your verdict?

21 Jury Member Number 18: Yes.

22 Madam Clerk: Defendant Julia Shawnette Gorman
23 as to the charge of unlawful conduct towards a child; is
24 this your verdict?

25 Jury Member Number 18: Yes.

1 Madam Clerk: Is this still your verdict?

2 Jury Member Number 18: Yes.

3 Madam Clerk: Defendant Julia Shawnette Gorman
4 as to the charge of aiding and abetting homicide by child
5 abuse; is this your verdict?

6 Jury Member Number 18: Yes.

7 Madam Clerk: Is this still your verdict?

8 Jury Member Number 18: Yes.

9 Madam Clerk: Defendant Julia Shawnette Gorman
10 as to the charge of homicide by child abuse; is this your
11 verdict?

12 Jury Member Number 18: Yes.

13 Madam Clerk: Is this still your verdict?

14 Jury Member Number 18: Yes.

15 Madam Clerk: Thank you. Juror number 204,
16 Defendant Robert Andrew Palmer as to the charge of unlawful
17 conduct towards a child; is this your verdict?

18 Jury Member Number 204: Yes.

19 Madam Clerk: Is this still your verdict?

20 Jury Member Number 204: Yes.

21 Madam Clerk: Defendant Robert Andrew Palmer as
22 to the charge of aiding and abetting homicide by child
23 abuse; is this your verdict?

24 Jury Member Number 204: Yes.

25 Madam Clerk: Is this still your verdict?

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1 Jury Member Number 204: Yes.

2 Madam Clerk: Defendant Robert Andrew Palmer as
3 to the charge of homicide by child abuse; is this your
4 verdict?

5 Jury Member Number 204: Yes.

6 Madam Clerk: Is this still your verdict?

7 Jury Member Number 204: Yes.

8 Madam Clerk: Defendant Julia Shawnette Gorman
9 as to the charge of unlawful conduct towards a child; is
10 this your verdict?

11 Jury Member Number 204: Yes.

12 Madam Clerk: Is this still your verdict?

13 Jury Member Number 204: Yes.

14

15 Madam Clerk: Defendant Julia Shawnette Gorman
16 as to the charge of aiding and abetting homicide by child
17 abuse; is this your verdict?

18 Jury Member Number 204: Yes.

19 Madam Clerk: Is this still your verdict?

20 Jury Member Number 204: Yes.

21 Madam Clerk: Defendant Julia Shawnette Gorman
22 as to the charge of homicide by child abuse; is this your
23 verdict?

24 Jury Member Number 204: Yes.

25 Madam Clerk: Is this still your verdict?

1 Jury Member Number 204: Yes.

2 Madam Clerk: Thank you. Juror number 265, 265,
3 Defendant Robert Andrew Palmer as to the charge of unlawful
4 conduct towards a child; is this your verdict?

5 Jury Member Number 265: Yes.

6 Madam Clerk: Is this still your verdict?

7 Jury Member Number 265: Yes.

8 Madam Clerk: Defendant Robert Andrew Palmer as to
9 the charge of aiding and abetting homicide by child abuse; is
10 this your verdict?

11 Jury Member Number 265: Yes.

12 Madam Clerk: Is this still your verdict?

13 Jury Member Number 265: Yes.

14 Madam Clerk: Defendant Robert Andrew Palmer as to
15 the charge of homicide by child abuse; is this your verdict?

16 Jury Member Number 265: Yes.

17 Madam Clerk: Is this still your verdict?

18 Jury Member Number 265: Yes.

19 Madam Clerk: Defendant Julia Shawnette Gorman as
20 to the charge of unlawful conduct towards a child; is this
21 your verdict?

22 Jury Member Number 265: Yes.

23 Madam Clerk: Is this still your verdict?

24 Jury Member Number 265: Yes.

25 Madam Clerk: Defendant Julia Shawnette Gorman as

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1 to the charge of aiding and abetting homicide by child abuse;
2 is this your verdict?

3 Jury Member Number 265: Yes.

4 Madam Clerk: Is this still your verdict?

5 Jury Member Number 265: Yes.

6 Madam Clerk: Defendant Julia Shawnette Gorman as
7 to the charge of homicide by child abuse; is this your
8 verdict?

9 Jury Member Number 265: Yes.

10 Madam Clerk: Is this still your verdict?

11 Jury Member Number 265: Yes.

12 Madam Clerk: Thank you, did I skip anyone?

13 The Court: Thank you very much. Ladies and
14 gentlemen of the jury, when you responded to your juror
15 summons on Monday morning I am sure that none of you expected
16 to have placed upon your shoulders the awesome burden of
17 judging a fellow human being under circumstances as serious
18 as the ones that we have heard about all during this week.
19 I can certainly appreciate the responsibility that we placed
20 on you this week. I can tell you I have practiced law for
21 thirty years before I came here and I know what an awesome
22 burden we placed on you, however, let me just say this, this
23 system would never work for it not for citizens just like you
24 who are willing to come here and take on that responsibility.
25 There would never be any end to these matters.

1 As you have heard this, this case has gone on for
2 three, almost four years now that I has been pending, this
3 case cried out for closure. It needed to be ended and you
4 were the only vessel to carry that load and we certainly
5 appreciate what you have done here for your willingness to
6 step up to the plate and do what needed to be done in this
7 situation.

8 I'm sure that you will never forget your, your
9 service here this week and I hope that you will never be
10 placed in this same position again, but let me tell you that
11 of all the people here there is one at least who appreciates
12 what you have done in your willingness to do so and
13 understands the burden that we placed on you at the beginning
14 of this week and that person is me. I want to thank you for
15 this Court. I want to thank you personally for what you have
16 done here this week in your willingness to serve.

17 In just a moment I'm going to go into the
18 sentencing in this, this case. I have a couple of motions
19 I'm going to hear. I will allow you to withdraw if you wish
20 to, however, you may stay here through sentencing if you
21 choose, but should any of you find it necessary to leave or
22 you would like to leave at this time, Mr. Ropp will certainly
23 escort you from the courtroom.

24 I asked you not to discuss this case with anyone at
25 the beginning of the week, you're free now to discuss it with

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1 anyone you like or you're free to say I never want to speak
2 of this case again. It's entirely up to you.

3 I am from Horry County, I think I told you that on
4 Monday when I was qualifying the jury. I'm in and about the
5 county all the time, born and raised here. If I have
6 occasion to be in the same location that you are in the
7 future and you recognize me, I have many jurors and
8 unfortunately I don't remember everyone who is on my jury,
9 but you see me I hope that you will approach me. I like to
10 say I'm one of the most approachable judges in the state. I
11 like to have you approach me and tell me what you thought
12 about this process.

13 I know it was a terrible burden and you had a
14 terrible responsibility here, but I hope you leave here with
15 a greater confidence in our judicial system and a greater
16 pride in this country. Thank you, you're welcome to stay but
17 should you wish to withdraw you're free to do so.

18 (Whereupon, the jury was excused for the evening at
19 4:14 p.m.)

20 The Court: I will hear from the State. First let
21 me ask Mr. Galmore and Ms. Grabert-Lowenstein if there's any
22 reason why we should not proceed to sentencing at this time?

23 Ms. Grabert-Lowenstein: Your Honor, given the
24 nature of the evidence and given the nature of the verdict I
25 would ask for a delay to prepare for formal sentencing.

1 The Court: Well first I need to hear your
2 motions; I'm sure you have some motions? Mr. Galmore, post
3 trial motions?

4 Mr. Galmore: Your Honor, yes, sir, I would make
5 a, excuse me, motion for a new trial and motion for an order
6 and arrested judgment based on the insufficiency of the
7 evidence presented in this case, based on the insufficiency
8 of the indictments presented. We have gone over those
9 indictments ad nauseam; they have two inconsistent theories
10 in the indictments. I just find it mind boggling that a jury
11 can convict Ms. Gorman of being the principal and being the
12 accomplice. It's just not possible for her to be the person
13 that inflicted the blow and for her to be the person that
14 aids and abets him inflicting the blow at the same time.
15 These are two different theories and they're two inconsistent
16 theories. These are not mutually exclusive; you can't be
17 both at the same time. Because of that we feel like this,
18 this case should have been severed when we made the request
19 for the severance. We feel like the jury could not have
20 understood their obligations and responsibilities as jurors
21 if they did find this person guilty of both of these
22 theories. I can understand if they found one person guilty
23 of one charge and one person guilty of the other charge but
24 to find both people guilty of both charges it just does not
25 make sense to us.

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1 Also, Your Honor, we do have a problem with the
2 indictments, just the dates on the indictments are
3 inconsistent with the testimony. The Court is aware that the
4 indictment said July 11th was the date when the wounds were
5 inflicted. The indictments were changed to say July 14th was
6 the date the wounds were inflicted. That change was done
7 without these cases being re-indicted by the grand jury, so
8 I would submit to the Court that the indictments are
9 insufficient.

10 Also as far as the evidence, Your Honor, there is
11 no direct evidence on this case, it's a case purely of
12 circumstantial evidence. We have requested several times for
13 the Court to consider a directed verdict motion based on the
14 insufficiency of this evidence.

15 The evidence in this case, like Candice said, it's
16 pieces of a puzzle and they can be arranged in any order you
17 want and Candice has arranged them in an order that has led
18 to these convictions. The point is this evidence must be
19 logically connected to each other and it must be to the
20 exclusion of any other reasonable hypothesis. Just looking
21 at the circumstantial evidence that has been presented in the
22 case we think that there is serious other hypothesis that's
23 going on here which is what we presented to the jury, which
24 is what we want the Court to consider in its role as the
25 thirteenth juror.

1 We presented evidence that Ms. Gorman was at work,
2 that she was unaware of any injuries being inflicted. At the
3 same time we presented evidence that Mr. Palmer's theories or
4 Mr. Palmer's explanations of what occurred during the day on
5 July 14th is inconceivable. His explanation is [REDACTED] got
6 up, ate breakfast, went back to sleep, took a nap, [REDACTED] got
7 up ate lunch, went back to sleep, took a nap. This is a
8 seventeen month old toddler. I would submit to the Court
9 that a seventeen-month old simply isn't going to sleep all
10 day. I would submit to the Court that Mr. Palmer's
11 explanation of [REDACTED]'s whereabouts during the day defies
12 logic and given that this is a circumstantial evidence case,
13 given that we've presented evidence that Ms. Gorman was at
14 work, she was at the IGA, she was in various places
15 throughout Aynor. We submit that this case should not have
16 been given to the jury to begin with. We believe the, the,
17 the evidence is insufficient and we believe the indictments
18 are insufficient as well.

19 Ms. Grabert-Lowenstein: Your Honor, if I may?

20 The Court: Yes.

21 Ms. Grabert-Lowenstein: I would, I'm sorry, I
22 would join Mr. Galmore's motion re the indictment and their
23 inconsistencies, and I believe that we have an even stronger
24 case for a new trial and arrest of judgment in this sense.
25 There was no testimony as to any agreement which would be the

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1 basis of an aiding and abetting in this case. There was
2 evidence my client was out of the trailer, away from the
3 trailer, could not have heard anything, could not have been
4 aware of everything, when Ms. Gorman snapped and committed
5 the injuries and that's per the testimony presented by the
6 State.

7 I would also agree that you can't aid and abet and
8 also be guilty of the homicide. There was no evidence that
9 in addition that my client neglected this child in any, in
10 fact just the opposite. The only evidence of neglect was
11 solely on Ms. Gorman when she was overdosing the child with
12 the antihistamine.

13 We believe that there isn't sufficient evidence and
14 it's even more consistent as to Mr. Palmer so we would also
15 request a new trial and arrest of judgment.

16 The Court: Let me hear from the State.

17 Ms. Lively: Yes, Your Honor, thank you. Your
18 Honor, in regards to the indictment I believe that, or all
19 the indictments, clearly this is a notice document. It's not
20 evidence in the case.

21 The Court: Isn't this a waiver if the indictment
22 there's not a motion to quash?

23 Ms. Lively: Yes, that's true.

24 Mr. Galmore: Your Honor, we made a motion to
25 quash like two weeks ago.

1 Ms. Lively: And but for the, and right before the
2 trial as well.

3 The Court: Okay.

4 Ms. Lively: We've gone through this, the
5 indictment issue ad nauseam, but in regards to the jury's
6 verdict and in regards to what the State's theory has been is
7 that we have a dead child. We have two perpetrators,
8 caretakers of the child. Under State v. Chad Smith our
9 court's have stated clearly the jury is the last one to sit
10 in judgment as to whether or not they were both involved as
11 principals and/or an aiding and abetting to cover up and/or
12 the, the process of how the actual infliction of the injury
13 to that child took place and then the decision they made to
14 cover it up.

15 Your Honor, that case as an exact mirror of the
16 evidence that I have in my case to an eerie level of
17 similarities. The Court clearly has stated that because of
18 the way homicide by child abuse cases are we do not have
19 usually a video as it's the type of crime that happens in
20 silence. Our courts understand that difficulty in proving
21 and bringing these cases to a jury and every single one of
22 the issues that defense is raising were clearly factual
23 issues that were presented to the jury who obviously compared
24 those to the law in the case and clearly were able to come to
25 a conclusion that they were both involved as principals and

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1 in covering up the crime.

2 I think that their all six verdicts are consistent
3 with the evidence, consistent with the theory that they were
4 both involved, and that they were both very much responsible
5 for the death of this child, so the State stands by
6 everything that this jury has found.

7 The Court: Mr. Galtmore, didn't we discuss the
8 Smith case? Didn't we discuss the alternative verdicts and
9 didn't we all agree prior to submitting this to the jury that
10 that was the law in this state?

11 Mr. Galtmore: It is the law in this state, yes,
12 sir.

13 The Court: Mr. Galtmore, you and Ms. Grabert-
14 Lowenstein, zealously represented your clients. You put
15 forth the issues that you argue now for a new trial. The
16 jury considered those issues; they considered all the
17 evidence in this case. They considered the State's evidence
18 and your evidence. This case was fully developed over the
19 last week. The jury has rejected your theories and I see no
20 reason or justification for this Court's setting aside the
21 verdicts of, of this jury and, therefore, your motions are
22 respectfully denied.

23 Mr. Galtmore: Yes, sir, we respectfully take
24 exception to the Court's ruling.

25 The Court: Yes, sir, and I would expect you to.

1 Ms. Grabert-Lowenstein: Have that noted, Your
2 Honor, thank you.

3 The Court: All right, I am. I see no reason why
4 we could not go forward with the sentencing. This case is
5 four years old, I think both of you have been representing
6 your clients for at least two years. I see many people here
7 from the defendant's families. I see no reason why we could
8 not go forward with a sentencing. Does the State have any
9 issues?

10 Ms. Lively: No, Your Honor, what I would like to
11 do if I may approach and just confirm the indictment numbers
12 that I have on the sentence sheet. I just get the print, and
13 I just need to make sure, if you don't mind, Your Honor, just
14 very quickly, that I have the right numbers.

15 The Court: I have the original indictments.

16 Ms. Lively: If I may approach?

17 The Court: Yes.

18 Ms. Lively: Thank you. 8-3756, Your Honor, is
19 that the correct number on Ms. Gorman?

20 The Court: Which one, unlawful conduct, homicide
21 by child abuse?

22 Ms. Lively: I think it's the homicide.

23 The Court: Or the aiding and abetting?

24 Ms. Lively: I think it was the homicide by child
25 abuse.

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1 The Court: Homicide by child abuse is 3756.

2 Ms. Lively: Okay, 2008-3756, thank you.

3 The Court: All right, Ms. Lively, I'll hear from
4 the State and I'd like the State to address the issue set
5 forth in 16-3-85 Section(d), the aggravating circumstances
6 that I must take into consideration.

7 Ms. Lively: I'm sorry, Your Honor, whenever I
8 went downstairs I must have taken my folder with my homicide
9 by child abuse statute section.

10 The Court: Well the statute says "that in
11 sentencing a person under this section the judge must
12 consider any aggravating circumstances including but limited
13 to a defendant's past pattern of child abuse or neglect."
14 Has there been any past child abuse or neglect of a child
15 under the age of eleven by either of these defendants?

16 Ms. Lively: No, sir, no, sir, there's no, in
17 regards to what we have any type of evidence in their past
18 histories, both Palmer as well as Gorman, we do not have any
19 evidence as to aggravating circumstances in that regard, I
20 mean in that particular section of the statute.

21 The Court: All right, well the section says that
22 it must be, I must consider it or any aggravating
23 circumstances, has the State put forth any aggravating
24 circumstances?

25 Ms. Lively: Your Honor, other than the obvious

1 brutality of the act on the actual victim in this case, I, I
2 believe that speaks for itself, Your Honor.

3 The Court: All right, Mr. Galmore, let me hear
4 from you in mitigation.

5 Mr. Galmore: Yes, sir, Your Honor, you've heard
6 the personal details of Ms. Gorman. She is forty years old,
7 she was thirty-seven at the time of all of this. Your Honor,
8 she is in court today surrounded by family and friends,
9 members of her church community have come throughout the week
10 to support her. Ms. Gorman is working, Ms. Gorman is in
11 school at Horry Georgetown Tech. Even in spite of this with
12 all of these charges pending for these many years she still
13 tried to put her nose to the grindstone and think positive
14 and keep on moving ahead with her life.

15 Your Honor, Ms. Gorman does not have a prior
16 record. Ms. Gorman has been at the detention center for
17 about fifteen months. She made bond in this case and she was
18 on home detention for several months as well. She complied
19 with the home detention. There were no home detention write
20 ups or anything, there were no J. Reuben Long write ups, and
21 in that regard we submit that that is mitigating
22 circumstances.

23 After a period of time she was removed from the
24 home detention program. Ms. Gorman was allowed to live and
25 work in the community. She did not have any subsequent

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1 arrests while any of this was going on. She did not attempt
2 to flee the jurisdiction. Contrary to that every time that
3 she went out of town for a family reunion or family get
4 together she was under court order to get court permission to
5 leave town each of those occasions and she did so. She came
6 back every time.

7 Your Honor, Ms. Gorman took great pains to try to
8 care of [REDACTED] You heard the testimony he was without
9 insurance, she was the person that called to the Marines to
10 get them insurance. That was a simple matter, Tri-Care is
11 free for armed forces, it was just a matter of filling out
12 paper work. She was the person that made sure that was done
13 for him. As far as taking him to the emergency room, taking
14 him to Dr. Hutson, getting his shot record updated, you heard
15 the testimony that there was a nine-month gap, that his shot
16 records were four months behind and then she was the person
17 that was responsible for making sure all of these things were
18 done. We submit that that is mitigating evidence in this
19 case.

20 Also, Your Honor, just given that the jury has
21 convicted both people under both theories we still don't know
22 what exactly took place in the house. We would ask the Court
23 to give Ms. Gorman the benefit of the doubt, that we
24 understand the jury's verdict, we respectfully disagree with
25 it but we accept it, but it does leave open the possibility

1 that they don't know as the finder of fact what happened in
2 that house on July 14th. We ask the Court to take that into
3 consideration, give Ms. Gorman the benefit of the doubt that
4 she was not the person that struck this blow. She has
5 testified that she was not the person that struck this blow.

6 With all of that said, Your Honor, I understand
7 what the penalties are. We would ask the Court to consider
8 the current sentence in this case. We ask the Court to
9 consider a minimum possible sentence in this case.

10 The Court: She understands that this carries up
11 to life?

12 Mr. Galtore: Yes, sir, and that's why we had
13 asked the Court to consider a minimum sentence just given
14 that she does not have a prior record, there is no prior
15 record of abuse, there's no prior record of criminal
16 activity, there's no subsequent record of criminal activity.
17 There is no problem with her adaptability to a prison
18 environment. She did not have any disciplinary problems at
19 the detention center. We ask you to take all these things
20 into account. I would ask you for, well the only thing I can
21 ask for is the minimum possible sentence in this case. We
22 ask you to consider the current sentence, we ask you to
23 consider minimum sentence.

24 The Court: Would your client choose to address
25 the Court?

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1 Mr. Galtmore: Your Honor, the only thing she
2 wanted me to convey to the Judge is that she didn't do it.

3 The Court: Is there anyone here who will speak
4 for her, that would like to address the Court?

5 Audience Member: I would like to speak.

6 The Court: Your name?

7 Audience Member: Alice Delaney. I've known Julie
8 since she first incarcerated and then released to us. I
9 spent much of the days with her, talked with her about the
10 incident. She could not do this.

11 The Court: Thank you.

12 Ms. Delaney: I just wanted to speak for her.

13 Mr. Galtmore: That would be our showing.

14 The Court: I think I see someone, yes, ma'am?

15 Audience Member: My name is Sharon Bush and I'm
16 from New York, we stay at the hotel where Julie worked. Last
17 year when we were down here we my husband had a stroke. I
18 called the office and told them to call the rescue squad that
19 my husband was having a stroke and I couldn't call. Julie
20 called me right back and she said, Ms. Bush, what is going
21 on. I said, Julie, Freddie is having a stroke. She said
22 I'll be right over, so she came over. She followed the
23 rescue squad to the hospital. She never left my side and
24 then she took me home while I packed the bag for my husband.
25 She said now you have to eat, she said, she took me to a

1 restaurant, which eating was the furthestest thing from my
2 mind, made sure that I had something to eat, went back to the
3 hospital, stayed with me, called my children up in New York
4 because I was, couldn't even talk, called my children to let
5 them know what was going on. She, she was so good for us and
6 us, being over a thousand miles from our home and she didn't
7 have to do that. I think that talks to Julia's character.

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

9 Audience Member: I know Julia from church.

10 The Court: Who are you?

11 Audience Member: I'm Rebecca Rivers, and she's in
12 my life group, small group that meets weekly for prayer. We
13 just love her and can't even believe she would do this.

14 The Court: Thank you, ma'am. All right, yes,
15 ma'am?

16 Family Member: Your Honor, I'm Judy Morris and
17 I'm Julie's mother and I know without a doubt that she would
18 never harm my great grandson. She has been there for her
19 children, she had taken care of them by herself while her
20 husband went out at sea. She didn't do this.

21 The Court: Thank you, ma'am. All right, anything
22 further, Mr. Galmore?

23 Mr. Galmore: No, sir, Your Honor.

24 The Court: Ms. Grabert-Lowenstein?

25 Ms. Grabert-Lowenstein: Your Honor, likewise we

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1 would ask you to consider the minimum sentence and concurrent
2 sentence. Mr. Palmer attempted to assist law enforcement in
3 the initial investigation. He cooperated, as the Court's
4 well aware with a proffer, and then subjected himself to a
5 polygraph and, Your Honor, the evidence about him and
6 children is that he's a good father and a caretaker. There's
7 nothing in his background that would be an aggravating factor
8 or that would indicate the need for anything more than a
9 minimum sentence with the other charges going concurrent and
10 we'd ask for that.

11 He's an honorable discharged veteran who served
12 this country. He's come back, he has been working, you know,
13 trying to support himself, and I think all of that, all of
14 those factors in total indicate that he is respectfully
15 entitled to the minimum sentence and concurrent sentences on
16 the other two charges.

17 The Court: Would your client like to address the
18 Court?

19 Defendant Palmer: Your Honor, I had nothing to do
20 with this, this is a travesty. I cannot believe that I was
21 found guilty of these charges. I did nothing wrong to that
22 child. I tried to give it more than anything that ---

23 The Court: We understand that, Mr. Palmer, but
24 you have to understand that I am bound by the findings of
25 this jury.

1 Defendant Palmer: I understand that, sir. I have
2 cooperated time and time again and I have not said, I can't
3 believe that you're not going to step in and help me with
4 this cause this is, this is a travesty. You're going to take
5 away my life for something I had no, nothing to do with,
6 nothing.

7 The Court: Thank you, Mr. Palmer.

8 Ms. Grabert-Lowenstein: Your Honor, I believe --

9 Family Member: Yes, I'm Gail Palmer, Robert
10 Palmer is my son, he's an honorable person. He was a
11 blessing from the day he was brought into our lives. He's a
12 man of integrity, a strong character. He's truthful, has
13 been truthful, has been cooperative throughout the duration
14 of this tragedy. If anything, there has been a misjustice of
15 my son's civil rights due to the proffer being pulled on him
16 and due to two polygraphs being passed.

17 I made a promise to Julie and to Ms. Morris on the
18 day of the bond hearing when they were arrested, I promised
19 her I would see to her daughter to the best of my ability and
20 knowledge and what the courts would allow; and I asked Ms.
21 Morris at that time, I said, I make a promise to you, I will
22 take care of her to the best my ability because in return I
23 would hope that if the shoe were on the other foot and my son
24 was out of his home state, that he had somebody who would see
25 to him and care for him and, Ms. Gorman, I wish you would

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1 look at me because you know I upheld my promise to you and
2 your mother. Yes, you did, but you didn't uphold your
3 promise to me, your promise to me was if anybody goes down
4 for this it will be me, it will not be your son.

5 Family Member: Your Honor, I'm Jim Palmer,
6 Robert's father. The only thing Robert is guilty of that he
7 could never pick a female companion, that's all he's guilty
8 of.

9 Family Member: I'm Adrian Robertson. I've known
10 Robert since, for about eight years, never seen him act out.
11 He's always been the kind of person, he works for me in the
12 office. He's always there on time; he works hard; he works
13 with people. He does not lose his temper and I'm sorry about
14 [REDACTED] death. I'm a mother of three and if that happened
15 to my babies I would want somebody to go down for it, too,
16 but I know it weren't Robert.

17 The Court: Anything further, Ms. Grabert-
18 Lowenstein?

19 Ms. Grabert-Lowenstein: Your Honor, I would just
20 ask you to take into account the testimony that you've heard
21 and that Robert was caring for the child and that in terms of
22 the child abuse it was Ms. Gorman who was administering
23 overdoses of the medication. As I said before, given
24 everything in totality, and I understand the minimums but I
25 think that respectfully Robert Palmer is entitled to the

1 minimum sentencing with concurrent sentence on the other two
2 charges.

3 The Court: How old is your client?

4 Ms. Grabert-Lowenstein: I'm sorry?

5 The Court: How old is your client?

6 Ms. Grabert-Lowenstein: Thirty-three, Your Honor,
7 sorry.

8 The Court: How far did your client go in school?

9 Ms. Grabert-Lowenstein: High school.

10 The Court: How about yours, Mr. Galmore, I
11 believe she's testified she was forty now?

12 Mr. Galmore: Yes, sir, and she's currently
13 enrolled in Horry Georgetown Tech.

14 The Court: She has how many children, three?

15 Mr. Galmore: Three; yes, sir.

16 The Court: Mr. Palmer has one; is that correct?

17 Ms. Grabert-Lowenstein: Yes, sir.

18 The Court: Is Ms. Gorman still married?

19 Mr. Galmore: No, sir.

20 The Court: Is Mr. Palmer still married, that was
21 never clear to me?

22 Ms. Grabert-Lowenstein: No, Your Honor, no.

23 Gail Palmer: May I say something in regards to
24 that?

25 The Court: No, ma'am, you've already spoken.

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1 All right, Mr. Palmer, Ms. Gorman -- yes, ma'am?

2 Ms. Lively: I do want to have a moment to address
3 the Court, Your Honor.

4 This is really hard for Mr. Grimes and for Cesalee
5 and I would just tell you that through everything that they
6 have been through with us putting together the case for
7 [REDACTED] for his horrific murder, there's no doubt that child
8 suffered a severe inflicting injury. They are separated.
9 They've lost their only child, so this has been devastating
10 for them, and they first weren't going to say anything
11 because it's been hard to sit here and go through and watch
12 the autopsy and everything else you're having to do ---

13 The Court: They, of course, have a right to speak
14 under the Victims Rights Act.

15 Ms. Lively: Yes, sir, so I'm going to just
16 briefly, I think Mr. Grimes, [REDACTED] [REDACTED] would like to
17 make a brief statement, Your Honor.

18 Mr. Grimes: Your Honor, I buried my son three and
19 a half years ago and I was under the impression things were
20 going to move a lot faster than they did. Now three and a
21 half years later after not being able to mourn for my son
22 things have finally been taken care of. My son hasn't been
23 able to rest at peace, nor me be able to mourn over him for
24 three and a half years because of this. I wasn't around a
25 lot for my son when he was alive because I enlisted in the

1 military to try to make a better life for my whole family and
2 in two weeks time he was taken from me when I was about to be
3 there and for the rest of my life I have to live with that
4 and accept that all I ever get to see again is my son's
5 gravestone. I can't have the privilege of holding him again.
6 I can't, I can't bring him back and I can't undo what's been
7 done, but to be fair, Your Honor, I have to live with this
8 for the rest of my life as my wife does. I know I'm not the
9 only one hurting but I can't bring him back.

10 The Court: Have your clients stand, please. Ms.
11 Grooms, excuse me, Mr. Palmer and Ms. Gorman, first of all
12 let me say this, I am not the judge of the facts in this
13 case, I'm the judge of the law. It's my job to instruct the
14 jury as to the law that they apply. This jury has made a
15 determination that both of you are responsible directly for
16 the death of this child. On review it is my job to determine
17 whether or not essentially if there's any evidence to support
18 the jury's verdict. In this case there is no doubt, no doubt
19 that this child died and that this child died violently at
20 the hands of one or both of you, no question about that.
21 This jury has determined that this was the act of both of
22 you. There's evidence certainly to support conviction of
23 either of you. You've essentially both pointed the finger at
24 each other, directly or indirectly you have done so. This
25 jury has obviously struggled with this case and it has handed

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1 it to me with verdicts of guilty on all charges and that is
2 what I am left with. It's not my decision to go back and
3 review the evidence and say what I would have done. That
4 would not be appropriate. The question on your attorneys'
5 motions is whether or not there was evidence, direct
6 evidence, circumstantial evidence, a combination of the two,
7 that would support the verdict of the jury. This jury found
8 that beyond a reasonable doubt this was the correct verdict,
9 the verdict that I'm holding.

10 This case is as egregious as any I've seen. This
11 was a precious seventeen-month-old toddler. This was a baby
12 as precious as defenseless. No one who could defend him, no
13 way he could defend himself, and this is not a situation
14 where the child had a minor injury where things just went
15 wrong and unfortunately death ensued. This child received
16 crushing blows to both sides of his head leaving his head, or
17 his skull, like a fractured egg shell, and I am sure that he
18 experienced a painful death. Hopefully he, at least I hope
19 that he was as the doctor said rendered unconscious so that
20 he did not have to bear that pain. When I look at his, his
21 cat scans and his x-rays this was a terrible injury. It was
22 not one that happened by accident. It was not one that went
23 unnoticed. Whoever did it, struck the blow, knew very well
24 what you were doing or just did not care what you were doing,
25 and you callously caused the life, cost the life of this

1 young child.

2 It gives me absolutely no pleasure to try these
3 cases. There's some forty-six judges around this state and
4 this is the case we all hate. This is the one we want no
5 involvement in. This is the one we always hope somebody else
6 has got to try, and I can tell you from having practiced law
7 for many many years your attorneys probably feel the same
8 way, and wish someone else had the case cause these are
9 terrible cases. They're not only rough cases for the defense
10 teams but they are for the prosecutors as well and the
11 jurors. They all take their toll on these people.

12 I have considered your ages, particularly your lack
13 of any criminal history, in trying to reach a sentence that
14 I believe would be fair. The statute says life on the
15 homicide by child abuse, says a minimum of twenty years up to
16 life. I try to think of a more egregious case, you know,
17 what would be a life sentence case, what would be a case that
18 would call for less. This is a case in which the object of
19 the prosecution is as severe as any could be, the killing of
20 a small defenseless child, the brutal killing of a small and
21 defenseless child; and on the other hand you don't have any
22 records of a pattern of child abuse, either one of you and
23 both of you have been around children. There's nothing that
24 suggests that this is a reoccurring thing and you're both
25 fairly young and you have no other criminal record and you've

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1 had people from the community speak for you, so there are
2 some redeeming qualities that I see there, but on the other
3 hand this is an aggravated case that cries, cries for
4 justice.

5 Ms. Gorman, under Indictment 2010-GS-26-00841, an
6 indictment for unlawful conduct towards a child, the sentence
7 of the Court is that you be confined to the State Department
8 of Corrections for a period of ten years.

9 On the charge, or Indictment 2010-GS-26-2194,
10 aiding and abetting homicide by child abuse, the sentence of
11 the Court is that you be confined in the State Department of
12 Corrections for a period of twenty years.

13 On Indictment Number 2008-GS-26-3756, homicide by
14 child abuse, the sentence of the Court is you be confined to
15 the State Department of Corrections for a period of thirty-
16 five years, all of these sentences to run concurrent.

17 As to Mr. Palmer, Indictment Number 2008-GS-26-
18 4120, an indictment for unlawful conduct towards a child, the
19 sentence of the Court is that you be confined to the State
20 Department of Corrections for a period of ten years.

21 On Indictment Number 2010-GS-26-2195, an indictment
22 for aiding and abetting homicide by child abuse, the sentence
23 of the Court is you be confined to the State Department of
24 Corrections for a period of twenty years.

25 On Indictment Number 21, excuse me, 2010-GS-26-

1 2196, an indictment for homicide by child abuse, the sentence
2 of the Court is you be confined to the State Department of
3 Corrections for a period of thirty-five years. These
4 sentences are all to run concurrent with each other.

5 Good luck to you both.

6 End of requested transcript....

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CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, Official Court Reporter for the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal in the General Sessions Court for Horry County, South Carolina.

I do further certify that I am neither kin, counsel nor interest to any party hereto.

April 6, 2012

Brenda R. Babb

Brenda R. Babb, CVR

OFFICIAL REPORTER

JSBL
7/17/08 104P

iSeries Timekeeper: Bass Pro Shops
PUNCH DETAIL HISTORY
7/11/08 THRU 7/13/08

CLK100P
PAGE: 1

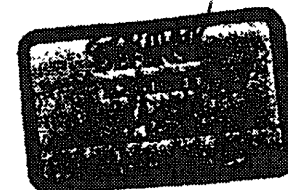
Department: 461025 OW-MYR CASHROOM CLERK

003

DAY	DATE	ROUNDED		DAILY NOTES	ACTUAL		SCHEDULED		PAY CODE	HOURS	AP	LABOR LVLS	TOTAL HOURS
		IN	OUT		IN	OUT	IN	OUT					
EMPLOYEE: 463180 Gorman, Julia S													
PAY PERIOD RULE: D1 REGULAR FULL TIME													
PRI	7/11/08	500A	500P	D1	500A	505P				12.00	0	MB6.461025.1AB029.	12.00
SAT	7/12/08	500A	300P	D1	455A	300P				10.00	0	MB6.461025.1AB029.	22.00
SUN	7/13/08	600A	100P	D1	557A	106P				7.00	0	MB6.461025.1AB029.	29.00
TOT HRS:		29.00	WORKED	29.00	NON-WORKED		.00	PAID		29.00	NON-PAID		.00 ADJUST \$0.00
HOURS BY PAY CODE		REGULAR		22.00	OVERTIME		7.00						
** TOTALS Department: 461025													
TOT HRS:		29.00	WORKED	29.00	NON-WORKED		.00	PAID		29.00	NON-PAID		.00 ADJUST \$0.00
HOURS BY PAY CODE		REGULAR		22.00	OVERTIME		7.00						
** FINAL TOTALS													
TOT HRS:		29.00	WORKED	29.00	NON-WORKED		.00	PAID		29.00	NON-PAID		.00 ADJUST \$0.00
HOURS BY PAY CODE		REGULAR		22.00	OVERTIME		7.00						

07/17/08 13:10 FAX 417 885 8812

BASS PRO ER



1170

6/27/10 352P

KRONOS TIMEKEEPER
PUNCH DETAIL HISTORY
SORT BY WORKED FIELDS
7/14/08 THRU 7/14/08

PAGE: 1

002/002

Department: 461025 MD4 MYR CASHROOM CLERK

DAY	DATE	-----ROUNDED-----		DAILY NOTES	---ACTUAL---		--SCHEDULED--		PAY CODE	HOURS AP	Labor Lvl	TOTAL HOURS
		IN	OUT		IN	OUT	IN	OUT				
EMPLOYEE:		463180	Gorman, Julia S		PERIOD RULE: D1		REGULAR FULL TIME					
WOM	7/14/08	600A	345P	D1	600A	342P			9.75	0	MS6.461025.LAB029.	9.75
JT HRS:		9.75	WORKED		9.75	NON-WORKED		.00	PAID	9.75	NON-PAID	.00
JURS BY PAY CODE			REGULAR			9.75						

* TOTALS Department:		461025										
JT HRS:		9.75	WORKED		9.75	NON-WORKED		.00	PAID	9.75	NON-PAID	.00
JURS BY PAY CODE			REGULAR			9.75						
* FINAL TOTALS												
JT HRS:		9.75	WORKED		9.75	NON-WORKED		.00	PAID	9.75	NON-PAID	.00
JURS BY PAY CODE			REGULAR			9.75						

Base Pro Shops H/R

04/27/2010 15:55 FAX 417 866 9812

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FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Horry Fifteenth CircuitJulia Shawnette Gorman #348815
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

20 15 CP26 8539

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention J. Rueben Long Detention Center
2. Name and location of Court which imposed sentence General Sessions, Fifteenth Circuit, Horry Co.
3. Name(s) of co-defendant(s) (if any) Robert Andrew Palmer
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-26-02194
 - (b) 2010-GS-26-00841
 - (c) 2008-GS-26-03756
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 18, 2011 20 years
 - (b) November 18, 2011 10 years

- (c) November 18, 2011 - 35 years - all ran Concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Division of Appellate Defense
- ii. ~~the~~ Supreme Court Oral Argument Court of Appeals
- iii. Supreme Court writ of certiorari
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. Affirmed in Part, Reversed in Part
- iii. Affirmed in Part, Reversed in Part
- (c) the date of each such result:
- i. February 15, 2013
- ii. October 9, 2013
- iii. June 17, 2015
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. February 12, 2014 Opinion No. 5198
- iii. July 29, 2015 Opinion No. 27552
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance trial counsel
- (b) ineffective assistance of appellant counsel
- (c) of suppression of evidence by prosecution

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) trial counsel failed to provide alibi witness and alibi defense
- (b) did not ask for a direct verdict based on the county which was prejudiced & didn't raise severance
- (c) we move for a suppression of the video tape due to coercion; faulty miranda right violation

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Petition for rehearing
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. The South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. order - denied
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. Apri 7, 2014
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
Yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. ineffective assistance trial counsel - miranda rights
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. Appellate Case No. 2011-203707 Initial Brief of Appellant
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Trial counsel failed to argue alibi witness nor alibi defense.
- (b) Appellate Defender failed to raise issue of Direct Verdict based on both county or an issue of severance.
- (c) Motion for suppression of video tape due to: coercion, miranda rights violation, Dr. prescribed Rx/sleep deprivation
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. James Galmore, Harry County Public Defender, P.O. Box 1666, Conway, SC 29526
- ii. Susan Hackett, Appellate Defender, Division of Appellate Defense, 1330 Lady St, Ste 401, Columbia, SC 29201
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal defense and writ of certiorari
- iii. _____

19. State clearly the relief you seek in filing this application:

direct verdict of acquittal.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of *Horry County*)

VERIFICATION

20 15 CP26 8539

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Julia A. Norman

SWORN to and subscribed before me this 18
day of November, 2015.

James P. Hyatt (L.S.)
Notary Public

My Commission Expires: 8-23-21

2015 DEC -3 PM 2:39
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

20 15 CP26 8539

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Julia A. Gorman
Applicant

SWORN or affirmed to and subscribed before me this
18 day of November, 2016.

Janet P. Hyatt
Notary Public

My Commission Expires: 8-23-21

2015 DEC -3 PM 2:39
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	2015-CP-26-8539
Julia Shawnette Gorman,	)	
S.C.D.C. No. 348815	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina	)	
	)	
Defendant.	)	
	)	

In response to the application for post-conviction relief filed by Julia Shawnette Gorman (Applicant) on December 3, 2015 ("the Application"), Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was charged by the Horry County Police Department on July 18, 2008 with Homicide by Child Abuse (J-612055). She was thereafter indicted for the same by the Horry County Grand Jury on September 25, 2008 (2008-GS-26-3756). Applicant was further indicted by the Horry County Grand Jury on February 18, 2010 for Unlawful Conduct Towards a Child (2010-GS-26-841), and on May 27, 2010 for Aiding & Abetting Homicide by Child Abuse (2010-GS-26-2194). James Galmore, Esq. represented Applicant on the charges.

Applicant proceeded to a jury trial before the Honorable Larry B. Hyman from November 14, 2011 to November 18, 2011. The jury found Applicant guilty of all charges and Judge Hyman sentenced Applicant to concurrent terms of thirty-five (35) years confinement for Homicide, ten (10) years confinement for Unlawful Conduct Towards a Child, and twenty (20) years confinement for Aiding & Abetting.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Susan Hackett, Esq.. By opinion filed February 12, 2014, the South Carolina Court of Appeals affirmed Applicant's convictions for Homicide and Unlawful Conduct, but reversed the Aiding & Abetting conviction. State v. Palmer/State v. Gorman, 408 S.C. 218, 758 S.E.2d 195 (Ct. App. 2014). Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was granted by order dated September 24, 2014. By opinion decided July 29, 2015, the Supreme Court of South Carolina sustained the Court of Appeals holdings with respect to Applicant¹. State v. Palmer/State v. Gorman, 413 S.C. 410, 776 S.E.2d 558 (2015). The Remittitur was returned to the circuit court on September 23, 2015.

II.

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons (verbatim):

1. ineffective assistance trial counsel
2. ineffective assistance of appellant counsel
3. of suppression of evidence by prosecution

Based thereupon, Applicant requests relief as follows (verbatim):

- direct verdict of acquittal

Attached to and incorporated herein are the Horry County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

The Application should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

¹ The Court reversed the two remaining convictions against Applicant's co-defendant.

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other write, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Applicant's allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. In her prayer for relief, Applicant requests (verbatim) "direct verdict of acquittal." This relief is unavailable in a post-conviction relief action. If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); *see also* Singleton v. State, 313 S.C. 75, 86, 437 S.E.2d 53, 59-60 (1993) (Unless a defendant has been falsely tried and convicted of a crime and the true perpetrator is discovered at a later date, vacating the sentence is not justified). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968); *see also* Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964). Because Applicant seeks only relief which is not available to her, the Application should be summarily dismissed.

IV.

Respondent denies each allegation not expressly admitted, qualified, or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application for failing to state a claim cognizable under the Post-Conviction Procedure Act.

Respectfully submitted,

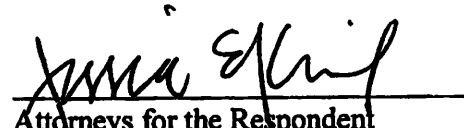
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May 5, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2015-CP-26-8539
JULIA SHAWNETTE GORMAN, #348815	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Julia Shawnette Gorman, #348815
Camille Griffin Graham Corr. Inst.
4450 Broad River Rd.
Columbia, SC 29210

DATED this 5TH day of May, 2016


 Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2015-CP-26-08539

JULIA SHAWNETTE GORMAN,)
)
 Applicant,) Transcript of Record
)
 vs.)
)
) February 21, 2018
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

B E F O R E:

Honorable Steven H. John
 Horry County Courthouse
 Conway, South Carolina

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

Steven W. Fowler, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

Gorman v. State - 2015-CP-26-08539

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MOTIONS

1 **FEBRUARY 21, 2018**

2 MOTIONS:

3 MR. JAMES: If it may please the Court?

4 THE COURT: Yes, sir.

5 MR. JAMES: Your Honor, this is the matter of Julia Gorman
6 versus State of South Carolina, docket number 2015-CP-26-8539.
7 Ms. Gorman is present here in the courtroom today and is
8 represented by Mr. Steve Fowler. Ms. Gorman was indicted by
9 the Horry County Grand Jury on September 2008 for homicide by
10 child abuse and she was thereafter indicted for unlawful
11 conduct towards a child and aiding and abetting homicide by
12 child abuse. James Galmore, Esquire, who is present here in
13 the courtroom, represented her on those charges.

14 Ms. Gorman proceeded to a jury trial before the Honorable
15 Larry B. Hyman, Jr. from November 14, 2011 to November 18,
16 2011. That jury found Ms. Gorman guilty of all charges and
17 Judge Hyman sentenced her to concurrent terms of 35 years for
18 the homicide, 10 years for the unlawful conduct, and 20 years
19 for the aiding and abetting. Ms. Gorman thereafter appealed
20 and a timely appeal was perfected by Ms. Susan Hackett,
21 Esquire, who is also present here in the courtroom today.

22 By opinion filed February 12, 2014, the Court of Appeals
23 affirmed Applicant's convictions for homicide and for the
24 unlawful conduct, but reversed the aiding and abetting
25 conviction. That ruling was appealed to the Supreme Court of

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1 South Carolina, who granted Certiorari, and thereafter the
2 Supreme Court of South Carolina sustained the Court of Appeals
3 holdings with respect to Ms. Gorman, but reversed with respect
4 to a codefendant, Mr. Palmer. The remittitur from those
5 appeals were returned to Circuit Court on September 23rd,
6 2015.

7 Your Honor, originally when the State of South Carolina
8 received the application for post-conviction relief, it filed
9 a return and motion to dismiss primarily on the basis that Ms.
10 Gorman requested as relief a direct verdict of acquittal, so
11 the state moved to dismiss on grounds for failure to seek
12 relief that was available to her in a PCR action. A
13 additional order of dismissal was at that time signed by the
14 Honorable William H. Seals, Jr.

15 Your Honor, in response to that conditional order of
16 dismissal, the state interpreted it so as to indicate a desire
17 for relief that was actually available to her in this court.
18 We thereafter sought appointment of counsel. Your Honor, the
19 state no longer believes that its motion to dismiss on the
20 basis of failure to -- failure to seek relief available is
21 appropriate, and therefore, we would request that conditional
22 order of dismissal be vacated and we proceed to a full
23 evidentiary hearing.

24 THE COURT: That request is so granted.

25 MR. JAMES: Thank you, Your Honor.

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JULIA GORMAN - DIRECT BY FOWLER

1 THE COURT: All right. Mr. Fowler?

2 MR. FOWLER: Yes, sir.

3 THE COURT: Do you wish to proceed with the application?

4 MR. FOWLER: Yes, sir; I do.

5 THE COURT: All right.

6 MR. FOWLER: I'd like to call Ms. Gorman to the stand
7 please.

8 THE COURT: All right. Ms. Gorman, if you'd please come
9 around. Come around up here, all the way over to the side
10 over here, please, ma'am.

11 JULIA GORMAN, HAVING BEEN DULY SWORN

12 TESTIFIES AS FOLLOWS:

13 MS. GORMAN: Julia Gorman.

14 THE COURT: If you just remember, Ms. Gorman, to kinda
15 stay right behind the microphone so we can hear you. Okay?

16 MS. GORMAN: Yes, sir.

17 THE COURT: Thank you very much.

18 All right, Mr. Fowler, you may proceed, sir.

19 DIRECT EXAMINATION OF JULIA GORMAN BY MR. FOWLER:

20 Q: Ms. Gorman, can you hear my voice?

21 A: Yes, sir.

22 Q: Okay. You filed a -- and as I -- if I can ask the Court,
23 I'd like to sit down for my questioning?

24 THE COURT: I understand, based upon your request to the
25 Court previously. I'm going to grant that, Mr. Fowler, you

1 may do so.

2 MR. FOWLER: Thank you, Your Honor.

3 BY MR. FOWLER:

4 Q: Ms. Gorman, you have filed a PCR action wanting a new
5 trial; is that correct?

6 A: Yes, sir.

7 Q: Okay. And you've lived in Horry County before this
8 action; is that correct?

9 A: Yes, sir.

10 Q: All right. And you had friends and family in this area;
11 is that correct?

12 A: I have friends; yes, sir.

13 Q: And some of them are here today, correct?

14 A: Yes, sir.

15 Q: All right. You mentioned in your -- you've stated in
16 your application several grounds for post-conviction relief
17 and one of those is ineffective assistance of trial counsel;
18 is that correct?

19 A: Yes, sir.

20 Q: Okay. You and I have spoken before at your SCDC facility
21 or by telephone at least over the issues in this case,
22 correct?

23 A: Yes, sir.

24 Q: Ineffective assistance of trial counsel, what's your
25 understanding of that? Why did you include that in your

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JULIA GORMAN - DIRECT BY FOWLER

1 application?

2 A: I included in my -- in my application because for, one, I
3 went through three different attorneys before I even went to
4 trial.

5 Q: Okay. And I might stop you from time to time in these
6 questions. Who were those three attorneys?

7 A: My first one was Thomas Floyd.

8 Q: Okay.

9 A: And I had Melinda Knowles, and then Mr. Galmore.

10 Q: Okay. And who is this action against; is it against
11 anyone specifically today?

12 A: It would be against Mr. Galmore.

13 Q: Okay. And why -- now, like I said, I might stop you from
14 time to time, but we'll try to get back on track. Why is it
15 against Mr. Galmore?

16 A: Well, when you go through three attorneys, you're kinda
17 lack about information because of the case being drawn out for
18 so long.

19 Q: Right. When you say so long, how do you -- how long was
20 the process on this?

21 A: It went from 2008 to 2011.

22 Q: Okay. Do you feel like you had effective communications
23 with Mr. Galmore?

24 A: At times, yes.

25 Q: Okay. But at times, you did not; is that correct?

1 A: Yes, sir.

2 Q: Okay. Tell me about why you feel like you did not
3 effective communication with your attorney on this?

4 A: There were times that we were unavailable to be in
5 contact. We've had to reschedule appointments or we couldn't
6 get together for other reasons. I knew that he just had a
7 baby, his wife had just had a baby and there was health
8 issues. Those are, you know, unfortunate, but those are hard
9 things to compile when you're trying to get your trial
10 together and your case together when you're fighting for your
11 life.

12 Q: Well, let's back up here for a second. You said it went
13 from 2008 to 2011. How long did Mr. Floyd represent you?

14 A: Oh, I don't know.

15 Q: Roughly, I mean, was it the majority of that time or --
16 or how long would you suggest ---

17 A: A year, two.

18 Q: Okay. So, basically a year or two, and then you had
19 Melinda Knowles; is that correct?

20 A: Yes.

21 Q: How long did she represent you?

22 A: Maybe a month.

23 Q: Okay. All right. So, so -- so according to your answer,
24 she represented you for about a month; is that correct?

25 A: Right.

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JULIA GORMAN - DIRECT BY FOWLER

1 Q: All right. How long did Mr. Galmore represent you?

2 A: He represented me the rest of the time.

3 Q: Okay. And how much -- how long was that?

4 A: Two, two years then.

5 Q: Okay. So, are you saying that even in two years, you
6 felt like there was issues with your communication with your
7 attorney?

8 A: Yes.

9 Q: Okay. Going back to the effective -- ineffective
10 assistance of counsel, I just kinda want to put some meat on
11 the bones, so to speak, in this.. What are some issues that
12 you feel is -- is ineffective -- has led to that ineffective
13 assistance?

14 A: Okay. The fact that even during this trial that our
15 cases, the codefendant and I, we could not have a severance,
16 that our cases were tried together. Understanding that even
17 though that we -- we didn't accuse each other of who did this,
18 but the fact that it wasn't a fair trial, and when he was told
19 no, it was okay.

20 Q: Okay. So, severance is one of the issues?

21 A: Severance is one of the issues.

22 Q: What's another issue?

23 A: Another issue is being on a direct verdict because
24 everything has been a theory, and when you're being told no,
25 it's a okay, cause asking to have it being, a theory being

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JULIA GORMAN - DIRECT BY FOWLER

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1 quashed, being annulled of -- of cases -- of amendments
2 because of the changes in dates because they'd been over three
3 years that why should they be changed now, being told no, and
4 it's like, okay. So, there's no fight in it.

5 Q: Okay.

6 A: Instead of -- the aggressiveness that should go behind
7 something because this is my life.

8 Q: So, you've mentioned severance, you've mentioned a
9 directed verdict; is that correct?

10 A: Yes, sir.

11 Q: Any other issues that you feel is pertinent under the
12 ineffective assistance of counsel, trial counsel.

13 A: When they talk about hearsay, the credibility of
14 someone's title.

15 Q: Could you repeat that last part, please?

16 A: Hearsay, the credibility of someone's title?

17 A: Okay. The credibility of someone's title?

18 A: Correct.

19 Q: Okay. All right. So you've mentioned severance, you've
20 mentioned directed verdict, hearsay issues, any other
21 ineffective assistance of trial counsel issues that you feel
22 is ---

23 A: The coercion with my Miranda rights, how they
24 continuously be able to use that. The fact that I had no
25 expert witnesses.

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JULIA GORMAN - DIRECT BY FOWLER

1 Q: Okay.

2 A: We did have one but didn't use it. Chose not to have any
3 extra character witnesses to even show my character about
4 myself.

5 Q: Okay. All right. So, so far and just to recap, and I
6 might do this a little bit. Issues of severance, directed
7 verdict, hearsay, Miranda rights, no expert witness, and no
8 character witness, right?

9 A: Correct.

10 Q: Are there any other ineffective assistance of trial
11 counsel issues that you feel is pertinent?

12 A: The other parts would be that they just didn't do other
13 researches to even prove the innocence of even places, you
14 know, with my job, with my -- my hours, videotapes to prove of
15 even where the places where I were to even show timeframes and
16 everything.

17 Q: Okay. All right. Are those the main issues that
18 you feel is -- is pertinent here under ineffective assistance
19 of trial counsel?

20 A: Yes.

21 Q: Okay. Let's kind of touch on each of these briefly, but
22 enough that you provide the Court and opposing counsel enough
23 to view here. The severance, you said you tried together; who
24 were you tried together with?

25 A: With Robert Palmer.

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JULIA GORMAN - DIRECT BY FOWLER

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1 Q: Now, why do you -- now, were there any steps taken by your
2 attorney to provide a severance?

3 A: He did.

4 Q: Okay. Do you feel like it was enough that -- do you feel
5 like he did enough to warrant -- let me rephrase that.

6 Do you feel he did enough in trying to get a severance in
7 this case?

8 A: I do believe so because the fact of the matter was, is
9 you're taking a person that's innocent and you're taking a
10 person that the state had at first, and then the state decided
11 they didn't want him and put him over on the defendant's side.
12 So, now you're ---

13 Q: Okay.

14 A: --- kind of what do you do with that?

15 Q: And you mentioned this earlier, I believe, but do you
16 feel like not having a severance was a fatal flaw in this case
17 for your defense?

18 A: I do because it didn't give me a fair chance.

19 Q: Okay. Do you feel your attorney could've done more in
20 terms of trying to severance the case?

21 A: I believe so.

22 Q: How so?

23 A: More fight, more -- more cases out there to go by besides
24 just the *Brady*.

25 Q: Okay. You also mentioned something about a directed --

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JULIA GORMAN - DIRECT BY FOWLER

1 one of your issues under ineffective assistance of trial
2 counsel, you mentioned directed verdict. Tell me a little bit
3 about that.

4 A: The directed verdict because everything has been a theory
5 from the beginning.

6 Q: What do -- what do you mean by theory?

7 A: Because nobody knows anything. All we know is the
8 unfortunates of what's happened to my grandson.

9 Q: Okay. Well, are you saying that -- well, how does that
10 relate to your attorney's representation of you in these
11 matters?

12 A: Because when the directed verdict was -- the fact of the
13 matter was, if we didn't know anything, how can you accuse.
14 If I come to you and say I didn't do it, and I've always --
15 I've stated that and I have been coerced into saying something
16 I didn't do, and then the state comes in and says we're gonna
17 charge her anyways.

18 Q: Okay.

19 A: And as we're going through theories and then the state
20 keeps changing their mind and they have stated in another
21 report that they have stated that the codefendant had did it
22 and then wanted to change a report because of a typographical
23 error. It lose that -- it should never be there. It should
24 be a direct verdict because, you know, the case is flawed.

25 Q: All right. You mentioned coerced into saying something,

1 tell me a little bit about that. What were you coerced into
2 saying?

3 A: When I was interviewed by the detectives, I didn't know I
4 was being interviewed for or being interrogated that day. I
5 was told I was coming in to talk about some other stuff. So,
6 I came in there and I talked, I'd been up for over 40 hours,
7 no -- no eating, no sleeping ---

8 Q: Were you ---

9 A: --- no rest.

10 Q: --- were you under some kind of -- were you in jail or
11 incarcerated?

12 A: No, I was at MUSC, I was home, because that's when
13 everything happened to Aidan, you know, from his injuries and
14 so I was back and forth Conway or from Aynor to Charleston and
15 so there was no -- none of that, and plus I took medication.
16 So, and then they're asking me all these questions and they
17 just started asking me, telling me -- asking me if I was a
18 cold blooded murderer and then ---

19 Q: Who asked you that?

20 A: Detective Troxell.

21 Q: Okay.

22 A: And then proceeded to say, you know you did this, tell us
23 how you did this. You know this, just tell us how you did
24 this and then they just started getting you to start believing
25 you did something wrong. Tell us how you did it and they got

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16

1 me to convince myself that I shook him.

2 Q: What did your attorney do to try to squash or quash those
3 coerced sayings as you -- as you put it in court today.

4 A: Because even though the fact that it states on there that
5 they should've never done it, they violated my Miranda rights,
6 my amendments, the fact that I was -- had already said that I
7 was on medication. I've gone under no sleep. I had -- I
8 wasn't even home that night. I had went out because I didn't
9 want to be home.

10 Q: Okay. Was the -- those issues of no sleep, and no food
11 -- lack of food or being tired, was that brought to the
12 Court's attention?

13 A: It was.

14 Q: Okay. Do you feel your attorney could've done more in
15 terms of bringing that to the Court's attention or -- or well
16 go ahead and answer the question, I'm sorry.

17 A: In light of it, I think more, I guess more -- I guess the
18 fight of it is to enlighten the fact that how can you -- how
19 can you bring something when someone is under so much -- I
20 can't even think of a word for it, and use that against
21 somebody when it's -- when they're not even really in a right
22 position to even think straight.

23 Q: Okay. Well, I think I may ask this, but just did your --
24 what did your attorney do to try to keep those statements out
25 of court?

1 A: He asked for them to be removed and the Judge still said
2 no, and he said okay.

3 Q: Okay.

4 A: So, it's like it just becomes an okay matter and ---

5 Q: Okay. All right. You mentioned the scrivener's error
6 that changed a statement or something along those lines. Tell
7 me a little bit about that.

8 A: It's in here. This is a motion to amend order on a
9 polygraph.

10 Q: Do you have a date and I believe that might be in the
11 file?

12 A: May 26, 2011.

13 Q: Okay. And what's the title there again you said or ---

14 A: It says motion to amend order on polygraph.

15 Q: Okay. And that was filed by who? Was it your attorney
16 who filed that?

17 A: I don't know.

18 Q: Okay. Well, if you -- you've stated the date and you've
19 stated what it is, can you tell us what that ---

20 A: It says the State of South Carolina versus Julia Gorman,
21 State of South Carolina versus Robert Palmer. It says
22 transcript of hearing.

23 Q: You've raised the issue of the scrivener's error, what
24 specifically are you relating to there?

25 A: Okay. On Page 6, it says my attorney and the pathologist

1 with the Charleston -- were seeing the pathologist there and
2 during that time, she, in Charleston, had determined at that
3 moment that she had changed her medical opinion that ---

4 Q: Who?

5 A: The medical doctor in Charleston ---

6 Q: Okay.

7 A: --- had literally changed her medical opinion that it was
8 not baby shaken syndrome and that's what they had charged me
9 with.

10 Q: Okay.

11 A: And at that time, she had called Ms. Lively, the
12 solicitor, to state her theory and then down here it says that
13 -- that it was typed that -- that this would've given the fact
14 that we had a court order written by Ms. Lively that Robert
15 Palmer inflicted the fatal blow. And then later on Page 7, it
16 says the purpose of this was Ms. Lively wanted this section
17 taken out because it was an error because she was copying and
18 pasting and didn't review what was written by her secretary.
19 And it later said, which was a scrivener's error, therefore,
20 however it had been done for over 30 -- 30 days and no one had
21 appealed it or had it redone, so, it should never have been
22 taken out. Although the Judge accepted it, again, my attorney
23 said okay.

24 Q: So, to summarize, you're saying that there was -- that
25 your attorney should have made more of that issue than they

1 did, correct?

2 A: Correct.

3 Q: And how do you feel that influenced the case?

4 A: Not well, because it's, it's -- it just gave more --
5 more, you know, it just looks bad on me, right then and there
6 because it's taking everything off of, you know, off of the
7 other person.

8 Q: Is there anything else you feel like your attorney
9 should've done on that?

10 A: Well, even then, I mean either you fight more, I mean, I
11 don't know how the system works, that's the problem. I don't
12 know how the system works. I don't know what you're supposed
13 to do, how you object to something, how you overrule
14 something, how you -- how do you talk to a Judge and say how
15 is this right or wrong, what case do you fall that upon to say
16 in this case this is what it says.

17 Q: You say you don't know, but did your attorney enlighten
18 you to how it does work or how it could possibly work?

19 A: No, or I don't recall.

20 Q: Okay. All right. Anything else on that scrivener's
21 error that you've brought up to the Court's attention that
22 you'd like to mention to the Court at this time?

23 A: No.

24 Q: Okay. You mentioned something about hearsay and the
25 credibility of titles earlier?

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JULIA GORMAN - DIRECT BY FOWLER

20

1 A: Right.

2 Q: Tell us a little bit about that, what do you mean
3 specifically on that?

4 A: Hearsay was titles -- people -- we had an EMT who stated
5 that I made a statement that I raised many children and this
6 is the worse I've ever seen. I don't ever recall making the
7 statement, though it was never written down in any report, but
8 because of her title, of her job, it was credibility and it
9 got to stay.

10 Q: So, you're saying there was a statement by the EMT that
11 ---

12 A: Correct.

13 Q: --- that should not have -- let me finish my sentence.
14 You're saying there's a statement by the EMT that you feel
15 should've been thrown out, correct?

16 A: Correct.

17 Q: Okay. What did your attorney do to throw that out?

18 A: He tried to have that thrown out as well because it is
19 hearsay.

20 Q: Okay. But the Court still went through with it, correct?

21 A: Correct. As well as this.

22 Q: When you say this, what are you referring to?

23 A: This as well is hearsay from the same EMT. I was in the
24 ambulance with them and she stated that I gave him medicine
25 that morning.

1 MR. JAMES: Your Honor, since she's clearly reading from
2 a copy of the transcript, can I get a direction to the page of
3 the transcript that she's reading from?

4 BY MR. FOWLER:

5 Q: Please what page and line number, roughly?

6 A: Sorry. This, this is during the trial hearing and it
7 would have been on Page 320.

8 THE COURT: Go ahead.

9 A: It says Rosenthal stated I gave him medicine when I
10 haven't been home all day. It doesn't say that exactly,
11 that's just my shorthand. But I wasn't even home, I left at 4
12 o'clock or so that morning. So, there's no way I could even
13 have done that or even have said that. So, there's statements
14 being made I've never even stated. So, how are these
15 credibility statements being made that I haven't even done.
16 Just as this two point -- just like this Xyzal medication that
17 everybody keeps saying I gave him two and a half teaspoons,
18 but I'm reading what the medicine bottle said, which was 2.5
19 milligrams per teaspoon, 1/2 teaspoon given a day. Because
20 what I read has been taken out of context saying I'm doing the
21 opposite.

22 Q: So, you feel there's some hearsay issues that were
23 brought up at trial, correct?

24 A: Correct.

25 Q: Do you feel like your attorney adequately fought those

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1 issues?

2 A: He fought them but, when the Judge said no, they can
3 stay; it's still okay. It's okay, thank you.

4 Q: Okay. Anything else on that hearsay issue that you feel
5 is important?

6 A: No, I mean, I don't have the rest of my notes.

7 Q: Okay. You mentioned, well, you mentioned Miranda rights;
8 tell us a little bit about that.

9 A: Miranda rights were violated because how they were
10 presented to me, I was unaware of them, I didn't know I was
11 videotaped. I didn't know I was audiotaped. I didn't know --
12 in fact I didn't know that's what was even happening to me. I
13 just thought I was coming there to talk about some other stuff
14 that I had told them on the phone about my son-in-law and
15 that's not what happened.

16 Q: What is -- how did your attorney fight those issues?

17 A: He, he had said, again, it was the fact that my -- the
18 way I was under duress and no -- lack of sleep and I was under
19 -- I was under my medication and grief stricken and all that
20 should've never happened and it was an hour and a half long
21 and my codefendant's was less than 30 minutes, and it was very
22 extreme and very aggressive.

23 Q: Do you feel like your attorney could've been more
24 aggressive in fighting those issues?

25 A: Yes.

1 Q: How so?

2 A: I think the tact of it could've been, you know, I guess
3 the same degree. It should've been the same with one with the
4 other, you know.

5 Q: You've mentioned several things so far, severance,
6 directed verdict, hearsay, Miranda rights, what communication
7 did you have with your attorney about these issues?

8 A: You know, during the trial, you just kinda, I mean we
9 talked a little bit, but I think you're more in shock through
10 it all because you're really -- you're really just trying to
11 listen and that's really all I did is I sat there and just ---

12 Q: Well, before trial, how did you and your attorney
13 communicate about these issues and the other issues that you
14 mentioned earlier? Was there any kind of pretrial conference
15 between you and your attorney about these issues and how they
16 would be addressed up to the Court?

17 A: That he would bring them up and that we would try to get
18 them resolved, you know.

19 Q: Do you feel like you went over it, but earlier you said
20 that you didn't know about these things, you didn't understand
21 it completely; is that correct?

22 A: Right.

23 Q: But did your attorney explain them to you in a depth that
24 you would understand? Did he go over these adequately with
25 you if you're saying you didn't understand these issues?

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1 A: I guess at the time I thought he did but, I guess ---

2 Q: What about now?

3 A: No.

4 Q: Why not?

5 A: Because now I've had to stop and I've had to research and
6 look up case laws and -- and go through them to learn what all
7 this means now.

8 Q: So, has your opinion changed since you've been able to
9 research these issues?

10 A: Yes, because now I've had time to read what cases mean,
11 what certain laws mean, that's how come I say, for example,
12 the Brady law or Daniel vs. -- you know, I've had to read,
13 I've had to make appointments, I've had to get on the
14 computers and -- and read books.

15 Q: Okay. Under the ineffective assistance of counsel, you
16 mentioned there was no expert witnesses; tell us about that?

17 A: We had -- he had -- he did have a pathologist and he had
18 said that he was gonna put him on there, but he didn't figure
19 -- it was pointless because he was just gonna say the same
20 thing that the state had. But the fact of the matter was, he
21 would've said that he changed the theory. That would've been
22 good for me because then that would've been something for me.
23 Instead he said never mind and sent him off.

24 Q: And so just to summarize, you're saying that there was an
25 expert witness that you had that was not used, correct?

1 A: Correct.

2 Q: And in retrospect, you're thinking that that expert
3 witness could've been helpful to you?

4 A: Correct.

5 Q: Did you ever speak with that expert witness before court?

6 A: Never even saw him.

7 Q: Did your attorney?

8 A: Yes.

9 Q: Did your attorney adequately explain to you about what
10 the expert witness was poised to testify?

11 A: No, I just knew that he was going to. Just the fact that
12 he said the same thing that the state was gonna say.

13 Q: Okay. But that's what your attorney told you, but you're
14 saying there's a different outcome?

15 A: Correct.

16 Q: Okay. Did your attorney explain to you -- you're saying
17 there's a different outcome now, did your attorney explain to
18 you why -- why the expert was not used other than the same
19 thing the state would've said?

20 A: No.

21 Q: Character witnesses, you said there was no character
22 witnesses?

23 A: No.

24 Q: Okay. Did you discuss with your attorney about the use
25 of the character witnesses?

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1 A: I asked him why and he said because when you use
2 character witnesses, it just becomes like having a -- what was
3 the word he used -- it starts to become a circus because it
4 just becomes too many people.

5 Q: Well, how many character witnesses were you and your
6 attorney proposing to have?

7 A: Well, he said that, so I didn't have any. So, I mean, I
8 would've had my mom. I would've had, you know, my sister or
9 my best friend. I mean ---

10 Q: In retrospect, do you feel like you should've used
11 character witnesses?

12 A: Well, if it was to show my character of who I am, yes.

13 Q: Okay. Do you feel that -- go ahead, I'm sorry.

14 A: Because the way people -- the way I was being portrayed
15 was not -- is not who I am.

16 Q: Do you feel it would have been helpful to your case to
17 have those character witnesses?

18 A: Yes.

19 Q: Okay. And then finally, from your earlier summation of
20 ineffective assistance of trial counsel, you mentioned there
21 was no research into your job or hours or videotapes. Tell us
22 a little about what you mean by that.

23 A: Because, excuse me, there was a check that I had written
24 and unfortunately it had bounced, and there's a 10 or 15-
25 minute gap between my job and the grocery store. However, I

1 have a 45 minute drive between the grocery store and my job.
2 So, their concern was that I must have changed my time at my
3 job versus the grocery store if that makes sense. But,
4 instead of doing the research and investigating that, just
5 getting my time cards ain't gonna be enough because in
6 administration, when you do payroll, if you do any time
7 change, you have a record of it. Because when you do any
8 audits, you have to have that paperwork. In the grocery
9 store, there's gonna be a camera, my job there's a camera
10 because I worked in the cash office. So, I am constantly
11 videotaped. By the time I leave that area with the cash until
12 I go all the way to I clock out to where I go out to --
13 outside to the parking lot, we're videotaped. It would've
14 showed a timeline there, too. They didn't go to the store to
15 get any videotapes or even pull a receipt. They didn't go to
16 the video store where I rented any movies. They didn't do
17 anything. All they did was drive to the grocery store and
18 back and say it takes two minutes to drive from one place to
19 the other.

20 Q: What -- what research did your attorney -- well, first of
21 all, did you discuss that, those issues with your attorney?

22 A: I did.

23 Q: Okay. What did your attorney say in response to that?

24 A: They just had the receipt. They just had my check stub
25 showing that I paid it. That's all they did. And they just

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1 -- they just argued the fact that it's not -- it's not
2 feasible from going with that gap in between. That was it.
3 The only argument was that gap that it wasn't feasible for me
4 to be in one place or the other.

5 Q: Do you feel like your attorney would've had -- could've,
6 should've -- do you feel like your attorney should have done
7 more in terms of researching that?

8 A: Yes, because if that research would have been done, it
9 would have proven that was always where I said I was.

10 Q: Do you feel like that would've been helpful to your case?

11 A: Yes, it always would've been helpful.

12 Q: Did your attorney and you may have addressed this and I
13 think you did, but why did your attorney say that they did not
14 do that research?

15 A: I cannot answer that.

16 Q: Okay. But they never addressed that with you?

17 A: No.

18 Q: All right. Any other issue, we've gone over several here
19 with the ineffective assistance of trial counsel. Any other
20 issues do you feel is pertinent to the ineffective assistance
21 of trial counsel?

22 A: Not that I'm aware of.

23 Q: You also mentioned in your application the ineffective
24 assistance of appellant counsel; who was your appellant
25 attorney?

1 A: Ms. Hackett.

2 Q: Okay. How long was she your appellant attorney?

3 A: Let's see. It was a year.

4 Q: Okay.

5 A: Was it a year? A year or two years.

6 Q: Well, which was it?

7 A: What was it, maybe two years.

8 Q: So, is that your best estimate that she was your attorney

9 for two years?

10 A: Give or take about two years.

11 Q: What, what was your relationship with her?

12 A: We did telephone calls and letters.

13 Q: How often did you have telephone calls with her?

14 A: I telephoned her if I had any questions, any, any, any

15 briefs that she sent me or if I got any briefs from the state,

16 she would -- she would answer any of my questions.

17 Q: Okay. But now you've claimed that she was ineffective in

18 her assistance of appellant counsel, correct?

19 A: Correct.

20 Q: Okay. What issues, like we mentioned earlier with trial

21 counsel, what issues do you feel is relevant there in terms of

22 her effective assistance of representing you with the appeals

23 court?

24 A: Still ineffective of counsel because we still were -- we

25 were still tried together even in the appellant, we couldn't

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1 be separated there either. So, you're still together.

2 There's still no fairness in this case.

3 Q: When you say you were tried together, who were you tried
4 together with?

5 A: With my codefendant.

6 Q: And what was their name?

7 A: His name was Robert Palmer.

8 Q: Do you know -- could you tell the Court what Robert
9 Palmer's sentence was on -- initially with the underlying
10 trial?

11 A: His was child neglect, aiding and abetting, and homicide
12 by child abuse.

13 Q: And how many years did he get?

14 A: His was the same. It was 10 years for child neglect, 20
15 for aiding and abetting, and 35 for homicide, and then the
16 aiding and abetting got reversed and then -- and then when it
17 went to the Supreme Court, he won his appeal, and he's home.

18 Q: Okay. But you feel like he should not've been your
19 codefendant on the appellant level either, correct?

20 A: Correct.

21 Q: Okay. In terms of the -- or let me just go back to the
22 summary. In terms of the ineffective assistance of appellant
23 counsel, you say, you shouldn't have been tried together. Any
24 other issues of ineffective assistance of appellant counsel?

25 A: Well, even there in the appellant, we -- Robert Palmer

1 and I both had appointed appellants. So, and even that was
2 tried to be separated, too, and it couldn't happen either.

3 Q: Okay.

4 A: So, you're still together. It's like still no fairness.

5 Q: What steps did your attorney take to sever your and his
6 appellant -- appellant work?

7 A: She requested it and it got denied.

8 Q: Okay. Do you feel like she could've done more in terms
9 of trying to sever the appellant action?

10 A: Yes, I think it should've went even higher because you're
11 still fighting, you know. It's like being here in the county,
12 you -- you can't have two inmates or defendants or the same
13 codefendant and a defendant be in the same department. One
14 has to go out.

15 Q: So, the severance issue was the main issue you had as
16 ineffective assistance of appellant counsel, correct?

17 A: Correct.

18 Q: Is that right?

19 A: Yes.

20 Q: Okay. You also mentioned on Question 10 or Line 10 of
21 your -- of your application, suppression of evidence by
22 prosecution; what do you mean by that and was that at trial
23 level or at the appellant level?

24 A: It would have been at the trial level.

25 Q: Okay. Well, once again to my original question, what do

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1 you mean suppression of the evidence by prosecution?

2 A: Well, the suppression of evidence would've been the
3 interrogation tape because of the coercion of it, the
4 amendments on those -- on the -- where the time changes were
5 on the indictments.

6 Q: Okay. So, you feel like prosecution suppressed evidence
7 of these matters?

8 A: Yes, and then the hearsays, I mean everything, those were
9 -- everything just kinda -- it was just everything they could
10 grasp on, they just kept keeping.

11 Q: Did your attorney go over, are you familiar with the
12 legal term discovery, the evidence in your case?

13 A: I had a discovery. Did we go over that, I can't tell
14 you, that was a long time ago.

15 Q: So, you don't know if you went over the discovery in your
16 matter?

17 A: I don't remember going through that packet, no.

18 Q: Do you think you may have gone over it with your trial
19 counsel?

20 A: Yeah. You know what, that was when I had Thomas Floyd,
21 when I had that packet, so, I'm gonna tell you no.

22 Q: Okay. So, just to clarify your response, you're saying
23 that you received your discovery when Thomas Floyd was your
24 attorney, correct?

25 A: Yes.

1 Q: Did you -- but you did not go over it with your trial
2 counsel attorney, correct?

3 A: No, I don't believe so, but ---

4 Q: Attorney Galmore, right?

5 A: No, I don't believe so.

6 Q: Okay. You felt it would've been a good thing to go over
7 it with attorney Galmore, your discovery?

8 A: Yes, if we hadn't, yes.

9 Q: Okay. Once again, in wrapping up the suppression of
10 evidence by prosecution, did the prosecution provide
11 additional discovery to you when attorney Galmore was your
12 attorney?

13 A: You mean like more evidence or ---

14 Q: Right.

15 A: It seemed like every time we'd turn around, something was
16 being turned in. I don't know if it was evidence, because the
17 -- it was always paperwork or -- the indictments got changed.

18 Q: Did your trial attorney go over those indictment changes
19 with you?

20 A: No, because those happened at the prehearing when I was
21 right there when they were doing the prehearing.

22 Q: But was there any change of indictments while attorney
23 Galmore was your attorney?

24 A: The indictment changes happened at trial if that makes
25 sense. The Judge changed them at the trial.

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1 Q: All right. Moving on in your application, Question 11,
2 you said trial counsel failed to provide alibi witness and
3 alibi defense. What do you mean by that?

4 A: Well, that's my job where I worked, going to the stores,
5 all that proves where I was at all those times.

6 Q: Well, what actions did your attorney take to provide
7 alibi witnesses?

8 MR. JAMES: Objection, we've been over all of this once
9 already, with respect to the evidence of her being at the
10 store, the bounced check, and so on and so forth.

11 THE COURT: I appreciate that. I'm gonna allow, though,
12 the question. Thank you very much.

13 BY MR. FOWLER:

14 Q: And -- and in continuing to follow your application and
15 what you've stated in your application, go ahead and continue
16 your statement.

17 A: The only thing we have is just my -- my timecard and the
18 receipt from the store or the paycheck or the cancelled check
19 from the store. That's it and the timecard they have isn't
20 even a complete one because they're still missing a day.

21 Q: So, how did your attorney address that?

22 A: They had to get another one, but it's not in my thing
23 here; it's not in my paperwork.

24 Q: So ---

25 A: They had to resubmit to get another one, but I don't have

1 a copy of it.

2 Q: So, are you saying your attorney did not follow up in
3 terms of providing that alibi witness or alibi defense?

4 A: No.

5 Q: Okay. Okay. Anything from Question 11, Line A, trial
6 counsel failed to provide alibi witness and alibi defense,
7 you've gone over that in your original statements to the Court
8 here today, but anything else about that that you feel needs
9 to be brought to the Court's attention?

10 A: No.

11 Q: Okay. And just to kind of continue on and I think you've
12 touched on this maybe perhaps earlier but did not, and
13 Question 11, did not ask for a directed verdict based on which
14 was prejudice and then it raised severance. I believe you
15 have gone over this before, but was there anything else on
16 that that you feel like needs to be brought to this Court's
17 attention?

18 A: No, because we went over that. Just the fact that this
19 case has been nothing but theory, should've been a direct
20 verdict in the beginning, then should have been a direct
21 verdict in the middle, it should've been a direct verdict at
22 the end, direct verdict at the prehearing because there's been
23 nothing at this whole time.

24 Q: So, how many times did your attorney ask for a directed
25 verdict?

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1 A: He did at the end, and if I'm correct, he may have done
2 one in the beginning, I can't recall, and then he asked for an
3 appeal.

4 Q: And finally, it's what you stated in your application and
5 I think you may've gone over -- I believe you did go over this
6 earlier, but 11(c), we move for a suppression of the videotape
7 due to coercion and faulty Miranda right violation. Well, you
8 mentioned that earlier, but is there anything on the coercion
9 or faulty Miranda rights violation you feel like needs to be
10 brought to this Court's attention?

11 A: No, we've gone over that. It was just very rough that
12 day. It was very malicious.

13 Q: Right. Is there anything else that you feel -- we've
14 gone over several issues with both the trial and appellant
15 counsel, is there anything else that you'd like to bring to
16 this Court's attention about this case that you feel is
17 pertinent?

18 A: I just know with this case that there's just been a lot
19 of -- a lot of context taken out of place. If it were
20 different and people saying things that aren't even true. All
21 I want is truth. All I want is truth.

22 Q: And how do you feel -- did your attorney adequately
23 address those issues in your mind?

24 A: He did the best that he could.

25 Q: How would you describe your trial counsel's performance?

1 A: He did good, the best that he could, but it needed to be
2 more. He needed to fight more. He needed to be more
3 aggressive.

4 MR. FOWLER: No further questions, Your Honor.

5 THE COURT: All right. Cross examination?

6 MR. JAMES: Very briefly, Your Honor. However, may I
7 approach the witness real quick?

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION OF JULIA GORMAN BY MR. JAMES:

10 Q: Ms. Gorman, I will be very brief. The object of my
11 interest is your attorneys and not necessarily you in
12 particular on this particular day.

13 Ms. Gorman, when you appeared to speak with Detective
14 Troxell and Detective Weaver, did you go to them voluntarily?

15 A: Yes.

16 Q: Okay. Do you recall being advised of your Miranda rights
17 during that conversation with them?

18 A: Later.

19 Q: And so, you were advised of your Miranda rights?

20 A: Yes.

21 Q: And did you sign off on a little piece of paper that said
22 I understand this right?

23 A: Yes.

24 Q: Okay. And after reviewing those Miranda rights, did you
25 continue to speak with them?

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1 A: Yes.

2 Q: Okay. And it was your testimony just now that you
3 believe defense counsel did the best that he could?

4 A: Yes.

5 Q: All right. I have no further questions, Your Honor.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION OF JULIA GORMAN BY MR. FOWLER:

8 Q: You mentioned on cross examination that you spoke with
9 them voluntarily, but you did say earlier that you had some
10 physical issues that were prohibiting you from speaking
11 clearly; is that correct?

12 A: Yes.

13 Q: Okay. And you mentioned this, I believe, on direct but
14 you were tired and other issues; what were those issues again
15 please?

16 A: I had been up for over 40 hours, I had no sleep, I was --
17 no eating, my grandson had just passed away.

18 Q: So, that -- so you're saying that that could have
19 influenced your voluntariness of talking to those detectives?

20 A: Yes.

21 Q: Okay. And also the Miranda rights was brought up on
22 cross examination. When were your Miranda rights given to
23 you; at that same time roughly?

24 A: When I came in, I was just talking to them and then I got
25 to a point where I went to go and say Aidan's name and went to

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1 go start to cry and then they said that we have to do the
2 Miranda rights. I didn't think anything of it. I didn't know
3 why they were doing it or anything, so, I said okay.

4 Q: So, were you in a -- how would you describe your state of
5 mind when you signed off on those Miranda rights?

6 A: Just fair. Well, I mean, I've never been in trouble
7 before. I've never got speeding tickets. I've never been in
8 trouble before, so what would it matter to sign this piece of
9 paper.

10 MR. FOWLER: No further questions, Your Honor.

11 MR. JAMES: Very briefly.

12 RECROSS EXAMINATION OF JULIA GORMAN BY MR. JAMES:

13 Q: You indicated that you've never been in trouble before;
14 is that correct?

15 A: Yes.

16 Q: Do you recall an investigation in Long Beach, California?

17 A: Uh-huh, (affirmative response).

18 Q: Okay. Do you recall what the subject of those
19 investigations were?

20 A: Yes.

21 Q: All right. What were they?

22 A: My neighbors behind us that didn't like me and my sister,
23 had had CPS ---

24 MR. FOWLER: Objection, Your Honor, relevance to this
25 case and to the issues that are before this Court as to her

1 trial counsel's performance.

2 MR. JAMES: She indicated on recross that she'd never
3 been in trouble before. I simply wish to raise an issue that
4 was raised briefly in a pretrial motion, Your Honor, that she
5 had a previous investigation and that I'd be ---

6 THE COURT: Was she charged with a crime?

7 MR. JAMES: I believe, ultimately, the charges were
8 tossed as unfounded.

9 THE COURT: Let's -- I'm not gonna allow you to pursue
10 that.

11 MR. JAMES: All right. Thank you, Your Honor, I have no
12 further questions.

13 THE COURT: All right, ma'am, you may step down.

14 A: Thank you.

15 MR. FOWLER: May I have a moment to speak with my witness
16 when she comes down, Your Honor?

17 THE COURT: Yes, sir.

18 MR. FOWLER: Thank you, Your Honor.

19 THE COURT: All right. Very good. All right. Further
20 witnesses on behalf of the applicant?

21 MR. FOWLER: No, sir, Your Honor.

22 THE COURT: Very good. All right. Yes, sir?

23 MR. JAMES: Your Honor, the state would call James C.
24 Galmore.

25 THE COURT: All right, Mr. Galmore, if you'd come around

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1 and be sworn please, sir?

2 JAMES C. GALMORE, HAVING BEEN DULY

3 SWORN TESTIFIES AS FOLLOWS:

4 MR. GALORE: My name is James Galmore, G-A-L-M-O-R-E.

5 THE COURT: Go ahead, Mr. Attorney General.

6 DIRECT EXAMINATION OF JAMES GALMORE BY MR. JAMES:

7 Q: Good morning, Mr. Galmore?

8 A: Good morning, sir.

9 Q: How are you doing today?

10 A: Fine and yourself?

11 Q: How long have you been practicing law?

12 A: I was admitted to the bar in 1995.

13 Q: About how much of your experience has been in criminal
14 law?

15 A: I've worked at the Public Defender's office from 1998 to
16 present.

17 Q: Were you appointed or retained to represent Ms. Gorman?

18 A: I was appointed.

19 Q: Do you recall about how many times you met with Ms.
20 Gorman in the course of your representation?

21 A: Give me just a minute.

22 Q: Take your time, Mr. Galmore.

23 A: I'm just going to guess maybe 10 times on various issues.

24 Q: What's the basis of that guess if I may ask?

25 A: I know that we had several meetings as the trial date

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1 came closer. Prior to that, we had meetings to -- we had to
2 do a bond issue. We talked several times about getting her
3 bond. There was a period of time where she was living at a, I
4 guess, halfway house and we had to discuss her bond matters on
5 that, also. As the trial ---

6 THE COURT: You may proceed.

7 MR. JAMES: Oh, I apologize. I was wondering where that
8 sound was coming from.

9 THE COURT: Go ahead.

10 A: As the trial came closer, we started to meet on a more
11 regular basis.

12 BY MR. JAMES:

13 Q: In the course of those meetings, did you discuss the
14 indictments, the offenses and their elements with your client?

15 A: Yes, sir.

16 Q: And did you discuss the possible punishments?

17 A: Yes.

18 Q: Did you explain to her all of her constitutional rights?

19 A: Yes, sir.

20 Q: Right to remain silent?

21 A: Yes, sir.

22 Q: Her right to confront the witnesses against her?

23 A: Yes, sir.

24 Q: The right to call her own witnesses?

25 A: Yes, sir.

1 Q: All right. Did you explain to her the burden on the
2 state to prove the case beyond a reasonable doubt?

3 A: Yes, that's correct.

4 Q: Did she appear to understand everything?

5 A: Yes, sir.

6 Q: Did you discern any mental or emotional deficiencies on
7 Ms. Gorman's part?

8 A: No, sir.

9 Q: What sort of discussions did you have with Ms. Gorman
10 regarding her right to present witnesses, specifically let's
11 talk about the expert witness since that came up on her
12 testimony. What sort of investigation into the possibility of
13 expert witnesses did you undertake?

14 A: Well, we retained an expert. We sent the, I think there
15 were some slides and photographs and written records to the
16 expert.

17 Q: I hate to interrupt you, but what kind of expert, if I
18 may ask?

19 A: I don't remember his name, but he was pathologist from
20 Johns Hopkins University. I have no idea if I can find it, I
21 have probably 100 pages of notes, but ---

22 Q: The crux of my interest is just what kind of expert it
23 was; you may proceed?

24 A: Yes, sir, it was a pathologist. And we sent him the
25 records from MUSC to review independently. I thought we had

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1 -- I thought that was paid for by the court so, let me see if
2 I have an order. The expert witness' name is Dr. Juan
3 Troncoso, T-R-O-N-C-O-S-O, and he is a pathologist at -- like
4 I said, he works at Johns Hopkins University.

5 Q: Did you receive any reports back from that expert?

6 A: I did not receive a written report. I spoke to him on
7 the telephone on several different occasions. I believe we
8 flew him into town for the trial and ultimately decided that
9 we were not gonna use him at trial.

10 Q: Why didn't you use him at trial?

11 A: I felt that the information that he was going to provide
12 was -- had been covered by the doctors from MUSC, so I did not
13 want to put up any unnecessary information or give the state
14 an opportunity to rehash any issues that they may have missed
15 the first go around.

16 Q: What, if anything, did Ms. Gorman tell you about what
17 happened?

18 A: As I recall the case, Ms. Gorman was working earlier in
19 the day. She worked at the Bass Pro Shops in North Myrtle
20 Beach and she lived in the Aynor/Galivants Ferry area of the
21 county. She got off work that day and went home and checked
22 on her grandson, Aidan. That was a ---

23 MR. FOWLER: Your Honor, I'm going to object to this line
24 of questioning. He asked a fairly general question, in my
25 opinion, and I'd like some specificity in what he's looking

1 for in this. The witness is kind of ---

2 THE COURT: Let's be more specific with your questions,
3 please, sir.

4 MR. JAMES: Respectfully, Your Honor, Mr. Galmore was
5 going through the timeline that the applicant provided to him
6 and part of her allegations are why didn't he investigate an
7 alibi defense. And so what she told him about what occurred
8 during the course of the day goes to the very heart of one of
9 her, frankly, her key allegation.

10 THE COURT: All right. So, what you're looking for is
11 the timeline that she provided to him.

12 MR. JAMES: Yes, Your Honor.

13 THE COURT: Is that the question?

14 MR. JAMES: Yes, Your Honor.

15 THE COURT: Go ahead and answer that, Mr. Galmore.

16 MR. FOWLER: That timeline is about what specifically, in
17 particular ---

18 THE COURT: I'm gonna allow the question.

19 MR. FOWLER: Yes, sir.

20 THE COURT: Go ahead.

21 A: The timeline is a very difficult concept in this case
22 because the state could not provide a time when the injuries
23 occurred. The best that the state was able to say through
24 their expert witnesses at MUSC was the injuries occurred three
25 hours or no more than three hours prior to when 911 was

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1 called. 911 was called at, I think, at 6:06 P.M.

2 Ms. Gorman's information to me was that she had gotten
3 off work, went home, checked on Aidan, and then went to the
4 grocery store and went to the video store in Aynor. And when
5 she came back, she started cooking dinner, and then later went
6 and checked on Aidan again and that's when they saw that he
7 was in a state of distress. I can't make it anymore clearer
8 because, you know, one of the issues was the blank check and
9 the blank check had a date, a timestamp on it.

10 MR. FOWLER: Your Honor, once again, I'd like to object
11 to this. I think he's adequately reviewed the timeline ---

12 THE COURT: I appreciate that. I'm going to allow Mr.
13 Galmore to answer the question.

14 MR. FOWLER: Yes, sir.

15 THE COURT: You may proceed, sir.

16 A: And, well the problem with the blank check was that the
17 time that was stamped on the check, I think it said maybe 3:52
18 and it was highly improbable that Ms. Gorman could have gotten
19 off work at Bass Pro Shops at maybe, I think -- I don't know,
20 it's in the transcript, the specific times are in the
21 transcript, but it seemed highly improbable that she could
22 drive from North Myrtle Beach to Aynor in nine minutes. So,
23 you know, we went with the theory that the date and the
24 timestamp on the check was off, but that the check was still a
25 relevant document because it showed that Ms. Gorman was not in

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1 the house, that she had left the house to go at least to the
2 video store and, by her testimony, to the Piggly Wiggly, also.
3 Therefore, leaving Aidan in the house alone with Mr. Palmer.

4 BY MR. JAMES:

5 Q: Did you conduct any additional investigation into an
6 alibi defense?

7 A: Well, it's not quite an alibi defense. I guess we
8 could've called a manager from Bass Pro Shops to confirm the
9 time on the timecard, but I don't think the -- the case rested
10 on -- I don't think the allegation was that she clocked out
11 early and went home or went home and was still riding the
12 clock and then went back and punched in. So, I didn't think
13 we needed to call the expert, or excuse me, call the witness
14 to address that part of it. Perhaps, we should have called a
15 witness from the video store to testify that the timestamp was
16 off, but just given that I felt the jury would reasonably
17 conclude that she could not have crossed the county in nine
18 minutes, I -- I thought that it was a reasonable explanation
19 that the timestamp on the check might've been off.

20 Q: Aside from the alibi witness, aside from the expert
21 witness, did you investigate the possibility of any other
22 character witnesses?

23 A: Well, I think you just got into the issue of why I didn't
24 want to deal with character witnesses. My understanding of
25 the law is that character or reputation evidence can be

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1 combatted with specific acts of conduct and there were
2 allegations from California and Judge Hyman ruled that those
3 allegations weren't admissible and I did not want to give an
4 opportunity for those allegations to be brought into court.

5 MR. JAMES: I'm sorry; is there an objection?

6 MR. FOWLER: Just to clarification, Judge Hyman ruled
7 those were inadmissible; is that what you said?

8 A: Yes. Yes.

9 MR. FOWLER: Okay.

10 A: Also, there's a difficult back story between Ms. Gorman
11 and her daughter, and I know that the daughter might've been a
12 runaway at one point, and those things would have just muddled
13 up the issues had they come into court.

14 BY MR. JAMES:

15 Q: Did you seek to have the charges or did you seek to have
16 your client's case severed from that of Mr. Palmer's?

17 A: I think I did.

18 Q: Do you recall how that motion went?

19 A: The motion was denied by the Court and, unfortunately,
20 it's just a four-part test and the Judge has to decide if it
21 fits or not and with respect to Ms. Gorman's testimony,
22 there's really not much you can do once a Judge rules.

23 Q: Did you seek to have Ms. Gorman's statements to law
24 enforcement excluded from trial?

25 A: I did. I read the Supreme Court opinion in this case

1 and, according to them, I did not do it correctly. I think
2 the opinion says that -- I think what the Supreme Court said
3 is that I did not preserve for review ---

4 MR. FOWLER: Can you specifically state which case that
5 is?

6 A: Oh, okay. I am reading from the -- oh, this is the Court
7 of Appeals Opinion in *State vs. Robert Palmer and Julia*
8 *Gorman*, Opinion Number 5198, and I am under Roman Numeral IV
9 of the issues on appeal.

10 Q: Is there a reason why you challenged under *Denno* and not
11 *Miranda*?

12 A: I thought I had done -- done it correctly. I thought I
13 had challenged her statement under both cases, apparently, I
14 did not.

15 Q: During her testimony, as she reviewed her allegations,
16 Ms. Gorman complained that there were a number of instances of
17 hearsay, she describes them that came out of that trial. For
18 example, she complains that an EMT testified to her statement
19 that she never saw such a bad child. Was there a reason why
20 you wouldn't have objected to that as hearsay?

21 A: I should have objected to it. I don't recall if I did or
22 did not. I think I objected to it and, you know, once you
23 object to it, if it still comes in, then you have to deal with
24 it.

25 Q: Are there additional rules for statements by a party

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1 opponent or by a defendant that come into play when dealing
2 with hearsay?

3 A: Yes, under those circumstances, the statement is not
4 hearsay.

5 Q: Okay. Did you -- were you the first attorney to
6 represent Ms. Galmore on these charges?

7 A: No, sir; I was her third attorney.

8 Q: Okay. Did you receive the files from the prior attorneys
9 who represented her?

10 A: Yes, sir.

11 Q: Okay. Did you independently file any motions pursuant to
12 Rule 5 or *Brady*?

13 A: No, sir; I did not.

14 Q: Just the same, did you go over the discovery that you did
15 have with Ms. Gorman?

16 A: I guess I did. I know I did not sit there and do a page
17 by page, line by line, read through with it, I will do that
18 with certain clients, you know, if they can't read or they're
19 in jail or have other mental health issues or other
20 circumstances but, you know, Ms. Gorman didn't have those
21 issues, so, I would just give her a copy of the paperwork and
22 we would discuss it as -- as it came up.

23 Q: To the extent of your understanding, do you believe you
24 received everything to which you were entitled under Rule 5
25 and *Brady*?

1 A: Yes, sir.

2 MR. JAMES: I beg a moment of the Court's indulgence.

3 THE COURT: Yes, sir.

4 BY MR. JAMES:

5 Q: What was your overall strategy in defending Ms. Gorman?

6 A: Well, we know that the child was injured and the only
7 issue, in my opinion, was who caused the injuries. The
8 state's theory, basically, was that it was one of these two
9 people. They could eliminate every other person on earth as a
10 suspect and they narrowed it down to two people.
11 Unfortunately, two is not enough to get a conviction in my
12 humble opinion. I believe that the state should have argued
13 that what each person did or that Ms. Gorman did something and
14 they didn't. Basically, they argued that one of these two
15 people did it and therefore they should be convicted. My
16 defense was Ms. Gorman was not around Aidan throughout most of
17 the day. Ms. Gorman had taken Aidan in and prior to all of
18 this, acted appropriately towards her grandson with his
19 medical treatments and things of that nature. And that on the
20 day in question, she did have this alibi in the form of a
21 bounced check where she was -- where it indicates that's she's
22 not in the house during the relevant time when the child was
23 injured, to the extent that we have a relevant time, because
24 the state could not give us an exact timeframe. Our defense
25 was it wasn't us, it wasn't Ms. Gorman, and therefore, it

1 must've been Mr. Palmer.

2 Q: Did you ever speak to Ms. Gorman's mother?

3 A: No, sir.

4 Q: Why not?

5 A: I don't think her mother was in the house or had been
6 down here for the month leading up to it because Aidan had
7 basically lived with Ms. Gorman for about a month prior to
8 this incident happening. I don't think Ms. Gorman's mother
9 was involved in any of that.

10 Q: Just to be clear, in addition to receiving files from the
11 prior attorneys, did you take any time to speak with them
12 about the work they did or did not perform in the case without
13 telling me what, if anything, they told you?

14 A: Well, not really, because the case was still very early
15 at that point. Other than -- and like she said, the case
16 stayed out there since 2008 and she went to trial 2011, maybe.
17 So, most of what the attorney would've been doing prior, for
18 the prior two years is just getting her on bond and trying to
19 make sure that that part of the case is taken care of. There
20 wasn't really much for me to discuss with the other attorneys.

21 Q: Mr. Galmore, I have no further questions at this time.
22 Please answer any questions that Mr. Fowler has for you?

23 THE COURT: Cross examination?

24 CROSS EXAMINATION OF JAMES C. GALMORE BY MR. FOWLER:

25 Q: On direct examination, you mentioned that you did not

1 move to suppress her discussions with the detectives; is that
2 correct?

3 A: I thought I was handling it correctly and, like I said,
4 in the court opinion, they said that I did not address *Miranda*
5 and *Jackson v. Denno*, so I guess I did not handle that
6 correctly.

7 Q: All right. Well, let's -- I think this was mentioned a
8 couple of times on direct examination, so, let's go back to
9 that opinion. I think you said 5198, Section IV. What did
10 the Court say about your, once again a little bit more
11 specifically, please, you said the Court addressed your *Denno*/
12 *Miranda* discussion; is that correct?

13 A: Specifically, what the Court said is, we find Gorman did
14 not preserve for our review her argument that any statement
15 she gave before being advised of her constitutional rights are
16 inadmissible under *Miranda v. Arizona*. The record reflects
17 Gorman objected only to the voluntariness of her statement at
18 the *Jackson v. Denno* hearing and renewed this initial
19 objection at trial. Because Gorman did not allege *Miranda*
20 violation before or during trial, she cannot do so now.

21 Q: So, basically, you could phrase it any way you want to,
22 but basically, the Court said you did not preserve her *Miranda*
23 rights, a potential violation correctly; is that correct?

24 A: Yes, sir; that's correct.

25 Q: Okay. But she -- was she in an emotional state in

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1 several -- but she's indicated on direct examination that she
2 was highly emotional or had issues with food and sleep and
3 rest perhaps at the time of talking to the detectives,
4 correct?

5 A: Yes, sir.

6 Q: How did you address that in court?

7 A: I would have to refer back to the trial transcript but,
8 again, I thought I was making objection and it appears that I
9 did not make the objection correctly.

10 Q: You mentioned that you flew in a Dr. Cuso [sic], or what
11 have you, and you did not use him at trial and you said you
12 did not want to give the state the opportunity to do
13 something, could you expand on that or explain that a little
14 bit more concisely, why you would fly in a expert from out of
15 town and not use him?

16 A: Well, because everything that he was going to testify
17 about had already been testified to by other witnesses. So, I
18 didn't think it was necessary to bring him in to rehash points
19 that we'd made and allow the state to rehash any points that
20 they were looking to try to make.

21 Q: But, but he was a trained expert, correct?

22 A: Yes, sir.

23 Q: Were these other witnesses that testified, were they
24 trained experts as well?

25 A: Well, I was referring to the doctor from MUSC.

1 Q: Right. And I think we're talking -- I think we're
2 talking about the same person, Dr. Cuso [sic], correct? Is
3 that the pronunciation? You looked up his name earlier, I
4 think.

5 A: Oh, Trancosa.

6 Q: The one that you flew in?

7 A: Yes, sir.

8 Q: So, you're saying that what he testified to was brought
9 up by other witnesses of yours at this action?

10 A: No, no, the MUSC doctors were the state's witnesses.

11 Q: Okay.

12 A: But they were, you know, conceding whatever points that I
13 needed to get out of them that I would've attempted to get out
14 of Dr. Troncoso.

15 Q: Okay. As far as the alibi witness, I think you said it
16 was an improbable timeline because of, you know, going from
17 one part of the county to a distant part of the county. I
18 think you said that you could've called the Bass Pro Shop's
19 manager; is that correct?

20 A: Yes, sir; I could have done that.

21 Q: And he could've probably given a little bit more
22 perspective on the timeline, correct?

23 A: He certainly could've addressed the time that Ms. Gorman
24 came to work, the time that she punched out, whether or not
25 the time card was accurate, whether or not their clock was

1 accurate. Yes, so he could've testified about the timeline.

2 Q: Well, regardless of even testifying, did you speak with
3 the Bass Pro Shop's manager or anyone at Bass Pro Shops about
4 the -- about this timeline issue?

5 A: No, sir; I did not.

6 Q: Also, you said there was a video store witness that
7 could've been helpful. Explain that to me again from your
8 direct examination?

9 A: Okay. Ms. Gorman had a bounced check from a video store
10 in Aynor, and we were trying to demonstrate to the jury that
11 the bounced check indicates that she was not at the house
12 during the relevant period when Aidan would've been injured.
13 We didn't have the receipt from the grocery store to go along
14 with the bounced check, but her testimony is that she was at
15 two different locations. We had proof of her being at one
16 location and this proof showed that she wasn't in the house
17 during the time that Aidan was injured, not that we have a
18 specific time that Aidan was injured.

19 Q: Okay. So, you're saying that there was -- okay, now, was
20 that the video store or the IGA in Aynor; do you recollect?

21 A: That was the video store.

22 Q: Okay. All right. So, you're saying that there was
23 tangible evidence out there that showed that she was not at
24 the house in the window of time?

25 A: Correct, she was at the video store bouncing a check,

1 yes.

2 Q: Okay. All right. And just for clarification, and we
3 mentioned this on cross examination or on direct, but you said
4 there was some California issues that Judge Hyman said were
5 inadmissible; is that correct?

6 A: Yes.

7 Q: Okay.

8 A: Go ahead; I'm sorry.

9 Q: But that relates to the lack of character witnesses that
10 you were going to propose; is that correct?

11 A: Yes, sir.

12 Q: Okay. So, if he ruled it inadmissible, how would that
13 affect your character witnesses on her behalf? I guess my
14 question is, if he ruled some things were inadmissible, why
15 was it a concern of yours calling these people as character
16 witnesses, if that was inadmissible?

17 A: Well, if for whatever reason the statement or the witness
18 made a statement that made it become relevant or made it
19 become an issue, then I would've preferred to not have that
20 issue brought before the jury. And also there -- there's,
21 like I said, some difficulty between Ms. Gorman and her
22 daughter and that would've or could have potentially been
23 brought up, also.

24 Q: Did you speak with her daughter about this case?

25 A: I did not. She was an adverse witness.

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1 Q: Did you ever receive any information that the daughter
2 was willing to help Ms. Gorman in this case?

3 A: No, sir; I did not.

4 Q: At the -- towards the end of your direct examination, you
5 said that there was a hearsay issue that it was brought up
6 about the EMT never saw such a child or what have you, some
7 quote to that effect. How did you fight that hearsay issue?

8 A: Well, when you have a statement like that, you ask the
9 witness whether or not the statement was independently
10 witnessed by someone else or just the other EMT driver,
11 whether this statement was recorded, whether you wrote this
12 statement down in your narrative or your log or your report,
13 and none of that was done here. So, we tried to take some of
14 the -- some of the credibility off of the statement by
15 approaching it in that manner.

16 Q: Thomas Floyd was her first attorney on this case,
17 correct?

18 A: Yes, sir.

19 Q: And does he work -- did he work in the same office as you
20 at the time?

21 A: Yes, sir.

22 Q: Okay. And then there was an attorney Knowles that
23 represented her for a brief period; is that correct?

24 A: Yes, sir.

25 Q: Did she work in the same office as you?

1 A: Yes, sir.

2 Q: So, she was at all times represented by the public
3 defender's office?

4 A: Yes, sir.

5 Q: I think you stated on direct examination that you didn't
6 file any discovery, supplemental discovery; is that correct?

7 A: That's correct.

8 Q: All right. But it's been -- it was several years and I
9 forget the timeline -- well, maybe Thomas Floyd was one or two
10 years. I think it was stated that Knowles was a month and
11 then you represented her for two years. That's a five-year
12 window and you didn't file any -- and once again, to ask the
13 question in a different way, you didn't feel the need to file
14 any supplemental discovery requests before trial after a five-
15 year representation by the public defender's office?

16 A: There wasn't any new evidence that was being generated by
17 the state.

18 Q: How do you know that?

19 A: Well, we did not receive any new evidence. A discovery
20 motion is a continuing motion. We talked to the doctors at
21 MUSC.

22 Q: So, did they provide you something -- I mean, without
23 asking for it, did they provide you supplemental discovery
24 requests?

25 A: No, but the doctors did change the diagnosis and I think

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1 that's an issue that probably needs to be addressed. Myself
2 and Andrew Richtner, he was working with me on this case. We
3 had an opportunity to go to MUSC in Charleston and talk with
4 the doctors down there and during our interview with them,
5 they brought us into a conference room and showed us pictures
6 and slides and went over their presentation, and as we were
7 asking questions, the doctors changed their diagnosis from
8 blunt force trauma, excuse me, from shaken baby syndrome to
9 blunt force trauma to the head. That, in my opinion, changes
10 the case 100 percent.

11 Q: But did the prosecution, the solicitor's office, give you
12 anything tangible in writing showing or stating that the
13 doctors had changed their diagnosis or was that something that
14 you found out on your own?

15 A: It was something that we found out. I mean, it occurred
16 during our interview. They didn't change the diagnosis a
17 month earlier and then just happen to tell us. It kind of
18 developed during the interview in Charleston. They looked at
19 the photos and said, hey, we've been looking at this case the
20 wrong way.

21 Q: But the solicitor's office didn't give you anything
22 stating that?

23 A: No, that was our ace in the hole as it were.

24 MR. FOWLER: If I may have just moment, Your Honor?

25 THE COURT: Yes, sir.

1 MR. FOWLER: If I may have just a moment?

2 THE COURT: Yes, sir.

3 MR. FOWLER: No further questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. JAMES: Very briefly, Your Honor.

6 REDIRECT EXAMINATION OF JAMES C. GALMORE BY MR. JAMES:

7 Q: As to the doctors changing their diagnosis, you brought
8 this to the Court's attention, correct?

9 A: Yes, that was, you know, when we got to trial, it was --
10 well, that was one of the major issues because there was also
11 an issue about a polygraph and -- let me back up. Mr. Palmer
12 took and passed a polygraph test. Ms. Gorman was not offered
13 a polygraph test. Mr. Palmer's attorney wanted to introduce
14 the fact that he passed a polygraph to the jury in their case
15 in chief and I objected. We ended up having a two-day hearing
16 on the issue of polygraph and their reliability and their
17 admissibility and Judge Hyman ruled that the polygraph would
18 -- well, let me back up.

19 First, on the issue of the hearing, I requested that that
20 hearing be sealed, the courtroom be closed to the public
21 because I did not want the fact that, you know, a polygraph
22 was involved in this case to negatively affect Ms. Gorman.
23 Judge Hyman ruled that the courtroom would be closed. The
24 South Carolina Newspaper Association got an intermediate
25 interlocutory appeal.

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1 Q: Respectfully, Mr. Galmore, the entire sort of side story
2 with the press forcing open the courtroom is sort of an
3 unrelated rabbit hole.

4 A: Well, the problem with the polygraph is that Mr. Palmer's
5 polygraph was based on the wrong theory. It was based on
6 shaken baby syndrome. So, then when we discovered that this
7 was blunt force trauma to the head and it goes back to should
8 his polygraph had been, you know, an issue.

9 Q: And you said in your testimony on cross just a moment
10 ago, that the issue developed in the course of your interview
11 with the doctors at MUSC?

12 A: That's correct.

13 MR. JAMES: I have no further questions, Your Honor.

14 THE COURT: All right. Mr. Galmore, one or two things.
15 Going back to the Court of Appeals opinion and that Section
16 IV, do you have that?

17 A: Yes, sir.

18 THE COURT: All right. You look in paragraph number,
19 Subsection II of the opinion, Section IV, and then they have a
20 Subsection I and then a Subsection II?

21 A: Yes, sir.

22 THE COURT: So, in looking at Subsection II at the very
23 top, it says, Gorman asserts that any statements given after
24 she waived her Miranda rights were tainted by the initial
25 violation and thus inadmissible. Going below that, it says --

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1 the Court of Appeals says, we find however, the police did not
2 interrogate Gorman before giving her Miranda rights and
3 therefore, are thus, no Miranda violation occurred, correct?

4 A: Yes, sir.

5 THE COURT: So, if you had objected under Miranda, the
6 Court of Appeals said no Miranda violation occurred.

7 A: That's correct.

8 THE COURT: All right. And then they go in to III. It
9 said Gorman asserts her statement is inadmissible because it
10 was not voluntarily given. Right after that, the Court of
11 Appeals says, in finding the statement was voluntary, the
12 Trial Court evaluated the totality of circumstances and made a
13 requisite finding. So, they're saying that the Trial Court
14 said, looked at all those issues about inadmissibility on the
15 voluntariness and the Trial Court was right, that it was
16 voluntary?

17 A: Yes, sir.

18 THE COURT: All right. So, whether or not you objected,
19 the Court of Appeals said it was proper, correct?

20 A: Yes, sir.

21 THE COURT: All right. Now, the issue about the
22 California allegations, whatever they are is not important.
23 But what I understand your theory or what you were operating
24 under was if you brought character witnesses forward for Ms.
25 Gorman, then in reply you were afraid the state was gonna be

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1 allowed to bring up those California allegations?

2 A: Yes, sir; that's correct.

3 THE COURT: Even though Judge Hyman had initially ruled
4 that they are inadmissible, the state can't talk about them,
5 if you voluntarily bring up her character, then there is
6 certainly the distinct opportunity the state's gonna attack
7 that by bringing up those California allegations, correct?

8 A: Yes, sir.

9 THE COURT: And you didn't want those going in front of
10 the jury?

11 A: No, sir.

12 THE COURT: All right. Anything on those questions I
13 asked, Mr. Fowler?

14 MR. FOWLER: No, sir, Your Honor.

15 THE COURT: Mr. James?

16 MR. JAMES: I was just going to bring it up in arguments
17 ultimately, Your Honor, but I would direct the Court's
18 attention to Page 195 of the transcript, pretrial motions
19 dated October 31st, 2011, which is where Mr. Galmore launches
20 into his argument against Mr. Gorman's recorded statements
21 coming in and he does bring up the issue that she was
22 exhausted, had no sleep for 40 hours, had taken medications,
23 and took or sought to seek the use of medications.

24 THE COURT: Those aren't questions to the witness?

25 MR. JAMES: No, Your Honor.

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1 THE COURT: All right. Very good. You may step down.

2 A: Yes, sir.

3 MR. JAMES: While Mr. Galtore is packing up, the state's
4 next witness would be Ms. Candice Lively.

5 THE COURT: All right. Very good.

6 MR. JAMES: Your Honor, if there is no objection, may Mr.
7 Galtore be excused?

8 THE COURT: Any objection, Mr. Fowler?

9 MR. FOWLER: Let me speak with my client. No objection
10 to Mr. Galtore being excused.

11 THE COURT: Thank you. You're excused.

12 CANDICE LIVELY, HAVING BEEN DULY
13 SWORN TESTIFIES AS FOLLOWS:

14 MS. LIVELY: My name is Candice Lively, L-I-V-E-L-Y.

15 THE COURT: Go ahead, Mr. Attorney General.

16 DIRECT EXAMINATION OF CANDICE LIVELY BY MR. JAMES:

17 Q: Good morning, Ms. Lively?

18 A: Good morning.

19 Q: It's still morning.

20 Where do you work now?

21 A: I am the Deputy Solicitor in Chester County for the 6th
22 Circuit.

23 Q: Where did you work before?

24 A: Before then, I was a Senior Resource Attorney at the
25 Children's Law Center and an Adjunct Professor for the

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1 University of South Carolina School of Law, and then before
2 then, I worked here. I was a Senior Assistant Solicitor for
3 the 15th Judicial Circuit.

4 Q: Did you prosecute this case?

5 A: I did.

6 Q: Did you receive motions pursuant to Rule 5 and *Brady* from
7 any opposing counsel representing Ms. Gorman?

8 A: I did.

9 Q: Okay. And did you provide materials to Ms. Gorman and
10 opposing counsels responsive to those motions?

11 A: Everything I had, they had.

12 Q: Okay. Did you ever attempt to wrongfully hide any
13 evidence or suppress any evidence?

14 A: Absolutely not.

15 MR. JAMES: I beg a moment of the Court's indulgence,
16 Your Honor.

17 THE COURT: Yes, sir.

18 MR. JAMES: It's a brief witness.

19 BY MR. JAMES:

20 Q: Ms. Lively, much has been made about how the state's
21 theory of this case changed in the course of the prosecution.
22 How did the state's theory of the case change?

23 A: Whenever this case first came about, we had a problem
24 with how the pathologist expert at MUSC was giving us a
25 timeline in comparison to our child abuse pediatrician, who is

1 Dr. Anne Abel. Whenever I talked to the pathologist, she was
2 giving me at timeline for when the child's injuries could've
3 been inflicted -- and let's be really clear, there was never a
4 question this child was murdered, so the pathology of the case
5 was not the issue. What the issue was, is who could have done
6 it. So, my pathologist that I talked to Dr. Schandl, stated
7 it could've been up to 36 hours prior to the time whenever he
8 came to the hospital on that Monday. And then whenever I
9 talked to Dr. Anne Abel, she said this is what you got to look
10 at. You've got to look at injuries that the child had and the
11 time that he would've actually exhibited some type of
12 symptoms. So, when Dr. Abel got involved and gave me a
13 timeline, she's the one that gave me the timeline of three
14 hours and up to possibly six hours as well as our radiologist
15 that we got involved who was a neuroradiologist.

16 So, initially, whenever the state got the case and
17 unfortunately, this happens a lot of times with child
18 homicides especially, the, the issue that we had to try to do
19 was narrow that timeframe. Mr. Palmer did pass a polygraph
20 test and, even though that's not evidence, it is something for
21 the purposes of investigating a case that we do consider. He
22 was charged initially with unlawful conduct towards a child
23 and for being aware of certain injuries to the child over a
24 period of time, but once I got both Dr. Schandl and Dr. Abel
25 in the same room and I said we need to have a meeting of the

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1 minds so I can understand exactly what happened in this case,
2 we were able to determine that it was not just shaking as the
3 mechanism that killed this child, it was shaking and impact,
4 which is the blunt force trauma, and clearly everyone agreed
5 at that point in time that the child would've been immediately
6 symptomatic, meaning he would've been unconscious, then he
7 would have had seizures, and then he would have been beyond
8 medical help, and he would've died, which he did.

9 So, the theory of the case did take time to evolve,
10 because you do have conflicting medical experts and then, when
11 I say conflicting, I don't mean that they said he died in a
12 different way, it was the timeline that we had to come down
13 to. So, once I was able to do that, then I clearly had only
14 two people that could've access to the child on the day he
15 actually died. Or let me take that back, the day he showed up
16 in the ER and was basically brain dead at that point from what
17 the doctors were telling me. Even though they put him on life
18 support and kept him on life support for about three more
19 days.

20 Q: So, you're saying he died another two to three days
21 after?

22 A: Exactly. He actually, when they pulled the plug, I think
23 it was that Wednesday, he had gone to the hospital through an
24 ambulance on that Monday.

25 Q: No further questions. Please answer any questions that

1 Mr. Fowler may have for you.

2 A: Thank you.

3 THE COURT: Mr. Fowler?

4 CROSS EXAMINATION OF CANDICE LIVELY BY MR. FOWLER:

5 Q: You said Dr. Abel and Dr. Schandl and you got together
6 with a meeting of the minds; is that correct?

7 A: Yes, that's exactly right. I needed to make sure that
8 before -- I'm not gonna call someone as an expert witness in a
9 trial, especially a case as critical as this one involving the
10 death of a child, and not having all my expert witnesses in
11 one room so that we can discuss exactly what everybody's
12 expert opinion is. So, I wanted to know what her opinion was,
13 which it didn't change; she still said it could've been up to
14 36 hours. But with a child abuse pediatrician, such as Dr.
15 Abel, who's been an expert for years and who is board
16 certified in that field, she can look at it in more depth than
17 the pathologist because of her expertise. So, I had her and
18 the radiologist as well.

19 Q: Did your office make any kind of written report or
20 summary of this meeting?

21 A: No, I did not. As a matter of fact, what I did was I
22 reported this information to Mr. Galmore, and I was the one
23 that set up that meeting for him to meet with Dr. Schandl and
24 Dr. Abel at MUSC, and I was down there when that happened. I
25 guess he just forgot to mention that.

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1 Q: Did -- okay. Well, how did you communicate this meeting
2 or meetings, what have you, how did you communicate this to
3 her defense attorney?

4 A: They were there.

5 Q: They were there?

6 A: They weren't there for my initial meeting at MUSC. I was
7 going down there to find out where we were in regards to the
8 expert witnesses. Once they told me what their opinions were
9 gonna be, I called Mr. Galmore and I told him, I said this is
10 what's going on. This is why Mr. Palmer is going to be
11 charged as well, and I can set up a meeting for you to speak
12 with my experts so that you can have all the information you
13 need in order to understand what the state's position is at
14 this time. So, I did. I set it up for them and I was down
15 there at the time whenever they met with Dr. Schandl and with
16 Dr. Abel.

17 Q: But you never had any kind of written report of this
18 meeting typed out or summarized or anything like that?

19 A: I thought the best thing was to give them an opportunity
20 to sit there and ask every single question they wanted of who
21 the experts were in the case. They already had all of their
22 medical records, they had the autopsy report, they had every
23 single thing that I had whenever I went down there to meet
24 with them. And I was able to determine from Dr. Abel what the
25 timeline was gonna be despite the fact that Dr. Schandl was

1 saying that there was a larger timeframe. I wanted to make
2 sure that the defense had exactly what I had before we brought
3 those witnesses into court. So, they had the opportunity
4 without me being in the room to talk to them to whatever
5 extent they felt necessary. And no, no additional reports
6 were made. They got to talk to them in person.

7 Q: Early on today's testimony, it was my understanding that
8 Defense Attorney Floyd was her attorney for two years and then
9 practically Attorney Galmore was her attorney for two years
10 soon thereafter. How many supplemental discovery requests or
11 how many supplemental discovery requests did you provide? How
12 much additional information did you provide in that five years
13 after the initial discovery request was provided to you by the
14 public defender's office?

15 A: First of all, this case didn't pend for five years. So,
16 that is incorrect.

17 Q: But she was represented for five years by the public
18 defender's office, wasn't she?

19 A: No.

20 Q: Okay. Okay.

21 A: The child died in 2008 and she got an attorney through
22 the public defender's office. We tried the case I think it
23 was 2011 and I was gone by -- I was actually at another job by
24 2012. So, it's not physically possible.

25 Q: Well, three years?

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1 A: Yeah. And the way that discovery works and the way that
2 I handle it all the time is anything that comes to me
3 immediately gets copied and sent over to the defense. They
4 would not have needed to file supplemental discovery requests;
5 anything that I get, they got. The reason why this case was
6 pending for so long was because there was this really strange
7 evidentiary issue in regards to the polygraph, which I'm not
8 gonna belabor, but the codefendant's attorney felt like this
9 was gonna be a landmark case in trying to have the polygraph
10 admissible in court. So, we had to do all of this stuff on
11 the record. I had -- the state had to hire an expert witness
12 from somewhere up north to come in and testify about why it's
13 not reliable. So, that was an evidentiary hearing, I don't
14 even know how long it lasted, but I all I know is that
15 probably put this case off about a year and every single piece
16 of that, even though it was not directly relevant to your
17 client, she got every piece of it and was allowed to be a part
18 of every part of that part of the discovery.

19 Q: So, you said she but -- are you saying her attorney did?

20 A: Uh-huh, (affirmative response). Yeah.

21 Q: Okay.

22 A: I'm sorry; yes, her attorney.

23 MR. FOWLER: Just a moment, Your Honor, please?

24 THE COURT: Yes, sir.

25 MR. FOWLER: No further questions, Your Honor.

1 MR. JAMES: Nothing additional from the state, Your
2 Honor.

3 BY THE COURT:

4 THE COURT: Just one question, Ms. Lively?

5 A: Yes, sir.

6 THE COURT: Regarding the -- when you initially got the
7 Rule 5 and *Brady*, that put the state under a continuing
8 obligation from that day forward to provide any information to
9 the defense that came into your possession?

10 A: Yes, sir.

11 THE COURT: And so, that's why you arranged for the
12 meeting with the experts down at MUSC?

13 A: Yes, sir.

14 THE COURT: Because that had come in and it obviously
15 changed what was happening in that case?

16 A: Yes, sir.

17 THE COURT: All right. Any -- any questions based on the
18 Court's questions, Mr. Fowler?

19 MR. FOWLER: No questions.

20 THE COURT: And, Mr. James?

21 MR. JAMES: Nothing, Your Honor.

22 THE COURT: Do you wish Ms. Lively to be excused to go
23 back to the 6th Circuit?

24 MR. JAMES: Not yet, Your Honor, she is also a witness in
25 the matter of John Gerard.

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1 THE COURT: All right. Well, you can't leave. I'm
2 sorry, ma'am.

3 A: Thank you, Your Honor.

4 THE COURT: All right. All right. So, your next witness
5 then?

6 MR. JAMES: The state next calls Mr. -- Ms. Susan
7 Hackett?

8 THE COURT: All right. Ms. Hackett, please?

9 If there is anyone that has cases after this, when we're
10 done with this particular case, we're breaking for lunch. So,
11 y'all might as well go and we'll resume at 2 o'clock. All
12 right? So, if there's anybody here that doesn't have anything
13 to do with this particular case, y'all can go and come back at
14 2 o'clock.

15 Thank you.

16 SUSAN HACKETT, HAVING BEEN DULY SWORN
17 TESTIFIES AS FOLLOWS:

18 MS. HACKETT: Susan Hackett, H-A-C-K-E-T-T.

19 THE COURT: All right. Go ahead, sir.

20 DIRECT EXAMINATION OF SUSAN HACKETT BY MR. JAMES:

21 Q: Good morning, Ms. Hackett.

22 A: Good morning.

23 Q: Where do you work right now?

24 A: I work at the Office of Appellant Defense.

25 Q: And were you working there at the time of this appeal?

1 A: I was.

2 Q: And did you represent Ms. Gorman on this appeal?

3 A: I did.

4 Q: All right. Do you recall what issue you raised on
5 appeal?

6 A: I have my brief to the Court of Appeals in front of me.
7 There were two issues. The first issue was divided into ---

8 MR. FOWLER: If I may, Your Honor, can she identify that
9 document a little bit more succinctly, with the date and ---

10 THE COURT: Just state again what you're looking at
11 please, ma'am?

12 A: The Final Brief of Appellant that I filed in the Court of
13 Appeals. It is dated August 26, 2013. I raised two issues.
14 The first issue concerned the admissibility of Ms. Gorman's
15 statement. It was subdivided into three parts. The second
16 issue was the matter of the directed verdict of acquittal on
17 all counts; homicide by child abuse, aiding and abetting, and
18 unlawful conduct toward a child.

19 This case was ultimately taken to the South Carolina
20 Supreme Court, where I proceeded only on the directed verdict
21 claim.

22 BY MR. JAMES:

23 Q: Ultimately, this appeal and the appeal of Mr. Palmer were
24 resolved in the same ruling. How did that come about that
25 they were -- that the appeals were made and kept together?

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1 A: Well, they weren't kept together. They were ultimately
2 put together. When the Notices of Appeal were filed, they
3 were filed separately by the individual lawyers who
4 represented the individuals. A lawyer in my office named
5 Robert Pachak, P-A-C-H-A-K, represented Mr. Palmer. Ms.
6 Gorman's case was assigned to me. Mr. Pachak came to me and
7 explained that the Palmer family was quite upset that we were
8 representing both. I talked to Ms. Gorman about this, I
9 believe in writing, but also by phone, she was also not
10 thrilled with both of us handling the cases. I then filed a
11 motion for the appointment of outside counsel. The Court of
12 Appeals denied my motion, so I stayed on as Ms. Gorman's
13 counsel.

14 Thereafter, Mr. Pachak and I represented the clients, of
15 course, individually. We were not aware that both had raised
16 the directed verdict issue. The Court of Appeals scheduled
17 the oral arguments in the case to occur on the same day before
18 the same panel.

19 Q: I want to stop you for just a moment and go back to one
20 of the things you just said. Right now, you indicated that
21 you were not aware that Mr. Pachak had raised the directed
22 verdict issue, correct?

23 A: I don't think that I was. It's possible, but I mean,
24 once the argument was ready, yes, but when I was preparing
25 what to raise in Ms. Gorman's case, I don't remember knowing

1 that that's what happened, but my memory could be faulty in
2 that regard.

3 Q: Okay. Did you attempt to coordinate or collaborate with
4 Mr. Pachak on this matter in any way?

5 A: No, we did not file joint records on appeal, which
6 sometimes happens when you have codefendants. We, we did not
7 collaborate in that regard. When the oral arguments were
8 scheduled, Mr. Palmer's case was scheduled to go first. I
9 wanted to cede the argument because it was directly related to
10 our case. At that point, I did know that he had a directed
11 verdict issue raised. I was sitting in the back of the
12 courtroom. At that time, Chief Judge Few was at the Court of
13 Appeals. He was the Chief Judge of our panel as well. When
14 he took the bench, he asked if I was present in the courtroom.
15 I indicated that I was, and he said that the Court, sua sponte
16 had decided to consolidate the oral arguments. And there's an
17 appellant court rule, I cannot remember the number right now,
18 maybe 215, but that permits the court to consolidate appeals
19 when there is the same issue raised. I did not object to the
20 consolidation.

21 Q: Are you aware of any grounds upon which you could've
22 objected to consolidation of the appeals?

23 A: At the time, I was just so surprised that it was
24 happening, because that was not how I thought things were
25 going to proceed as we had not been made aware of that

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1 previously. So, I did not even think of objecting at that
2 moment.

3 Q: But are you now aware of any grounds upon which you could
4 have objected?

5 A: I'm not. The rule provides that it's in the Court's
6 discretion of whether to consolidate. I'm not aware of any
7 case law that regards when the Court would not be permitted to
8 do so. I don't know what grounds I could've objected.

9 MR. JAMES: No further questions, Your Honor.

10 THE COURT: All right. Mr. Fowler?

11 CROSS EXAMINATION OF SUSAN HACKETT BY MR. FOWLER:

12 Q: Okay. You did file a motion to provide outside -- and
13 some of this, I took notes while you were talking, so, some of
14 it might go over again, but briefly. You filed a motion to
15 provide outside counsel for my client at the appellant level;
16 is that correct?

17 A: That's correct.

18 Q: And why did you do that?

19 A: Mr. Palmer and his family had expressed a great -- as I
20 understood from Mr. Pachak, I never spoke to them personally
21 of course -- they expressed to Mr. Pachak that they thought
22 that by us representing both of them that there would be some
23 sort of conflict of interest. Mr. Pachak brought those
24 concerns to me. I talked to my client, Ms. Gorman, about
25 them. She likewise thought that there may be a conflict and

1 requested that I move for the appointment of outside counsel
2 and I complied with her request. I did not perceive a
3 conflict, but I wanted to comply with Ms. Gorman's request.

4 Q: Well, I guess my question a little bit more specifically
5 is, okay, so, you're saying Palmer and both your client said
6 that there's a conflict, but what -- what was the meat on the
7 bone, so to speak, of this -- of this motion for outside
8 counsel? Was it -- was it just my client saying there's a
9 conflict or did you specifically go into reasons why you felt
10 like there needed to be some kind of other attorney for my
11 client in this motion, other than just the general, there
12 appears to be a conflict.

13 Q: My file on this case is three banker's boxes that are in
14 my car in the parking lot. I'll be happy to get them. I
15 brought in with me what I thought would be related to the
16 questions today. I did file a specific motion on it. I don't
17 see it in the materials that I have with me at the moment. I
18 am happy to try to dig those out of the three boxes that are
19 sitting in my car or would've been prepared to talk about it
20 more had I known the questions were gonna go there.

21 Q: Well, I appreciate the amount of apparent work that you
22 have on this, but all I'm looking for is the motion for
23 outside counsel. You stated in general terms so far that the
24 Palmer and my client said there was a conflict, but are you
25 saying -- but a little more specificity if at all possible

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1 with this because, you know, apparently the -- the Court of
2 Appeals on your direct examination, said that they were gonna
3 consolidate oral arguments sua sponte, and you said you were
4 surprised at it. So, my question is, what specificity did you
5 have in that motion to have outside counsel that was the
6 substance of this conflict?

7 A: I do not know the answer to that question because I don't
8 have the motion in front of me.

9 THE COURT: You want her to go get it? If you want her
10 to go get it, I'll be glad to -- for us to take a break.

11 MR. FOWLER: May we approach for a moment, Your Honor?

12 THE COURT: Sure.

13 (REPORTER'S NOTE: Bench conference is held off the record.)

14 THE COURT: All right. Ms. Hackett, since the questions
15 have come up and you've indicated to the Court that the
16 information is available to you, but just not right here, what
17 we're gonna do considering the time is we're gonna stop for
18 lunch and we'll resume at 2 o'clock. That should give you
19 plenty of time to get to your car and find that, also to have
20 lunch yourself, and to then show it to both the assistant
21 attorney general and Mr. Fowler and let them look at it and
22 then answer any questions. We'll resume at 2 o'clock.

23 All right?

24 A: Thank you.

25 THE COURT: Thank you very much.

1 MR. JAMES: Thank you, Your Honor.

2 THE COURT: 2 o'clock. Thank you.

3 **RECESS**

4 *****OFF THE RECORD*****

5 **(On the Record.)**

6 THE COURT: So, with that, where is Ms. Hackett? Ms.
7 Hackett, if you'd come back and resume the witness stand,
8 please, ma'am.

9 And gentlemen, did you have a opportunity to look at the
10 document that y'all were looking for?

11 MR. JAMES: Yes, Your Honor.

12 MR. FOWLER: Yes, sir.

13 THE COURT: All right. Very good. All right. So, it
14 was on -- on cross examination and so whatever -- you want to
15 continue with that cross examination, Mr. Fowler?

16 MR. FOWLER: Yes, sir. And just for the record, the -- I
17 think I'll let Ms. Hackett discuss this.

18 CONTINUATION OF CROSS EXAMINATION OF SUSAN HACKETT BY MR.

19 FOWLER:

20 Q: Ms. Hackett, during the break you provided us with some
21 information; is that correct?

22 A: Yes, sir.

23 Q: Okay. And what was that document?

24 A: It was a motion for the appointment of outside counsel.

25 Q: And when was that filed with the Court?

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1 A: I dated it October 15th, 2012. The stamp date is October
2 15th, 2012 with the South Carolina Court of Appeals.

3 Q: Okay. And you're the one who signed this, correct?

4 A: Yes, sir.

5 Q: In the -- on Page 3 under the law and analysis about four
6 lines down under Number 1, Number 1, what does that state?

7 A: If one -- the representation of one client will be
8 directly adverse to another client ---

9 Q: Okay. And if you could stop there for a moment. What
10 did you mean by that in terms of, of stating to the court that
11 there was an adverse risk to your client from this?

12 A: Well, having reviewed the motion over lunch, earlier I
13 was asked whether I knew that Mr. Palmer had raised a directed
14 verdict issue on appeal, it's clear from this motion that I
15 had read Mr. Palmer's appeal, so I would like to amend my
16 earlier answer to reflect that I was aware of that. In
17 regarding the conflict of interest rules being cited in the
18 motion, that concerned the state's theory at trial that the
19 state was unsure which individual may have inflicted the harm
20 and I don't remember the exact language at trial, but
21 essentially the state was putting forward all the evidence it
22 had against both individuals and permitting the jury to make
23 the decision. And so one was cited, subpart 1 of Rule 1.7(a)
24 of the Rules of Professional Conduct was cited because we were
25 moving for the appointment of outside counsel on the potential

1 conflict of interest of representing both of them.

2 Q: So, you did feel at that time, the time of the signature
3 that there was a direct adverse relationship between the two
4 codefendants, correct?

5 A: I believe my -- what I specifically told the Court was
6 that I was concerned that it may result in a Sixth Amendment
7 violation, that's at the bottom of Page 3. I did not assert
8 that there was a conflict of interest but I did want the Court
9 to be aware of the facts in the case, that it was a bit
10 unusual set of facts in the case with codefendants and that
11 there was a potential of a Sixth Amendment violation. So, I
12 tried to word it in a way that was accurate and careful.

13 Q: But the law that you quoted says that it will be directly
14 adverse to another client, right?

15 A: Well, the law that I quoted was 1.7(a) and I quoted both
16 subparts 1 and 2.

17 Q: And that second subpart Number 2 there is a significant
18 risk that the representation of one or more clients will be
19 materially limited by a lawyer's responsibility to the other
20 client. What does that mean to you or why did you include
21 that in here?

22 A: Well, I included both subparts because the motion was to
23 make the court aware that there was a potential for a conflict
24 of interest here. Subpart 2 means to me that there is some
25 risk that when you're representing one person there is a

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1 potential or there is a great likelihood that that
2 representation will be limited in some way by responsibility
3 to another person who is your client. And there is some case
4 law about this regarding where you may -- I believe one of the
5 cases, I can't remember the name but it regards representing a
6 husband and wife who are charged with the same thing and the
7 state comes back with an offer that says, well, okay, if you
8 husband take all the drugs, we'll give you five years and let
9 the wife go, and the lawyer at that point, his or her
10 representation is materially limited by this conflict that's
11 created, is it in the husband's best interest to take the
12 offer, certainly it's in the wife's interest for the offer to
13 be taken. So, that's what I understand subpart 2 to refer to.
14 So, you were very concerned, you even quoted the case law here
15 on the stand, you were very concerned that there were issues
16 related to the conflict between the two codefendants, correct?
17 A: I did have concerns that there was the, certainly the
18 appearance of a conflict, the way the case had proceeded at
19 the trial was that there was no clarity as to which of the
20 individuals may have inflicted the harm. Neither of them
21 pointed the finger at the other and there was not clear
22 evidence that one harmed the other and the -- one harmed the
23 child and the other just stood by. Some of the cases dealing
24 with homicide by child abuse, there's a pretty evident that
25 one of the parties inflicted the harm while the other person

1 simply stood by.

2 Q: And just to wrap this up on this portion of the cross
3 exam, at the top of Page 4, you state there is a screening
4 mechanism in light of the defenses presented, it may relate to
5 your earlier testimony but what do you mean by a screening
6 mechanism on this?

7 A: 1.10(e) of the professional conduct, which is cited on
8 Page 3, talks about employees of a public defender office
9 representing individuals with conflicts of interest as long as
10 there is screening. And essentially that would mean that if
11 there is a matter that needs to be kept apart from another
12 attorney that's of the same firm you have to implement some
13 sort of screening. So, that's what that would be if there's a
14 some sort of -- for example, if Mr. Palmer had confessed to
15 his appellate lawyer that he had done this, that information
16 could never make its way to me. And 1.10 would require that
17 that be screened away from me.

18 Q: Okay. And the Court of Appeals, and I believe you showed
19 this to me earlier, did they reject or approve this motion?

20 A: The order was filed on November 16th, 2012 and the Court
21 of Appeals denied the motion to appoint outside counsel.

22 Q: Did they quote in case law in their denial?

23 A: No, sir. It's two sentences.

24 Q: And do you have that with you?

25 A: I do.

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1 Q: Could you read it to the Court, please?

2 A: Certainly. Appellant's counsel has filed a motion for
3 the appointment of outside counsel due to a conflict of
4 interest. Petitioner's motion is denied. And that's
5 apparently a scrivener's error and should be Appellant.

6 Q: Okay. So, the point in that is, the Court of Appeals
7 provided no case law or no legal standing or anything
8 substantive in their denial of your motion, did they?

9 A: No, sir.

10 Q: Okay. Do you have an opinion on why that is?

11 A: I don't have an opinion on it, no, sir.

12 Q: Earlier you said, and I don't remember specifically the
13 context of this, but you said you were so surprised that they
14 turned down this motion. Is that correct?

15 A: No, sir. I believe I was referencing being surprised
16 that when we showed up for argument that the Court was
17 requesting to consolidate the oral arguments.

18 Q: Well, tell me about the consolidation of oral arguments.
19 Did you file any motion to divide them or what was your
20 position at the time?

21 A: Well, there was no motion to divide because the cases
22 were not together. The oral arguments were not consolidated.
23 When the roster came out, both cases were listed separately.
24 We had separate appellate case numbers, we had a separate time
25 allowances for our arguments. So, when I arrived at court, I

1 was surprised when the Judge from the bench requested
2 consolidation.

3 Q: Did they provide any kind of documentation stating why
4 they provided -- decided to consolidate?

5 A: No, sir.

6 Q: And there's -- and like you said, well, just to repeat
7 what you said, you said up to that moment, they were separate
8 cases, correct?

9 A: Yes, oral argument had been scheduled on the same day and
10 oral argument was back to back, meaning Mr. Palmer's case was
11 going first, we were going second. But at that point, it was
12 all separate.

13 Q: How did the consolidation of oral arguments affect what
14 you did?

15 A: Not at all. Nothing.

16 MR. FOWLER: If I might have a moment, Your Honor?

17 THE COURT: Yes, sir.

18 MR. FOWLER: After consulting with my client, Your Honor,
19 no further questions.

20 THE COURT: All right. Very good.

21 Any redirect?

22 MR. JAMES: Very briefly, Your Honor.

23 REDIRECT EXAMINATION OF SUSAN HEWITT BY MR. JAMES:

24 Q: Very briefly, Your Honor. Did you use a screening
25 process in the office of appellate defense?

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SUSAN HACKETT - REDIRECT BY JAMES

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1 A: I don't remember specifically employing a screening
2 process in this case, but I don't remember -- I certainly
3 obtained no information that was as such that would require a
4 screening process and Mr. Pachak would not have been privy to
5 any confidential information between me and Ms. Gorman.

6 Q: Okay. Did you have your full time to argue at your oral
7 arguments?

8 A: We did. I was trying to remember when I was being
9 questioned if any time was not given. The person who usually
10 suffers at consolidation is the state. Typically, we -- the
11 appellant, we often get our full 10. And then often the state
12 is relegated to one 10 minutes, instead of getting 10 minutes
13 to respond to one person and 10 minutes to respond to the
14 other. But my memory in this case is that William Blitch of
15 the attorney general's office got full 10 minutes to argue
16 against Mr. Palmer's case and a full 10 minutes to argue
17 against mine and we did have different issues. The directed
18 verdict issue was the same for both. Obviously the evidence
19 against them was different. But Mr. Palmer, as the motion
20 reflects, had an issue regarding an enforcement of a plea
21 agreement and as has been discussed earlier here today, we had
22 a motion -- or we had an appellate issue concerning the
23 statements given by Ms. Gorman. So, my memory is that Mr.
24 Blitch go his full 20 minutes.

25 Q: Do you recall preparing an affidavit in response to these

1 allegations?

2 A: Yes, sir.

3 MR. JAMES: If I may approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. JAMES:

6 Q: Do you recall when you prepared that affidavit?

7 A: The 15th of February.

8 Q: All right. Is this -- I would identify this as State's.

9 1. Is this a copy of that affidavit?

10 A: It is.

11 Q: All right. Is that your signature?

12 A: It is.

13 Q: All right.

14 MR. FOWLER: Your Honor ---

15 THE COURT: Have you seen that, Mr. Fowler?

16 MR. FOWLER: Yes, sir. I've seen it but I don't know
17 what the purpose of it is. I mean, she is here to testify and
18 this affidavit seems to be somewhat duplicative in terms of
19 the issues. I mean, Mr. James could've raised any of these
20 issues and I could've had the opportunity to cross examine,
21 Your Honor. I'd object to it going into evidence.

22 THE COURT: All right. What's the purpose of ---

23 MR. JAMES: Your Honor, this affidavit was provided as
24 attached to a motion to dismiss the allegations of ineffective
25 assistance or counsel filed by email with the Chief Admin

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SUSAN HACKETT - REDIRECT BY JAMES

1 Judge, Judge Seals on Friday and then mailed to the Clerk of
2 Court. I just wanted to confirm that it was on the record.
3 Additionally, there was some ambiguity as to the precise
4 nature of the allegations of ineffective assistance of counsel
5 as based in the original application. And so it gets a little
6 bit flexible to make sure that everything is covered.

7 THE COURT: All right. Well, if it's -- was filed with
8 the clerk of court's office, then it's a matter of record in
9 this particular case and I see no harm in allowing it to be an
10 exhibit in this matter because the Court has before it the
11 full and complete record of the case as filed with the clerk
12 of court's office.

13 MR. JAMES: All right. Should I go ahead and mark this
14 as State's Exhibit 1?

15 THE COURT: Has it been marked by the court reporter?

16 COURT REPORTER: No, sir.

17 THE COURT: All right. Please do so. And just leave it
18 with her.

19 MR. JAMES: Thank you very much, Your Honor.

20 MR. FOWLER: And, Your Honor, just to be clear, are we on
21 redirect now or is he still in his direct examination?

22 MR. JAMES: This is redirect.

23 THE COURT: It was redirect. But again, I don't find it
24 to be new matter. If anything it's duplicative of the record
25 that is before the Court because as indicated it's part of the

1 clerk of court's file and I have the full clerk of court's
2 file before me. So, if anything it's an extra piece of paper
3 more than anything else. So, I'm gonna allow it.

4 STATE'S EXHIBIT NUMBER 1

5 ADMITTED INTO EVIDENCE

6 MR. JAMES: All right. I have no further questions, Your
7 Honor.

8 THE COURT: Anything else on this witness, Mr. Fowler?

9 MR. FOWLER: No, sir, Your Honor.

10 THE COURT: All right. Is there any reason that Ms.
11 Hackett cannot be excused?

12 MR. JAMES: No. I have no objection to her being
13 excused.

14 THE COURT: Mr. Fowler?

15 MR. FOWLER: She can be excused, Your Honor.

16 THE COURT: All right. Ms. Hackett, you are released
17 from your subpoena and may go back to Columbia, I guess.

18 MS. HACKETT: Thank you.

19 THE COURT: All right. Yes, ma'am.

20 All right. Further witnesses on behalf of the state?

21 MR. JAMES: There will be no further witnesses on behalf
22 of the state, Your Honor.

23 THE COURT: Okay. Any reply witnesses on behalf of the
24 appellant?

25 MR. FOWLER: No, sir, Your Honor. Are we scheduled to

CLOSING BY FOWLER

1 have closings?

2 THE COURT: We're gonna have some arguments right now.

3 MR. FOWLER: Yes, sir.

4 THE COURT: All right. So, on behalf of the applicant,
5 then, Mr. Fowler? I'll be glad to hear from you.

6 CLOSING BY FOWLER:

7 MR. FOWLER: Yes, sir. Your Honor, I think today we went
8 over -- I would like to think fairly thoroughly the
9 application of my client in this issue. Both at the trial
10 level and the appellate level. We discussed severance; we
11 discussed directed verdict; we discussed the hearsay issues;
12 Miranda rights; the lack of the expert witness in context in
13 her case, Your Honor; the lack of character witnesses and the
14 lack of research. And, Your Honor, when Attorney Galmore went
15 on the stand, he highlighted some of the issues that I think
16 are very pertinent here. There was no -- he mentioned several
17 things and I hope I include them all but there in his
18 testimony. He stated he could've called the Bass Pro Shops
19 manager or an employee to verify some time issues. You know,
20 and he said a video store witness could've helped out in terms
21 of the timestamp of the check or what have you or the issues
22 there with the time. He stated there as an issue of time
23 lapse of nine minutes to get across the county from western
24 Horry to Bass Pro Shops or what have you and that's a very
25 long drive and, you know, those were -- by his own admission,

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CLOSING BY FOWLER

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1 I believe were not brought up adequately on the trial level.
2 The Court of Appeals even in Section 4, and we discussed this
3 at length earlier, but the Court of Appeals mentioned that he
4 did not properly discuss the Miranda issues and whether
5 whatever the Court's decision on that, that is something that
6 the Court of Appeals brought up in Section 4 there and he
7 seemed to be apologetic to it in my opinion. Also, he
8 mentioned that there was no -- that even though they flew in
9 an expert witness, he was not used in this case. At the
10 appellate level, there was a -- several issues brought up,
11 Your Honor, in terms of dividing this case between the parties
12 in terms of, if I may ---

13 THE COURT: Yes, sir.

14 MR. FOWLER: The -- they were tied together and some
15 suppression of matters or what have, Your Honor, so I mean
16 there's various issues that we were -- that we brought out on
17 cross exam of Ms. Hackett here today. So, Your Honor, I do
18 feel like we have discussed the relevant issues as they are --
19 have been presented to the Court. We feel Mr. Galmore and Ms.
20 Hackett also expanded on the issues that we presented, Your
21 Honor, and were representative of our issues in a lot of ways.
22 So, that's where we stand at this point, Your Honor. And we
23 thank the Court and we ask for a judgment in our favor.

24 THE COURT: All right. Very good.

25 All right. Mr. James?

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CLOSING BY JAMES

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1 CLOSING BY JAMES:

2 MR. JAMES: Yes, Your Honor. As to the Miranda issue,
3 there was no Miranda violation that occurred as is indicated
4 by the Court of Appeals in its opinion. Your Honor, the fact
5 that she was under stress and without necessarily adequate
6 sleep and in a hectic situation with the death of the child
7 was brought up by counsel as is evident in the transcript
8 before the Court.

9 As to the lack of expert witnesses, Your Honor, counsel
10 gave a -- articulated a specific reason why he didn't bring up
11 the expert which is that the doctors for the state had already
12 gone over everything that his expert would've testified to and
13 he did not wish to provide the state any additional
14 opportunity to go back into any issues that they may have
15 forgotten.

16 As to character witnesses, Your Honor, I will not belabor
17 that point but none of those character witnesses were
18 presented here today. Therefore, any consideration of what
19 they may or may not have testified to at trial would be pure
20 speculation. Furthermore, counsel articulated a strategic
21 reason that he did not want to get into character as an issue
22 because it would've opened up a can of worms as to the
23 applicant's prior history as well as any unfortunate
24 interactions that she may've previously had with relatives
25 within the case.

1 As to the allegations regarding his inadequate
2 investigation of the alibi, he did indicate that he performed
3 a degree of investigation into the alibi defense but found
4 that there wasn't really enough there to follow-up upon. And
5 furthermore, no witnesses from Bass Pro Shop or any other
6 witnesses that could've testified to the alibi defense were
7 presented here today and therefore applicant cannot meet her
8 burden.

9 Your Honor, as to the hearsay, the hearsay wasn't
10 hearsay. The instances indicated by applicant in her
11 testimony as well as in the original application were both
12 regarding statements that she had made. Statements made by a
13 party opponent or defendant are very simply not hearsay as a
14 matter of law.

15 Your Honor, as to the directed verdict motions, counsel
16 made his directive verdict motions and they were simply
17 denied.

18 As to ineffective assistance of appellate counsel, Your
19 Honor, I would respectfully refer to the record before the
20 Court and that counsel sought to have outside counsel
21 appointed and was denied by the Court of Appeals. There's
22 nothing more she can do on that subject.

23 Furthermore, there is no authority within my knowledge in
24 the law to provide her any means of objecting to the Court's
25 procedural decision to go ahead and take care of both oral

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RULING OF THE COURT

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1 arguments at the same time given that they were -- happened to
2 be scheduled for the same day before the Court of Appeals
3 before Justice Few. So, Your Honor, there was no deficiency
4 of counsel, there was no deficiency of appellate counsel.
5 Furthermore, Your Honor, there was no evidence of -- no
6 compelling evidence introduced to show that the state did
7 anything wrong in terms of its *Brady* obligations in terms of
8 provision of the evidence and in terms of how it handled this
9 case.

10 And so, Your Honor, based on all of the allegations that
11 are set forth before the Court today, Applicant has failed to
12 show a deficiency on the part of either trial counsel or on
13 the part of appellate counsel, has failed to show any
14 prosecutorial misconduct, failed to show any prejudice from
15 any of the allegations thereto. And therefore, her request
16 for relief should be denied.

17 RULING OF THE COURT:

18 THE COURT: All right. Very good.

19 Regarding these matters that have been presented to the
20 Court today -- first, I'll set forth a legal standard. The --
21 where the allegations of ineffective assistance of counsel are
22 made, the question becomes whether counsel's conduct so
23 undermined the proper functioning of the adversarial process
24 that the trial cannot be relied on as having produced a just
25 result. The Court must apply the two-prong test as set forth

1 in *Strickland v. Washington*, the 1984 decision of the U.S.
2 Supreme Court when considering this claim of ineffective
3 assistance of counsel. The applicant must show that the
4 counsel's performance fell below an objective standard of
5 reasonableness either of the trial attorney or the appellate
6 attorney in this case, and but for counsel's error, there's a
7 reasonable probability the result would have been different,
8 either at trial or as a result of the appeal. And a
9 reasonable probability is a probability sufficient to
10 undermine confidence in the outcome of the trial.

11 I find in this particular matter, that all of the
12 particular allegations of ineffective assistance of counsel
13 have, first, not been shown to the Court. But there is more
14 than sufficient evidence in the record as to the testimony of
15 the trial counsel and the testimony of appellate counsel that
16 sets forth, first, the Court finds that their actions on
17 behalf of Ms. Gorman did not fall below the objective standard
18 of reasonableness. The Court finds, based upon the testimony
19 presented that each of them performed properly when faced with
20 the facts and circumstances that each of them had, either at
21 trial or on appeal. I do not find that any matters that were
22 testified to, either the calling of the person from Bass Pro
23 or some other information from the video store or the grocery
24 store, because number one, it's not before this Court, I don't
25 have it in front of me, don't know what it would've been; but

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RULING OF THE COURT

1 secondly, there's nothing to indicate that that would have
2 changed the result such that there's nothing that that's
3 presented to the Court that would undermine the confidence in
4 the outcome of trial in this matter. I do not find that many
5 of the matters that were presented to the Court either on the
6 trial level or the appellate level, the attorneys did exactly
7 what they were supposed to do. Either the presiding judge at
8 the trial level or the appellate courts did not agree with the
9 position taken by Ms. Gorman's attorney, but the attorneys did
10 what they were supposed to do, they raised the issue. They
11 presented the matters to the Court. The Court in its own mind
12 found those reasons not to be sufficient and denied the relief
13 requested by the trial attorney and the appellate attorney.
14 There was nothing else that either of them could do. They
15 raised it. It was denied. That's the end of the matter as
16 far as their particular performance. I find that as far as
17 trial counsel that the attorney set forth and articulated
18 valid reasons for employing the trial strategy that he
19 employed. I did not find his reasoning to be -- certainly did
20 not fall below that objective standard but I did not find or
21 question his reasoning in any of the matters presented. And
22 again, the appellate counsel did what she was expected to do
23 and in some measure did achieve a favorable result on behalf
24 of Ms. Gorman regarding one of the charges, regarding the
25 Court of Appeals' decision and one of the charges in this

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RULING OF THE COURT

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1 matter. So, that in and of itself argues against a
2 performance falling below the objective standard of
3 reasonableness. But in that, therefore, based upon all of
4 these reasons and including but not setting forth, again, all
5 of the testimony presented to this Court, I respectfully
6 decline to grant the applicant's motion for a new trial in
7 this matter.

8 What I'm gonna have you do, Mr. James, is to prepare a
9 proposed order to that effect. I need for you to circulate it
10 to Mr. Fowler before filing it with the Court. And you'll
11 have to -- Madam Clerk, PCRs are outside of the electronic
12 filing.

13 CLERK: They are.

14 THE COURT: Okay. So, you'll just need to email that to
15 my law clerk after you have forwarded it on to Mr. Fowler and
16 then send it to the Court for my review.

17 All right?

18 MR. JAMES: Yes, sir.

19 THE COURT: Thank you very much.

20 MR. FOWLER: Your Honor ---

21 MR. JAMES: Thank you, Your Honor.

22 THE COURT: Yes, sir, Mr. Fowler?

23 MR. FOWLER: Your Honor, may we have that in -- set a
24 time limit on that order of ---

25 THE COURT: Certainly.

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RULING OF THE COURT

1 MR. JAMES: I would respectfully request 30 days.

2 THE COURT: All right. I -- that's at the out -- and I
3 understand, you know, next week, Mr. James, you're somewhere
4 else arguing PCRs somewhere else and I appreciate that and
5 that's why I try to take out the more mundane ones, the
6 continuances and/or the waivers so that you don't have to do
7 those. But, I don't want it to be any longer than 30 days.
8 Obviously, sooner is better, but at the outside, you are
9 granted 30 days to submit an order.

10 MR. JAMES: Thank you, Your Honor.

11 THE COURT: All right. Thank you very much.

12 **ADJOURNED**

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25C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Julia Shawnette Gorman versus State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on February 21, 2018, as reported by Dixie C. Eubank.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

August 8, 2018.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT	
COUNTY OF HORRY	)		
Julia Shawnette Gorman,	)	Case No.: 2015-CP-26-08539	
S.C.D.C. No. 348815,	)		
	)		
Applicant,	)		
	)	ORDER OF DISMISSAL	
v.	)		
	)		
State of South Carolina,	)		
	)		
Respondent.	)		
	)		

2018 FEB 11 PM 12:58
 Horry County Court
 Clerk of Court

This matter comes before the Court by way of an application for post-conviction relief filed by Julia Shawnette Gorman ("Applicant") on December 3, 2015. Respondent made its return on or about May 5, 2016. The Court convened an evidentiary hearing into the matter on Wednesday, February 21, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's trial counsel, James C. Galmore, III, Esq. ("Counsel"), Applicant's appellate counsel, Susan B. Hackett, Esq. ("Appellate Counsel"), and the prosecutor on the case, Candice A. Lively, Esq. ("Solicitor") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2008 term of the Horry County Grand Jury for homicide by child abuse (2008-GS-26-03756). Applicant was further indicted at the February 2010 term for unlawful conduct towards a child (2010-GS-26-00841), and at the May 2010 term for aiding and abetting homicide by child abuse (2010-GS-26-02194). James C. Galmore, III, Esq. represented Applicant, and Candice Lively, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On November 14, 2011, Applicant proceeded to trial before the Honorable Larry B. Hyman, Jr. and a jury. The jury found Applicant guilty as indicted on November 18, 2011. Judge Hyman sentenced Applicant to imprisonment for concurrent terms of 35 years for the homicide, 10 years for the unlawful conduct, and 20 years for aiding and abetting.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Susan Hackett, Esq., who raised the following issues on appeal:

1. Appellant's right against self-incrimination as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution was violated by the introduction of her statements to police where the first statement was the product of an interrogation by officers who failed to advise Appellant of her Miranda warnings and the second statement was tainted by the initial violation and was the product of an involuntary waiver.
 - a. The court erred in admitting the statement made by Appellant prior to officers advising Appellant of her Miranda rights and obtaining a valid waiver of those rights where Appellant clearly was in custody based upon the totality of the circumstances.
 - b. The court erred in admitting the statement made by Appellant subsequent to the officer advising her of her Miranda rights and obtaining an involuntary waiver of those rights because the statement was tainted by the initial violation where the same officers questioned appellant in the same interview room and in close temporal proximity to the prior unwarned interrogation.

- c. The court erred in admitting the statements made by Appellant because the statements were not the product of a voluntary waiver of Appellant's rights due to Appellant's lack of sleep, state of shock and grief over the loss of her grandson, lengthy detention for interrogation, and ingestion of a prescription anti-anxiety drug during the interrogation.
- 2. The trial court erred in failing to direct a verdict of acquittal in Appellant's favor where the state failed to present any direct or substantial circumstantial evidence that Appellant committed the alleged criminal acts.

The parties proceeded to oral arguments on October 9, 2013. By opinion decided February 12, 2014, the South Carolina Court of Appeals affirmed Applicant's convictions for homicide and unlawful conduct towards a child, but reversed her conviction for aiding and abetting. State v. Palmer/State v. Gorman, 408 S.C. 218, 758 S.E.2d 195 (Ct. App. 2014).

Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, raising the following issue:

Did the Court of Appeals err in failing to direct a verdict of acquittal where the state failed to present any direct or substantial circumstantial evidence that Petitioner committed homicide by child abuse and unlawful conduct toward a child?

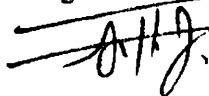
The Supreme Court granted certiorari by order dated September 24, 2014. The parties proceeded to oral arguments on June 17, 2015. By opinion decided July 29, 2015, the Supreme Court of South Carolina sustained the Court of Appeals holdings with respect to Applicant.¹ State v. Palmer/State v. Gorman, 413 S.C. 410, 776 S.E.2d 558 (2015). The Remittitur was issued on September 23, 2015.

Present Application

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

- I. Ineffective assistance of trial counsel, in that:

¹ The Court reversed the two remaining convictions against Applicant's co-defendant, Robert Palmer.



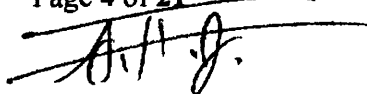
- a. "trial counsel failed to provide alibi witness and alibi defense"
 - b. "did not ask for a direct verdict based on the county which was prejudiced & didn't raise severance"
2. Ineffective assistance of appellate counsel; and
3. Prosecutorial misconduct, in that:
 - a. "of suppression of evidence by prosecution"

Applicant requested relief as follows:

- "direct verdict of acquittal"

Upon motion by Respondent, the Honorable William H. Seals, Jr. issued a Conditional Order of Dismissal dated May 11, 2016, and filed May 23, 2016, finding Applicant exclusively sought relief to which she was not entitled, and granting Applicant twenty days to give specific reasons why the order should not become final. Applicant timely responded and clarified the allegations set forth in the application:

1. Ineffective assistance of counsel, in that:
 - a. "My Fifth and Fourteenth Amendment rights to due process of law against self-incrimination was violated when the detectives interrogated me without properly issuing me my Miranda Rights. My trial counsel was ineffective; in the fact, he failed to satisfy the court by not retracting the tainted statements. The coerced statements were the product of an involuntary waiver."
 - b. "Trial counsel was further ineffective in that my Fifth Amendment right was violated. Trial counsel failed to have the evidence of the coerced video tape suppressed. The court erred in admitting the statements were made under duress. It was not the product of a voluntary statement; due to the shock, grief, the loss of my grandson [REDACTED], the lack of sleep, and the influence of medication (Xanax) during the lengthy, berating, harsh interrogation."
 - c. "In addition, my trial counsel, failed to supply any alibi witness and/or alibi defense."
2. Ineffective assistance of appellate counsel, in that:
 - a. "My appellate defense attorney was ineffective due to the fact she did not request severance of jurisdiction from my co-defendant Robert Andrew Palmer on the Appeal level."



- b. "In addition, my appellate defense attorney should have requested automatic motion for acquittal of my sentence due to the lack of evidence found by the prosecution. Singleton v. State, 313 S.C. 75, 85, 437 S.E.2d 53, 59-60 (1993)."

3. The trial court lacked jurisdiction.

Upon the recommendation of Respondent at the outset of the evidentiary hearing, this Court vacated the Conditional Order of Dismissal and proceeded to a full hearing on the merits of the application, as functionally amended by Applicant's response to the Conditional Order. Applicant additionally testified to *numerous* grounds for relief not specifically pled.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

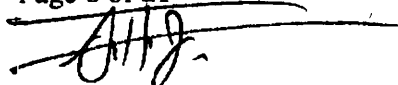
A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to



dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

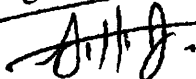
1. Failure to Challenge, Successfully Suppress Statements to Law Enforcement

Applicant alleges Counsel was ineffective in failing to object to and win the suppression of her recorded statements to law enforcement after the victim's death.

Upon motion by the State seeking the admission of Applicant's video recorded statements to law enforcement, the Court conducted on October 31, 2011, a pre-trial hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). After extensive *in camera* testimony by Detective Timothy Troxell, of the Horry County Police Department, and the full proffer of the 82 minute video recording of Applicant's statement of July 18, 2008, Applicant objected to the admission of her statement. (Hrg. 49-195).² Counsel argued Applicant's statement was not knowingly and voluntarily given in light of her continuous 40 hours without sleep, as well as her use of medication during the interview. (Hrg. 195, ll. 13-24). Counsel also noted Applicant's statements during the interview that she went to "two bars" during the night before the interview was given. (Hrg. 196, ll. 8-19). The Court found Applicant's statement was voluntary and indicated it would be admitted. (Hrg. 196-97). Counsel renewed his objection when the State sought to introduce the recorded statement at trial. (Tr. 674-75).

As previously indicated in the recitation of the procedural history, the voluntariness of Applicant's statement formed the basis of one of her issues on appeal, and the adequacy of her Miranda warnings another. The South Carolina Court of Appeals found the trial court's ruling as to the voluntariness of her statement was supported by the record. Palmer/Gorman, 408 S.C. at 236, 758 S.E.2d at 205. The Court of Appeals found "the police did not interrogate [Applicant]

² Following the approach utilized by Appellate Counsel, the Court annotates the pre-trial transcript of October 31, 2011, as "Hrg."



before giving her Miranda rights and thus no Miranda violation occurred." Palmer/Gorman, 408 S.C. at 235, 758 S.E.2d at 204. These issues were not raised as part of the petition to the Supreme Court of South Carolina and, thus, were undisturbed.

At the evidentiary hearing, Applicant she did not know she was going to be interrogated. Applicant explained that at the time of the interview she was tired and medicated to the point that the police were able to convince her that she shook the victim, resulting in his death. Applicant admitted Counsel brought the matter to the Court's attention, but felt he could have done more. Applicant noted Counsel "just said 'okay'" after the Court denied his motion to suppress. Applicant similarly argued that her Miranda rights were violated because she did not know she was going to be interrogated and did not know she would be recorded during her interview. Applicant conceded her belief that Counsel did the best that he could and that "he did good." Applicant further conceded she met voluntarily with law enforcement and that she could recall being read her Miranda rights.

Counsel testified he argued the statement was not freely and voluntarily made due to Applicant's extended lack of sleep and use of medication. Counsel noted he thought he'd argued both Denno and Miranda to the satisfaction of issue preservation, but acknowledged the Court of Appeals found part of his Miranda arguments were not preserved.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Counsel clearly and effectively challenged the voluntariness of Applicant's statement, raised the issue to the trial court, and received a ruling on the issue. That issue was then raised to the Court of Appeals, which also ruled upon it. Applicant did not offer in her testimony anything additional Counsel could have argued on the issue. The same applies to any potential argument on the basis of Miranda, and no conceivable additional argument meaningfully existed in light of the fact

A.H.G.

that, as noted by the Court of Appeals, "the police did not interrogate [Applicant] before giving her Miranda rights and thus no Miranda violation occurred." Palmer/Gorman, 408 S.C. at 235, 758 S.E.2d at 204. Counsel did exactly what he was supposed to do—he sought relief, raised the issues, and was denied by the trial court. Applicant has failed to meet her burden as to either prong of Strickland; accordingly, her request for relief by way of this allegation is **DENIED**.

2. Failure to Present Alibi Defense, Call Alibi Witness

Applicant alleges Counsel was ineffective by failing to investigate an alibi defense at trial or call an alibi witness in her defense. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Similarly, "[a] PCR applicant cannot show that he [or she] was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence." Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant testified at trial that the victim was in the co-defendant's care and custody during the day on a daily basis. (Tr. 917, ll. 9-14). Applicant set forth a timeline of events occurring on July 14, 2008:

- Applicant woke at 4:15 AM (Tr. 917, ll. 16-18);
- Applicant clocked in to work at a Bass Pro Shop at 6:00 AM (Tr. 919, ll. 1-5);
- Applicant clocked out of work at 3:45 PM, but took another 10-15 minutes to exit the store (Tr. 919-20);
- Applicant drove 45-50 minutes directly home, arriving around 4:30 to 4:45 PM (Tr. 920, ll. 10-25);
- Applicant found the victim napping in his crib, then left the house 10 minutes later to conduct errands to an IGA grocery store some five minutes away, which Applicant corroborated with a bounced check with a time-stamp of 3:52 PM, which Applicant suggested was off by an hour (Tr. 921-27);
- Applicant spent five to ten minutes in a video rental store near the IGA in Aynor, then returned home some five minutes later (Tr. 927-28);
- Applicant immediately set to making dinner without checking on the victim, which took 20-30 minutes (Tr. 928-30);
- Applicant and co-defendant ate dinner for an indeterminate period of time, after which she checked on the victim and discovered him seizing; Applicant called 911 (Tr. 931-32).

Given a 911 dispatch call at 6:06 PM, Dr. Ann Abel, the State's expert witness in child abuse pediatrics, opined on cross-examination that the injury occurred either that day or, possibly, in the middle of the previous night. (Tr. 553-54). Dr. John Cacace, the State's expert witness in emergency medicine and trauma, testified Applicant demonstrated seizures resulting from intracranial injury upon arriving at the emergency room around 7:00 PM, that the injury was the result of non-accidental "tremendous force to the skull," and that given the injuries the victim suffered would be "immediately symptomatic[.]" (Tr. 352-75). Dr. Donna Day Roberts, the State's expert witness in neuro-radiology, concurred that a person with the victim's brain injury would be "immediately severely symptomatic" including "alteration or loss of consciousness,

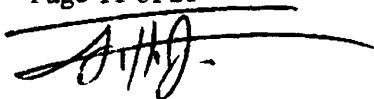
alteration in breathing, likely seizures, a child would not be able to walk, move, play with toys, cat.” (Tr. 419, ll. 3-14).

At the evidentiary hearing, Applicant testified Counsel did not adequately investigate an alibi defense. Applicant argued Counsel should have pulled video footage of her from the various retail establishments she visited over the course of the day. Applicant claimed Counsel only got the stamped check from the IGA and never explained why he didn’t research the defense further. Counsel, in his own testimony, described the defense as a “not quite alibi” defense, for which he did not believe witnesses were necessary. Counsel conceded he could have called the video store, but noted his greater problem was with the clocked time on the check bounced at this IGA—the time between Applicant’s clock-out at the Bass Pro Shop and the bounced check was roughly 9 minutes, and travel between the North Myrtle Beach and Aynor locations in that time was impossible.

The Court finds Applicant cannot prove any prejudice from her suggested courses of investigation. No alibi witnesses were presented at the evidentiary hearing, nor was any video evidence from the retailers, nor anything else of like kind. As such, all that is before the Court to support Applicant’s allegation is mere speculation, which is simply not enough. Accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

3. Failure to Sever Trial

Applicant alleges Counsel was ineffective in failing to argue for severance of her trial from her co-defendant. “Criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right.” State v. Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999) (citations omitted). “A defendant who alleges he [or she] was improperly tried jointly must show prejudice before this Court will reverse his conviction.” Id. “The general rule

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allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a codefendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime." Id. "A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt." Hughes v. State, 346 S.C. 554, 559, 552 S.E.2d 315, 317 (2001).

At the pre-trial motion hearing, Counsel motioned the Court sever Applicant's trial from that of her co-defendant, who opposed the motion. (Hrg. 6-7). Counsel argued that Applicant's specific trial right to a directed verdict would be jeopardized by a joint trial, and that the co-defendant was originally a cooperative witness for the State before the prosecution revoked his proffer. (Hrg. 8-12). The State clarified it would not call the co-defendant as a cooperative witness. (Hrg. 13, ll. 6-9). The State thereafter argued "[w]e have the same victim, the same time line[.]" and that severance would not be appropriate since there would be no deprivation of a crucial trial right, such as a Bruton³ issue. (Hrg. 12-16). The Court found the case "should appropriately be tried together" and effectively denied the motion. (Hrg. 16-17).

At the evidentiary hearing, Applicant asserted Counsel should have fought harder in his motion and cited more caselaw in support of his motion. Counsel simply observed that he made the motion to the Court and was denied.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Counsel properly moved for severance before trial, set forth grounds for his motion, and secured a ruling from the trial court. Applicant does not identify any specific trial rights that were compromised by the joint trial and which should have been raised by Counsel in arguing his motion, but only broadly argues that Counsel should have had "more fight." Nor does this Court observe any

³ Bruton v. U.S., 391 U.S. 123 (1968).

grounds upon which Applicant could have or should have been entitled to severance. Counsel did all that is reasonably expected of competent counsel in this state. Applicant has not and cannot prove either prong of Strickland and, accordingly, her request for relief by way of this allegation is **DENIED**.

4. Failure to Challenge Venue

Applicant argued in her original application that Counsel was ineffective for failing to seek dismissal of the charges on the basis of venue. No testimony was provided at the evidentiary hearing on this subject, and the record before the Court clearly and unequivocally indicates the injuries to the victim were incurred in Aynor, South Carolina, which is situated in Horry County. The Court finds this allegation is abandoned by Applicant and is otherwise patently without merit; accordingly her request for relief by way of this allegation is **DENIED**.

5. Failure to Call Expert Witnesses

Applicant, during her testimony at the evidentiary hearing, raised for the first time an allegation that Counsel was deficient for failing to call an expert witness in her defense; namely an independent pathologist. In addition to Applicant's failure to properly raise this issue in her original application or by way of any amendment prior to the start of the evidentiary hearing, Applicant did not produce any such expert witness at the evidentiary hearing, nor was any evidence provided to show what such an expert's testimony would have been, and as such she cannot show prejudice. See Dempsey, 363 S.C. at 369, 610 S.E.2d at 814.

Furthermore, at the evidentiary hearing, Counsel testified he retained an expert witness, Dr. Juan Troncoso, a pathologist from John's Hopkins University, and had him available to testify. However, Counsel concluded the State's doctors conceded everything he felt Applicant needed to present her defense and, as such, no contradictory expert was necessary. Counsel

indicated he did not wish to give the State any additional time by calling an unnecessary witness. Counsel having articulated a valid strategic reason at the evidentiary hearing, this Court cannot deem Counsel's conduct ineffective. See Smith, 386 S.C. at 567, 689 S.E.2d at 632. Accordingly, Applicant cannot meet her burden under Strickland and her request for relief by way of this allegation is **DENIED**.

6. Failure to Call Character Witnesses

Applicant, during her testimony at the evidentiary hearing, raised for the first time an allegation that Counsel was deficient for failing to call character witnesses in her defense. Just as above, in addition to Applicant's failure to properly raise this issue in her original application or by way of any amendment prior to the start of the evidentiary hearing, Applicant did not produce any such character witnesses at the evidentiary hearing, nor was any evidence provided to show what such an expert's testimony would have been, and as such she cannot show prejudice. See Dempsey, 363 S.C. at 369, 610 S.E.2d at 814.

Furthermore, Applicant conceded at the evidentiary hearing that Counsel explained to her why he would not call any character witnesses—the trial would become a circus. Counsel confirmed that explanation in his own testimony, and further reasoned that putting Applicant's character at issue would bring in matters relating to Applicant's "bad blood" with her daughter, the victim's mother, and could potentially open the door to the admission of prior investigations by social workers in California. Counsel having articulated a valid strategic reason at the evidentiary hearing, this Court cannot deem Counsel's conduct ineffective. See Smith, 386 S.C. at 567, 689 S.E.2d at 632. Accordingly, Applicant cannot meet her burden under Strickland and her request for relief by way of this allegation is **DENIED**.

7. Failure to Object to Hearsay

Applicant, during her testimony at the evidentiary hearing, raised for the first time an allegation that Counsel was deficient for failing to object to instances of purported hearsay. The out-of-court statement of a defendant, offered against him or her, is not hearsay. See Rule 801(d)(2)(A). At the evidentiary hearing, Applicant argued that testimony by witnesses that she stated "she never saw such a bad child" and that she had given medication to the victim was both inaccurate and inadmissible hearsay. Counsel noted the supposed hearsay involved out-of-court statements made by Applicant and, thus, were not hearsay.

Notwithstanding Applicant's failure to properly plead this allegation prior to the evidentiary hearing, the Court finds Counsel was correct—the testimony in question regarded Applicant's own statements and, thus, did not constitute hearsay. The Court finds no deficiency on the part of counsel, nor prejudice therefrom, for "failing" to object where no valid basis for objection existed. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

B. Ineffective Assistance of Appellate Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to

appeal all trial errors is not ineffective assistance of counsel. Tisdale v. State, 357 S.C. 474, 476. 594 S.E.2d 166, 167 (2004) (quoting Jones v. Barnes, 463 U.S. 745, 754 (1983) ("For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .")).

Applicant must show that appellate counsel's performance was deficient and that she was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Smith v. Robbins, 528 U.S. 259, 288 (2000) (citing Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

1. Failure to Sever Appeal

Applicant alleges Appellate Counsel was ineffective for failing to sever her appeal from her co-defendant. "Where there is more than one appeal from the same order, judgement, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated." Rule 214, SCACR.

As indicated in its published opinion, the Court of Appeals consolidated Applicant's appeal with that of her co-defendant pursuant to Rule 214. Palmer/Gorman, 408 S.C. at 222 n.1, 758 S.E.2d at 197 n.1. The appeals remained consolidated before the Supreme Court. Palmer/Gorman, 413 S.C. at 410, 776 S.E.2d at 558.

At the evidentiary hearing, Applicant simply observed that she and her co-defendant were still tried together on appeal, but that Palmer's convictions were ultimately overturned. Appellate Counsel testified that separate briefs were drafted and submitted by separate attorneys within the Office of Appellate Defense for Applicant's and her co-defendant's appeals. Appellate Counsel testified oral arguments for Applicant and the co-defendant were scheduled separately, but for the same day, with the co-defendant's argument occurring first. Appellate Counsel recalled that on the day of oral arguments, then-Chief Justice John C. Few asked at the outset if she was present in the courtroom, which she confirmed, at which point the appeals were consolidated. Appellate Counsel was surprised, but was unaware of any grounds for objection and noted the decision was one wholly within the court's discretion. Appellate Counsel testified the consolidation had no impact on oral arguments—she still received her full time to argue before the Court.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. The decision to consolidate was entirely within the discretion of the Court of Appeals and appears to have been well made. Appellate Counsel credibly testified the consolidation had no impact on Applicant's appeal—Applicant was not deprived of time to argue and no evidence exists in the record to show her arguments were not fairly considered by the Appellate Court. Accordingly, Applicant cannot meet her burden under Strickland, and her request for relief by way of this allegation is **DENIED**.

2. Failure to Raise Issues

Applicant alleges Appellate Counsel was deficient by failing to seek her acquittal due to lack of evidence. The Court will not belabor this allegation—the record indicates Applicant is very simply incorrect. Appellate Counsel's brief to the Court of Appeals unequivocally states:



"As to Ground II, Appellant requests this Court direct a verdict of acquittal." Final Brief of Appellant at 31, State v. Gorman, App. Case No. 2011-203707. Appellate Counsel did this same in her brief to the Supreme Court: "Respondent/Petitioner respectfully requests this Court reverse the decision of the Court of Appeals and grant a directed verdict of acquittal in her favor[.]" Brief of Respondent/Petitioner at 18, State v. Gorman, App. Case No. 2014-001008. Applicant's allegation is factually without merit and her request for relief is therefore **DENIED**.

3. Conflict of Interest

Applicant, during her testimony at the evidentiary hearing, raised for the first time an allegation that Appellate Counsel was deficient due to a conflict of interest. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an *actual* conflict of interest adversely affected his attorney's performance." Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (emphasis original). "However, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief." Id. (citations omitted). An actual conflict of interest occurs "when a defense attorney places himself in a situation inherently conducive to divided loyalties." Id. (quoting Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)).

Applicant noted that both she and her co-defendant were represented by attorneys in the employ of the Office of Appellate Defense. Applicant recalled Appellate Counsel requested relief from the conflict of interest, which was denied by the Court of Appeals.

Appellate Counsel testified that while she represented Applicant, OAD colleague Robert M. Pachak, Esq. represented the co-defendant. Applicant testified the co-defendant's family was upset OAD would be handling both appeals and that, due to the facts of the case, Appellate

Counsel was concerned about the appearance of a conflict, despite OAD screen processes. Accordingly, Appellate Counsel requested outside counsel be appointed for Applicant. Appellate Counsel affirmed the Court of Appeals denied the motion in one page order. Appellate Counsel denied any coordination or collaboration with Pachak regarding Applicant's appeal, and noted screening processes within OAD.

The Court finds no actual conflict of interest existed. First, Appellate Counsel raised her concerns to the Court of Appeals and her motion for relief was there denied. This Court is bound to respect the ruling of the appellate court on the matter. Second, Appellate Counsel credibly testified there was no actual conflict, that she had nothing to do with co-defendant's appeal and that Pachak had nothing to do with Applicant's appeal. Applicant offered no evidence to show what, if any impact there was on her appeal as a result of OAD's screened representation of both her and her co-defendant. Accordingly, her request for relief by way of this allegation is **DENIED**.

C. Prosecutorial Misconduct

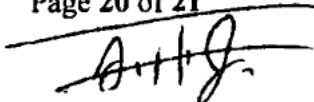
Applicant alleges that the State failed to disclose evidence in its possession in violation of Brady v. Maryland, 373 U.S. 83 (1963). "Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). "A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the

defense, the result of the proceeding would have been different.” Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

At the evidentiary hearing, Applicant argued the State failed to turn over a copy of her interrogation tape, made late amendments to the indictments against her, and introduced hearsay at trial. Counsel testified he received everything in discovery and reviewed it. Solicitor testified she received motions pursuant to Rule 5, SCCrimP, and Brady, and turned over everything. Solicitor denied hiding anything.

The Court finds Applicant’s claims of prosecutorial misconduct entirely not credible. Both Counsel and Solicitor credibly testified everything was properly disclosed. The record before the Court, as well as the testimony at the evidentiary hearing, broadly indicate Counsel was familiar and prepared for the evidence against Applicant, including the recording of her interrogation by law enforcement. The allegations of late amendments do not constitute any form of misconduct, nor do the allegations the State admitted hearsay, which was already addressed in Section II.A.7 of this order. The Court finds no misconduct on the part of the prosecution and, accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

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III. CONCLUSION

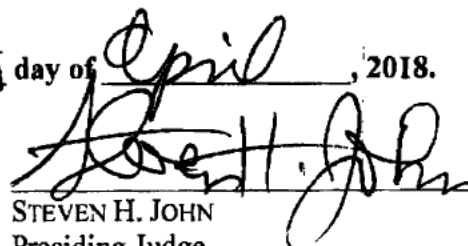
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

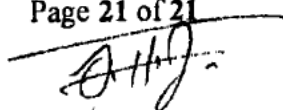
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5th day of April, 2018.


STEVEN H. JOHN
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 25, 2008, the Grand Jurors of Horry County present upon their oath:

HOMICIDE BY CHILD ABUSE

CDR: 2356 16-03-0085(A)(1)(B)(1)

That **JULIA SHAWNETTE GORMAN** did in Horry County, on or about July 14, 2008, cause the death of **Minor**, a seventeen month old child, while committing child abuse or neglect, and the child's death occurred under circumstances manifesting an extreme indifference to human life, in violation of Section 16-03-0085(A)(1)(B)(1), S. C. Code of Laws, 1976, as amended. jga

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

David Weaver Horry County Police Department

DOCKET NO. 2008-GS-26- 3756

The State of South Carolina

County of Horry

Candice Lively

08H03112

COURT OF GENERAL SESSIONS

SEPTEMBER, 2008 TERM

ARREST WARRANT NUMBER

J612055

CDR: 2356 16-03-0085(A)(1)(B)(1)

DOA: 7/18/2008

THE STATE

VS.

Julia Shawnette Gorman

W/F

ATTORNEY: Floyd, W. Thomas

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 25 2008

VERDICT

Indictment for

HOMICIDE BY CHILD ABUSE

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on February 18, 2010, the Grand Jurors of Horry County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

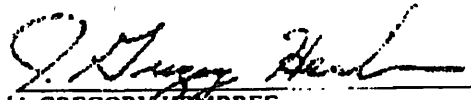
CDR: 2481 63-5-0070

284

through July 14

That Julia Shawnette Gorman did in Horry County on or about July 11, 2008, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, Minor age 17 months, place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or did unlawfully or maliciously cause or cause to be done bodily harm to the child so that the life or health of the child was endangered or was likely to be endangered; or did willfully abandon the child, in violation of Section 63-5-70, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

David Weaver Horry County Police Department

DOCKET NO. 2010-GS-26-

00841

The State of South Carolina

County of Horry

Candice Lively

08H03112

COURT OF GENERAL SESSIONS

February, 2010 TERM

ARREST WARRANT NUMBER

2010GS2600841

CDR: 24881 63-5-0070

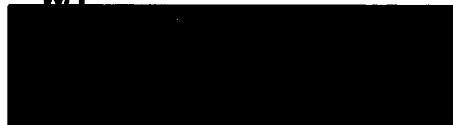
DOA: 7/18/2008

THE STATE

VS.

Julia Shawnette Gorman

W/F



ATTORNEY: Knowles, Melinda

ACTION OF GRAND JURY

TRUE BILL

Matthew Thom

Foreperson of Grand Jury

Date: FEB 18 2010

VERDICT

Indictment for

Unlawful Conduct Towards a Child

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

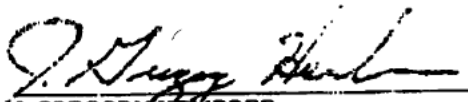
INDICTMENT

At a Court of General Sessions, convened on May 27, 2010, the Grand Jurors of Horry County present upon their oath:

HOMICIDE BY CHILD ABUSE**CDR: 2357 16-03-0085(A)(2)(B)(2)**

That Julia Shawnette Gorman did in Horry County, from on or about July 14, 2008, ²⁸⁴ ~~through July 14, 2008~~, knowingly aid and abet another to commit child abuse and neglect upon **Minor** (MINOR), a seventeen month old child, resulting in his death, in violation of Section 16-03-0085(A)(2)(B)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

DOCKET NO. 2010-GS-26- 02194

WITNESSES

David Weaver Horry County Police Department

C **The State of South Carolina**

County of Horry

Candice Lively

08H03112

COURT OF GENERAL SESSIONS

May, 2010 TERM

ARREST WARRANT NUMBER

2010GS2602194

CDR: 2357 16-03-0085(A)(2)(B)(2)

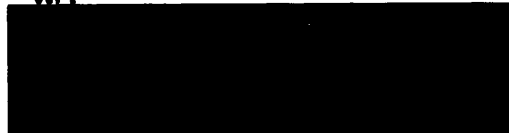
DOA: 7/18/2008

THE STATE

vs.

Julia Shawnette Gorman

W/F



ATTORNEY: Galmore, James Cullen

ACTION OF GRAND JURY

TRUE BILL

Martha H. Gorman

Foreperson of Grand Jury
Date: **MAY 27 2010**

VERDICT

Indictment for

HOMICIDE BY CHILD ABUSE

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL