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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of General Sessions

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000341

SHELBY HARPER TAYLOR …… PETITIONER,

V.

THE STATE ……. RESPONDENT.

APPENDIX

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State of South Carolina)	Court of General Sessions
)	2015-GS-26-01938
County of Horry)	
State of South Carolina)	
)	
vs.)	Transcript of Record
)	
Shelby Harper Taylor)	

February 5 - 7, 2018
Conway, South Carolina

BEFORE:

Honorable Robert E. Hood, Judge.

APPEARANCES:

Scott Hixson, Esq.
Cara Walker, Esq.
Attorneys for the State

Greg McCollum, Esq.
Dean Mureddu, Esq.
Attorneys for the Defendant

Teresa J. F. Bautz, RPR
Official Court Reporter

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(The hearing commenced at approximately 11:32 a.m.)

THE COURT: Good morning, all right. So one of the first things that I'm going to read this jury list so I can make sure I have the right 40 people in the room; okay? So if I call your name, just say here or present. Victoria Hill?

JUROR #176: Here.

THE COURT: Carlos Rivera?

JUROR #308: Here.

THE COURT: David Barr?

JUROR #16: Here.

THE COURT: Morgan Woolard?

JUROR #394: Here.

THE COURT: Corrine Breadmore?

JUROR #42: Here.

THE COURT: Nathaniel Angle?

JUROR #10: Here.

THE COURT: King Alan Hewitt?

JUROR #174: Here.

THE COURT: Stephanie Elias -- or Stephen Eliason?

JUROR #109: Here.

THE COURT: Stephen Oliver.

JUROR #270: Here.

THE COURT: Karrie Melvin.

JUROR #306: Here.
THE COURT: Jacquelyn Schultz-Black? Jacquelyn Schultz? Juror No. 321?
(No response.)
THE COURT: William Cox?
JUROR #82: Here.
THE COURT: Suzanne Brooks?
JUROR #44: Here.
THE COURT: Adam Bourque?
JUROR #37: Here.
THE COURT: Shelby Waldroup?
JUROR #372: Shelley.
THE COURT: Shelly. Sorry.
JUROR #372: Here.
THE COURT: Nicholas Blackmon?
JUROR #30: Here.
THE COURT: Todd Spiehler?
JUROR #342: Here.
THE COURT: Mary Courtney?
JUROR #80: Here.
THE COURT: Dontrea Hazzard?
JUROR #168: Here.
THE COURT: Leigh Lever?
JUROR #218: Here.
THE COURT: Franklin Holmes?

JUROR #177: Here.
THE COURT: Mark Cholowski?
JUROR #70: Here.
THE COURT: Dorothy Long?
JUROR #223: Here.
THE COURT: Douglas English?
JUROR #112: Here.
THE COURT: Marie Davis-Forester?
JUROR #90: Here.
THE COURT: Ryan Gamble?
JUROR #127: Here.
THE COURT: Patricia Crews?
JUROR #83: Here.
THE COURT: Karen Schecker?
JUROR #319: Here.
THE COURT: Dewon Huggins?
JUROR #182: Here.
THE COURT: Beverly Todd?
JUROR #358: Here.
THE COURT: Jessica Haas?
JUROR #153: Here.
THE COURT: Charles Brown?
JUROR #46: Here.
THE COURT: Philip Ulias?
JUROR #367: Here.

THE COURT: Kurt Mew?
JUROR #242: Here.
THE COURT: Gregory Gibson?
JUROR #135: Here.
THE COURT: Kenneth Rumbaugh?
JUROR #317: Here.
THE COURT: Eddy Gibson?
JUROR #134: Here.
THE COURT: Jazzman Putnam?
JUROR #295: Here.
THE COURT: Madison Raynor?
JUROR #303: Here.
THE COURT: Linda Tibbert?
JUROR #356: Here.
THE COURT: Marie Davis-Forester?
JUROR #90: Here.
THE COURT: Okay.
JUROR #90: He called me twice.
THE COURT: Sorry if I said your name wrong.
JUROR #90: No, you called me twice.
THE COURT: Okay. I have a method to my madness. Okay, all right. Did we find Ms. Schultz? All right. Can we call down to see where Ms. Schultz is?
DEPUTY: What's the name, first name?
THE COURT: Jacquelyn Schultz, hyphen, Black,

juror number 321.

All right. Just a couple of housekeeping matters while we're waiting on that juror. If you have a phone, make sure that it's off. If I hear a phone go off, then it will be taken from you. If you actually make it on the jury, you will have your phone on breaks and for meals, but while you're performing jury duty in the jury room, you will not be allowed to keep it. They will take it from you. Okay? But make sure it's off.

All right. Where is Ms. Schultz? Okay. All right. Thank you very much.

All right, ladies and gentlemen. Good morning. We are on the record in 2015-GS-26-1938. This is the State of South Carolina versus Shelby Harper Taylor.

Is the State ready to proceed?

MR. HIXSON: We are, Your Honor.

THE COURT: And is the Defense ready to proceed?

MR. MUREDDU: We are, Your Honor.

THE COURT: All right. Mr. Hixson, you may call your case.

MR. HIXSON: Thank you, Your Honor. At this time, the State of South Carolina, the State versus Shelby Harper Taylor, Your Honor. The specific indictment we're calling, we have, is attempted murder against

Ms. Taylor. I believe you have a copy of the original true bill indictment, and the indictment number, Your Honor, referring to is 2015-GS-26-1938.

And in that indictment, Your Honor, we allege that Shelby Harper Taylor did, in Horry County, on or about April 9th of 2015, with an intent to kill her newborn child, date of birth of [redacted]/15, attempted to kill said child with malice aforethought, either expressed or implied, in violation of Section 16-3-29, South Carolina Code of Laws, 1976, as amended, Your Honor. Our grand jury true billed that case May 28th of 2015.

THE COURT: Thank you very much, Mr. Hixson.

Ladies and gentlemen, the State has called its case. There is one indictment in this case. I hold in my hand this indictment. This indictment is not proof of anything, it is not evidence of anything. It is simply the document that gives this Court the authority to hear this case. To this charge, the Defendant has pled not guilty, and she has requested a trial by jury.

The indictment in this case alleges -- and, again, these are allegations; this is not proof or evidence -- but the indictment alleges attempted murder, that Shelby Harper Taylor did, in Horry County, on or about April the 9th of 2015, with intent to kill her newborn child, date of birth, [redacted] of 2015, attempt to

kill said child with malice aforethought, either express or implied, in violation of the South Carolina Code of Laws.

Now, as I've told you, an indictment is not proof of anything, it is not evidence of anything. It simply gives this Court the authority to hear this case.

Now, the Defendant has pled not guilty to the charge and has requested a trial by jury. And so what we're going to do now is we're going to ask you some specific questions about this case. So this morning the questions that I asked you were about your general qualifications to serve.

The questions that I'm going to ask you now are about this case specifically, do you know the lawyers, do you know the parties, do you know the witnesses, do you know anything about the case, have you heard anything about the case; questions of that nature.

As I told you this morning in qualifications and I will again tell you now, it's absolutely essential and critical that you provide us with truthful answers to the questions that I'm going to ask. Okay? So in that vein, I'm going to have you be sworn in again, so if you will all please rise. And the clerk will now swear you in to tell the truth.

Please, Madam Clerk.

THE CLERK: Please stand and raise your right hand to be sworn.

(WHEREUPON, all jurors were duly sworn.)

THE COURT: Is there anybody that does not answer I do or I will, please remain standing. Everyone else that answered in the affirmative, please be seated.

Okay. All right. The clerks have all kinds of different oaths. They have oaths for interpreters and oaths for all kinds of people, and so since I'm -- I'm not normally here trying cases, so it's a little bit of a learning curve between office staff and the way the judges do things differently. That's all that was.

Okay. So the first thing I'm going to do is introduce the lawyers to you.

Mr. Hixson, if you'll please -- and Ms. Walker -- y'all please stand up and introduce yourselves and tell them who you are and where you work.

MR. HIXSON: Thanks. Hey, everybody. My name is Scott Hixson. I'm the chief deputy solicitor here in the Fifteenth Judicial Circuit, which is Horry and Georgetown Counties, and I directly answer to my boss, the elected solicitor, which is Jimmy Richardson.

MS. WALKER: And I'm Cara Walker. I'm one of the assistant solicitors here, and been here for about a year and a half in Horry County.

THE COURT: All right. So the question is, is anybody related by blood or marriage, close personal friends with, have any connection to, business, personal, social or otherwise, either with Mr. Hixson or Ms. Walker? If so, please stand.

(No response.)

THE COURT: All right. Does anybody have any connection to anyone that works at the Fifteenth Circuit Solicitor's Office? Now, the Fifteenth Circuit is Horry County and Georgetown County. Your elected solicitor is Mr. Jimmy Richardson. Does anyone have any connection, business, personal, social, or otherwise, to anyone that works at the Fifteenth Circuit Solicitor's Office? If so, please stand.

All right. And tell me your name, sir.

JUROR #16: David Barr, No. 16.

THE COURT: Okay. Now, we all got to find you before you answer the question. Okay, Mr. Barr?

JUROR #16: That's fine.

THE COURT: So give me just one second. All right. So Mr. Barr is Juror No. 16. And who do you know?

JUROR #16: I can't remember their name, but I sold them a house in the community that I work in. It's one of the solicitors that work here at Horry

County.

THE COURT: How long ago was that?

JUROR #16: Three months ago.

THE COURT: And do you even remember their name?

JUROR #16: I can't remember the last name.

THE COURT: Okay. And would this affect your ability to be fair and impartial?

JUROR #16: No.

THE COURT: Are you willing to base your decision off the evidence and the law?

JUROR #16: Yes.

THE COURT: And will you do so?

JUROR #16: Yes, sir.

THE COURT: Okay. Thank you very much.

Tell me your name, sir.

JUROR #182: Dewon Huggins.

THE COURT: Mr. Huggins. And Mr. Huggins is Juror No. 182. Who do you know, Mr. Huggins?

JUROR #182: I know Jimmy Richardson. I know one of the solicitors that prosecuted a case of someone who was -- pretty much assaulted me last year. I know the victim advocate. And that's pretty much it with the Solicitor's Office.

THE COURT: And would this affect your ability to be fair and impartial?

JUROR #182: Absolutely not.

THE COURT: Are you willing to base your decision off the evidence and the law?

JUROR #182: Yes, sir.

THE COURT: And will you do so?

JUROR #182: Yes, sir.

THE COURT: Okay. Thank you very much.

Now, I usually give this example before I start, and I just forgot this morning. The example I like to give is people at church; okay? So, you know, you go to church with people, and there's some people that you go to church with and you know their phone number, you've been to their house, you've eaten, you know their children, you've gone out with them and had dinner either as couples or friends that you really, really know; right?

And then there's that guy at church that you see every single Sunday, you may or may not know his name, but you don't have his phone number, you've never been to his house, but you know, yeah, I go to church with that guy. So even the guy in my second example, kind of the guy I see at church but I don't really know him, if he was involved in this case, I would want you to stand up and tell me. Does that make sense?

What we're trying to do is gather as much

information as possible in as efficient amount of time as possible. So err on the side of answering my question as opposed to not answering my question. Make sense? Okay.

All right. Mr. Mureddu, if you and Mr. McCollum would like to stand up and introduce yourselves and your client.

MR. MUREDDU: Thank you, Your Honor.

My name is Dean Mureddu. I work with Mr. Greg McCollum. We are Shelby Taylor's lawyers. We have a firm called The Complete Legal Defense Team down in Myrtle Beach.

THE COURT: All right. Mr. McCollum, anything you want to say?

MR. McCOLLUM: I'm Greg McCollum, and as Dean said, I'm a lawyer with The Complete Legal Defense Team, and we represent Shelby Taylor. Also present with us who you may see in the courtroom some -- Debbie, stand up -- is Debbie Gibbs. She's a paralegal and our firm's administrator, and she may be in here assisting as well.

THE COURT: All right. And, Ms. Taylor, if you would please stand up and face the jurors so they can see you.

(The Defendant complied.)

THE COURT: Thank you very much. Okay. So the question is, is anyone related by blood or marriage, close personal friends with, have any connection to, business, personal, social, or otherwise, either Mr. McCollum or Mr. Mureddu or Ms. Taylor? As to the lawyers, have you ever been represented by them or on the other side of a case from them? If so, please stand.

MR. MUREDDU: Your Honor, I --

THE COURT: Yes, sir.

MR. MUREDDU: I don't want to potentially embarrass, I think it is Ms. Wollard, but I think she looks familiar. I think she was actually an attending nurse for me. I had a little -- not a skin cancer thing, but anyway, that's who it looks like. I figured out of an abundance of caution -- I may be wrong.

THE COURT: Okay. Where is Ms. Wollard? Do you remember Mr. Mureddu?

JUROR #394: I don't, but I see so many patients.

THE COURT: Right. Do you know him personally or have any connection to him?

JUROR #394: No, sir.

THE COURT: Okay, all right. Thank you very much. Okay.

All right. Now, ladies and gentlemen, so one of

the things if you make it on this jury that you will hear me repeatedly tell you is a trial judge cannot state or comment on the facts in a case, okay. But you'll hear me explain this very clearly if you make it on a jury. You're in charge of the facts, I'm in charge of the law. I can't tell you what the facts are. You can't tell me what the law is, okay.

Now -- but I have to give you a little bit of information about the case to see if you've heard anything about the case or if you know anything about the case or you've heard somebody talking about the case or you think you know what the case is, something of that nature; okay?

Now, at this point, these are completely and totally allegations. This is not evidence of anything or proof of anything. But this is an incident that allegedly occurred on or about April the 9th of 2015 near the Island Green apartment complex, which I understand is somewhere close to Socastee outside of Myrtle Beach city limits but probably still has a Myrtle Beach address. And it occurred in the early morning hours of April the 9th of 2015.

Now, the alleged victim's name in the case is [redacted], who would have been a newborn child at that time. So the question is, has anybody heard

anything about this case, seen anything about this case, read anything about this case, or have any knowledge about the case or the allegations in any way, shape or form?

Okay. Stand up, sir. Tell me your name.

JUROR #177: Franklin Holmes.

THE COURT: Okay. Mr. Holmes, why don't you come on right up here. And the attorneys may, of course, approach. Come on right up. Come right up here, Mr. Holmes. Okay.

JUROR #177: I live about a mile away from Island Green.

THE COURT: Yeah.

JUROR #177: And I kind of remember that case, but I can't -- you know, I can't really remember what happened.

THE COURT: Do you know anything about it other than something happened?

JUROR #177: Something happened and that's it.

THE COURT: Okay. And have you ever formed or expressed an opinion about anything in the case?

JUROR #177: No, nu-uh.

THE COURT: Are you aware of any bias or prejudice you may have towards either side?

JUROR #177: No.

THE COURT: Are you willing to base your decision on what happens here in the courtroom?

JUROR #177: Yes.

THE COURT: And are you willing to follow the law as I give it to you?

JUROR #177: Oh, yeah.

THE COURT: Okay, all right. Thank you very much.

JUROR #177: All right.

THE COURT: Anybody else? All right. Come on up. What's your name, sir? Tell me your name, sir.

JUROR #367: Phillip Ulias.

THE COURT: All right. Let me find you, Mr. Ulias.

JUROR #367: 367.

THE COURT: Yes, sir. Come right over here. Okay. Tell me what you know.

JUROR #367: I moved here in September of 2014, and I've been reading The Sun News --

THE COURT: Right.

JUROR #367: -- and watching ABC News.

THE COURT: Right.

JUROR #367: That's the only thing.

THE COURT: Do you know anything personally about the case?

JUROR #367: No, absolutely not.

THE COURT: Have you formed or expressed an opinion about anything in the case?

JUROR #367: No.

THE COURT: Are you willing to base your decision on what happens here in court?

JUROR #367: Yes.

THE COURT: And the law and the facts as they present themselves?

JUROR #367: Absolutely.

THE COURT: And do you have any bias or prejudice towards either side?

JUROR #367: No.

THE COURT: Okay. Thank you very much. All right. Anybody else?

(No response.)

THE COURT: Okay. The next question is, has anybody formed or expressed an opinion about any issue or matter in this case? Has anybody formed or expressed an opinion about any issue or matter in this case?

(No response.)

THE COURT: All right. The next thing I'm going to do is read you a list of potential witnesses, okay.

A JUROR: When you say form or expressed an opinion, I do work in politics so, I mean, I -- on a

daily basis, I'm generally writing policy about pro-life and pro-choice. Does that count?

THE COURT: No. Just have a seat. Thank you. All right. The next thing I'm going to do is read you a list of potential witnesses and -- that may be called in the case. If you hear a name that you know or you think you know, just go ahead and stand up right where you are.

Raymond Price, Jessica DeTray, Jeremy Neely with the Horry County Police Department, Keith Drabick, Ryan Seipt or Siept, Kevin McLean, Denis Lewis, Robbie Caulder, Jeff Cauble, C-A-U-B-L-E, Dr. John Burney at the Conway Medical Center, Weslyn Chickering, Lori Dudley, Amy Stephens with SLED, Doris Yarborough with SLED, Paul Meeh, M-E-E-H, with SLED, Rene Hardwick, Patrick Taylor, Dr. Adedapo Oduwole with Conway Medical Center, Sheila Gunter, Bill Burhans, Renee Hardwick.

If I say some of the same names again, I apologize. Patrick Taylor, Angie Harper, Chris Harper, Chris Lilly, Richard Earnest, Samantha Harper, Kayla Harper and Dr. Robert McCarthy.

So is anybody related by blood or marriage, close personal friends with, have any connection to, business, personal, social, or otherwise? Basically, do you know any of these people in any way, shape, or

form? If so, please stand.

Okay. Yes, sir. Tell me your name.

JUROR #242: Kurt Mew.

THE COURT: All right. And who do you know, Mr. Mew?

JUROR #242: Sheila Gunter.

THE COURT: Okay. And how do you know her?

JUROR #242: I used to go to church with them.

THE COURT: Would that affect your ability to be fair and impartial?

JUROR #242: No, sir.

THE COURT: Are you willing to base your decision off the evidence and the law?

JUROR #242: Yes, sir.

THE COURT: And will you do so?

JUROR #242: Yes, sir.

THE COURT: Anybody else?

JUROR #242: Jimmy Richardson, I go to church with him now.

THE COURT: Okay. And would that affect your ability to be fair and impartial?

JUROR #242: No, sir.

THE COURT: Are you willing to base your decision off the evidence and the law?

JUROR #242: Yes.

THE COURT: And will you do so?
JUROR #242: Yes, sir.
THE COURT: Okay. Tell me your name, sir.
JUROR #37: Adam Bourque. 87. I'm sorry; 37.
THE COURT: It's Ward?
JUROR #37: Bourque.
THE COURT: Bourque, okay. There you are, okay. And who do you know, Mr. Bourque?
JUROR #37: The SLED agent, Amy.
THE COURT: Okay. And would that affect your ability to be fair and impartial?
JUROR #37: No, sir.
THE COURT: Are you willing to base your decision off the evidence and the law?
JUROR #37: Yes, sir.
THE COURT: And will you do so?
JUROR #37: Yes, sir.
THE COURT: Thank you. Yes, sir, your name?
JUROR #135: Greg Gibson, Juror 135.
THE COURT: Hold on one second. All right, Mr. Gibson. Who do you know?
JUROR #135: I'm not quite sure if I know her, Kayla Harper. Does she work -- does it have a -- where she works at, evidence of where she works? Did she work at Lowe's?

A JUROR: Lowe's Hardware.

JUROR #135: Lowe's home improvement on 410. I worked with her for several years.

THE COURT: And you were a manager at Lowe's; is that right?

JUROR #135: I was, yeah.

THE COURT: And would this affect your ability to be fair and impartial?

JUROR #135: No.

THE COURT: Are you willing to base your decision off the evidence and the law?

JUROR #135: Yes.

THE COURT: And will you do so?

JUROR #135: I will.

THE COURT: Thank you very much, Mr. Gibson. Yes, ma'am, tell me your name.

JUROR #372: Shelley Waldroup.

THE COURT: All right. Let me find you. Just one second, okay. Shelley Waldroup.

JUROR #372: Uh-huh.

THE COURT: Okay. And who do you know, Ms. Waldroup?

JUROR #372: Dr. Oduwole.

THE COURT: Okay. And would this affect your ability to be fair and impartial?

JUROR #372: No.

THE COURT: Are you willing to base your decision off the evidence and the law?

JUROR #372: Yes, sir.

THE COURT: And will you do so?

JUROR #372: Yes, sir.

THE COURT: Thank you, ma'am. Anybody else know any of the witnesses or have any relationship to them?

(No response.)

THE COURT: All right. Is there anybody in the jury panel who is aware of any bias or prejudice that you may have towards either the State or the Defendant in this case?

(No response.)

THE COURT: Is there any member of the jury panel who is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victims' rights? This would include MADD, SADD, or CAVE or defendants' rights such as The Innocence Project.

All right. Stand up. And what's your name? Mr. Angle; is that right?

JUROR #10: Right. I'm a member of the ACLU.

THE COURT: Okay. Hold on, let me find you. Spell your last name for me.

JUROR #10: A-N-G-L-E.

THE COURT: Okay. And you're a member of the ACLU. And would this affect your ability to be fair and impartial?

JUROR #10: No.

THE COURT: Are you willing to base your decision off the evidence and the law?

JUROR #10: Yes.

THE COURT: And will you do so?

JUROR #10: Yes.

THE COURT: Thank you. Anybody else?

(No response.)

THE COURT: Does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case? What the attorneys and the parties in this case want is 12 people who have no one to reward and no one to punish. They want you to come in, they want you to sit fairly and impartially without any bias or prejudice towards either side. They want you to hear the evidence, determine what the facts are, and then apply those facts to the law.

Is there anybody that believes they cannot do that? All right. You need to come on up. Tell me your name, sir.

JUROR #46: Charles Brown.

THE COURT: Charles, come on up. Tell me your last name.

JUROR #46: Brown.

THE COURT: Brown, okay.

JUROR #46: I don't pass judgment on a person. I had a friend killed four years ago, and they gave him ten years -- her ten years, and she was seen stabbing him and everything. But they will give somebody ten years for selling coke or something. I do not believe in the judicial system.

THE COURT: Okay. Just have a seat in the back row.

JUROR #46: Thank you.

THE COURT: He's out. All right. Any further questions from the solicitor?

MR. HIXSON: No, thank you, Your Honor.

JUROR #10: I'd like to see the judge, please.

THE COURT: Come on up, Mr. Angle.

JUROR #10: Thank you, Your Honor. I have spiritual --

THE COURT: Shh.

JUROR #10: I have spiritual convictions that don't allow me to judge people.

THE COURT: Okay, that's fine. You won't be on the jury, but you'll be here all week. Thank you very

much.

JUROR #10: Okay.

THE COURT: Any further voir dire from the State?

MR. HIXSON: No, sir, Your Honor.

THE COURT: From the Defense?

MR. MUREDDU: Nothing, Your Honor.

THE COURT: All right. So this is what's going to happen. Your names have been put into a randomly generated list in order, so you are all completely and totally out of order at this point.

So if your name is called, what you do is you need to come and stand right up here and face out to your fellow jurors. And then they will ask the State, do they want to seat that person or excuse that person. Then they will ask the Defense, do they want to seat the person or excuse the person.

If either side says excuse, just go back to your seat. If both sides say seat or swear the juror, then you'll come right over here to Ms. Danna, and she will show you where to sit. We're going to pick two alternates. Strikes on the first 12 are five and five. Strikes on the alternates are one and two each. Everybody good?

MR. HIXSON: Yes, sir.

MR. McCOLLUM: Yes, sir.

THE COURT: Everybody ready? Okay. You ready, Janet?

THE CLERK: Yes, sir.

THE COURT: Okay. So if your name is called, bring all your stuff with you; okay?

THE CLERK: Okay. Juror No. 127, Ryan Gamble. What say the State?

MR. HIXSON: Please present Mr. Gamble.

THE CLERK: Defense?

MR. MUREDDU: Please swear Mr. Gamble.

THE CLERK: All right. Please be seated in the jury box. No. 83, Patricia Crews. What say the State?

MR. HIXSON: Please present Ms. Crews.

THE CLERK: All right. Defense?

MR. MUREDDU: Please swear Ms. Crews.

THE CLERK: Please be seated in the jury box. No. 319, Karen Schecker. What say the State?

MR. HIXSON: Please present Ms. Schecker.

THE CLERK: All right. Defense?

MR. MUREDDU: Please swear Ms. Schecker.

THE CLERK: Please be seated in the jury box. No. 182, Dewon Huggins. What say the State?

MR. HIXSON: Please excuse Mr. Huggins.

THE CLERK: You're excused from this particular case. No. 358, Beverly Todd. What say the State?

MR. HIXSON: Please excuse Ms. Todd.
THE CLERK: All right. You're excused from this particular case. No. 153, Jessica Haas. What say the State?
MR. HIXSON: Please present Ms. Haas.
THE CLERK: All right. Defense?
MR. MUREDDU: Please swear Ms. Haas.
THE CLERK: All right. Please be seated in the jury box. No. 367, Phillip Ulias. What say the State?
MR. HIXSON: Please present Mr. Ulias.
MR. MUREDDU: Please excuse Mr. Ulias from this particular case.
THE CLERK: All right. You're excused from this particular case. No. 242, Kurt Mew. What say the State?
MR. HIXSON: Please present Mr. Mew.
THE CLERK: Defense?
MR. MUREDDU: Please excuse Mr. Mew from this particular case.
THE CLERK: You're excused from this particular case. No. 135, Gregory Gibson. What say the State?
MR. HIXSON: Please present Mr. Gibson.
THE CLERK: Defense?
MR. MUREDDU: Please swear Mr. Gibson.
THE CLERK: All right. Please be seated in the

jury box. No. 317, Kenneth Rumbaugh. What say the State?

MR. HIXSON: Please present Mr. Rumbaugh.

THE CLERK: Defense?

MR. MUREDDU: Please swear Mr. Rumbaugh.

THE CLERK: Please be seated in the jury box. No. 134, Eddy Gibson. What say the State?

MR. HIXSON: Please present Mr. Gibson.

THE CLERK: All right. Defense?

MR. MUREDDU: Please excuse Mr. Gibson from this particular case.

THE CLERK: You're excused from this particular case. No. 295, Jazzman Putnam. What say the State?

MR. HIXSON: Please present Ms. Putnam.

THE CLERK: Defense?

MR. MUREDDU: Please swear Ms. Putnam.

THE CLERK: Please be seated in the jury box. No. 303, Madison Raynor. What say the State?

MR. HIXSON: Please present Ms. Raynor.

THE CLERK: Defense?

MR. MUREDDU: Please swear Ms. Raynor.

THE CLERK: Please be seated in the jury box. No. 356, Linda Tibbert. What say the State?

MR. HIXSON: Please present Ms. Tibbert.

THE CLERK: Defense?

MR. MUREDDU: Please swear Ms. Tibbert.

THE CLERK: All right. Please be seated in the jury box. No. 90, Marie Davis-Forester. What say the State?

MR. HIXSON: Please present Ms. Davis-Forester.

THE CLERK: Defense?

MR. MUREDDU: Please swear Ms. Davis-Forester.

THE CLERK: Please be seated in the jury box. No. 112, Douglas English. What say the State?

MR. HIXSON: Please present Mr. English.

THE CLERK: Defense?

MR. MUREDDU: Please swear Mr. English.

THE CLERK: Please be seated in the jury box. No. 223, Dorothy Long. What say the State?

MR. HIXSON: Please present Ms. Long.

THE CLERK: Defense?

MR. MUREDDU: Please excuse Ms. Long from this particular case.

THE CLERK: All right. You're excused from this particular case. No. 70, Mark Cholowski. What say the State?

MR. HIXSON: Please present Mr. Cholowski.

THE CLERK: Defense?

MR. MUREDDU: Please swear Mr. Cholowski.

THE CLERK: All right. Please be seated in the

jury box.

THE COURT: Two alternate. Strikes will be one and two on each.

THE CLERK: No. 177, Franklin Holmes. What say the State?

MR. HIXSON: Please present Mr. Holmes.

THE CLERK: Defense?

MR. MUREDDU: Please swear Mr. Holmes.

THE CLERK: All right. Please be seated in the jury box. No. 218, Leigh Lever. What say the State?

MR. HIXSON: Please present Ms. Lever.

THE CLERK: Defense?

MR. MUREDDU: Please excuse Ms. Lever from this particular case.

THE CLERK: All right. You're excused from this particular case. No. 168, Dontrea Hazzard. What say the State?

MR. HIXSON: Please present Mr. Hazzard.

THE CLERK: Defense?

MR. MUREDDU: Please swear Mr. Hazzard.

THE CLERK: All right. Please be seated in the jury box.

THE COURT: All right. Any exception to the jury selection process from the State?

MR. HIXSON: The State has none, Your Honor.

THE COURT: From the Defense?

MR. MUREDDU: None from Defense, Your Honor.

THE COURT: Okay. All right. Thank you very much. All right. Ladies and gentlemen, if you are seated in the audience, congratulations, you did not make it on this jury. There is another jury selection process that's going to go on today in a civil case.

So I have been instructed by the Clerk of Court that I'm allowed to release you for lunch. And you need to be in the jury assembly or the jury pool room -- is that the room they were in this morning?

THE CLERK: Um-hum.

THE COURT: Okay. In the jury assembly room at 2:30. So you are released for lunch, and you are free to go. You are to be back in the jury assembly room at 2:30. Thank you very much.

(WHEREUPON, the jury pool exited the courtroom at 12:08 p.m.)

THE COURT: All right. Ladies and gentlemen, as soon as they get out, if you'll give me five minutes of your time, I'm going to release you for the day; okay? So just give me five uninterrupted minutes, once I get everybody out of the room, and then we will -- then I'll be able to scoot you out for the day.

All right. Give me five interrupted minutes, and

I'll get you out of here. So here's the plan. I'm going to give you a little bit of information -- about this much; okay? And then I'm going to release you for the day. We have some matters that we need to take up outside of your presence. This happens in literally every single case I've ever tried in my entire life. It's just part of the normal course of how a trial will proceed.

And we will start tomorrow morning with opening statements and jump right into the first witness first thing tomorrow morning; okay? All right, so that's the plan.

Now -- so what I'm about to do is make sure you know who everybody is and, because you're in this room, the majority of you have probably never been in court before, or you've probably never certainly been jurors before. So I'm trying to help you with who everybody is, okay?

So Ms. Danna is over here to your left, in this beautiful red outfit that she has on. All right, she'll be your bailiff. She'll be responsible for you. She'll be bringing you in and bringing you out, making sure you have snacks and things of that nature; okay? She's going to take good care of you this week, and she'll be in charge of you.

Now, you will be required to basically turn over your cell phone when you get here. When you get a lunch break or a break at night, you will be given those devices back, but you can't use them in the jury room, you can't use them here in the courtroom; okay? So if you want to leave them in your car, that's fine. But if you bring them up here, they will take them from you and then return them to you for lunch or for overnight; okay?

Now, seated right down here to my right is Ms. Terri Bautz, and she is our court reporter. So I like to say that the court reporters are the most important person in the room. They are the only one in the room who is always working. So she is literally taking down every single word we say; okay?

So if, during the trial, you hear me tell the attorneys stop talking or sometimes witnesses and attorneys talk at the same time and I'll say "time out" or "shh" or do something to get everybody from stop -- to stop talking, that is because she can only take down one voice at a time, and we want her record to be accurate for what happens here in the courtroom.

So you will hear me tell the attorneys to slow down. Or some witnesses get on the stand and they talk so fast, you can't see straight, and you'll hear me

say, "slow down." I'm not doing that to pick on anybody; I'm doing that so that we can make sure the record of what occurs in here is accurate.

So she'll be taking down every single word. She'll be with us this week. So whenever she needs a break, I always take a break because, while I may not be talking or the attorneys may not be talking, she's always doing something and keeping up with what's going on; okay?

Now, not with me today but will be with me tomorrow will be my law clerk. Her name is Bailey Davis. She's from Greenville, South Carolina. So she has graduated from law school, taken the bar exam, passed the bar exam, and then she has chosen to spend her first year practicing law working with me. So you will -- she'll sit up here with me, and she'll be here tomorrow.

I am the chief administrative judge of all civil cases in my home circuit, which is -- we're on the record -- the worst job in the entire state. So you will constantly see her and I working on other things because, while I'm in the middle of this trial, I'm managing a docket that has about 7,500 cases on it in Columbia, and literally, there's -- there will probably be three to 400 orders waiting on me to sign when I get

back next week. So she'll be constantly working on that. She'll be going in and out. That's perfectly normal. But I wanted you to know who she was.

And then Ms. Janet is right down here. She's with the clerk's office. She'll be swearing in people and handling the exhibits and things like that; okay?

Now, here are your basic rules for between now and tomorrow morning, and then tomorrow morning I will give you more specific rules. Rule number one is this, you are not allowed to talk about this case or anything about it in any way, shape, or form with anyone, including each other.

So you can talk about the Patriots. You can talk about the Eagles. You can talk about how Clemson, you know, is in the top 25 in basketball. You can talk about the weather. I don't care what you talk about, but you can't talk about this case in any way, shape, or form with anyone, including each other; okay?

Now, I do live in the year 2018, contrary to popular belief, and when you leave here, I know that most of you are going to turn on a cellphone and you are going to call somebody, you are going to text somebody, you are going to check some form of social media, you're going to see what's going on in the world. And all of that relates to communicating with

other people, you are able to do, but you are not allowed to talk about this case.

And here is why. Because what happens, if you go home, and your roommate's there or your significant other or your spouse, and you say, hey, I'm on this trial. And they say, oh, I know all about that case. Right? Okay. Then you've had an outside influence, and that's what we're trying to prevent.

So y'all can talk about anything else you want to, but you can't talk about this case. You can tell people you're on a jury, but you cannot tell them anything about the case. And, likewise, you should not let anybody talk to you about the case. If somebody tries to talk to you about the case, whether it be one of your fellow jurors or somebody at lunch one day, you should tell them, I'm a juror, do not discuss the case with me. And when you come back to court, immediately report it to me; okay? And we're doing that to protect the integrity of the jury process; okay?

Now, second rule is this, you are not allowed to watch, read, listen to news -- any type of news media, whether it be on the Internet, whether it be social media, whether it be the TV, whether it be radio, whether it be newsprint paper. There is no media in your life this week, period, end of story. Not up for

discussion. You cannot watch the news, you cannot read the news, you cannot look up the news. You cannot follow some kind of news media on your Twitter page or anything else this week. You are to have no news influence in your life in any way, shape, or form this week; okay? All right.

Rule number three is, you are not allowed to do any research about this case; okay? So right now, you know essentially nothing about this case, okay. And you've all told us, by the answers to your questions, that you don't know anything about the case. So when you come back tomorrow morning, that's exactly how I want you to be. So you can't go out and do any research or look up something or say, ooh, wouldn't that be interesting.

So I tell jurors in wreck trials where two cars get in a collision, don't go by that intersection unless you have to go by it on the way home. And the reason is this, you don't know that what the intersection looks like today is what the intersection looked like on the day of the wreck, okay. So you don't -- I don't want any outside influences available for you to view.

So you're not allowed to go do any research. If somebody says a term or somebody says some type of term

and you don't know what it means, you can't even go home and get the dictionary and look it up. You can't do any research on any topics raised or on anybody involved in the case in any way, shape, or form.

Now, tomorrow morning we will start at 9:30. I like to be efficient. I promise you that I will make the best use of your time. I promise you that if we are not starting on time, it's because we're doing something that I have to do outside of your presence; otherwise, I will tell all the parties I will be here and ready to go.

And usually the timeframe for court is we start at 9:30, we take a morning break, we take a lunch break between 12:00 and 1:00, we'll take an afternoon break, and then we usually stop each day about 5:00 or 5:30.

The general rule on that is this, if we get to 5 o'clock and the next witness is short, I'll tell them to go ahead and do it. If we get to 5 o'clock and the next witness is long, I'll go ahead and stop for the day, even if it's 10 or 15 minutes before as opposed to trying to break up a witness.

Okay. And let's see, the last thing is this. Do not -- if you see some of the people that are in the courtroom this week and you see them somewhere out, you should have no contact with any of the parties in the

case, the lawyers in the case, the witnesses in the case, or anything like that. Everybody should kind of treat you all like you have the flu and stay away from you; okay?

So I understand that Horry County is a large county. There's only so many places to eat lunch, I've discovered in my three weeks of court here. So if you see people at lunch, that's perfectly normal, but do not have any contact with them in any way. They aren't even going to say hello to you; okay? I promise you, an innocent good morning or good afternoon or hello seen by the other side is always 100 percent misconstrued; okay?

For my two alternates, you-all are very important. I have to seat alternates in cases all the time. So you-all need to be paying attention, and just as you are -- just as if you were a normal juror on the case, and all these rules still apply to you; okay? All right.

So anything before I release the jury, Mr. Hixson?

MR. HIXSON: No, sir.

THE COURT: Mr. Mureddu?

MR. MUREDDU: No, sir.

THE COURT: Okay, all right. So I want to say this, on behalf of all the -- I know we're just getting

started, but on behalf of all the lawyers and the parties in this case, I want to say thank you very much for your service. I know that there are a million other places you could be and things that you could be doing this week, and I understand that. And I have a very healthy respect for that, and I promise to make the best use of your time.

This case is very important to both sides, okay. This is their only day in court to resolve this matter, and so this is a very important job that you have this week. And so I ask that you take it that way, and I say thank you. I know that it is a sacrifice, and I know that it is a larger sacrifice for some of you than others, and I want to say thank you for that.

And I hope by the end of this, when I'm communicating with you, you understand the importance of your role and responsibility this week and the important part that it plays in how our government and how our country functions. So thank you very much.

Ms. Danna, will you show them how to come in and how to go out.

BAILIFF: I will.

THE COURT: Okay. She'll show you how to come in and go out. We'll see you tomorrow morning at 9:30. Thank you very much.

(WHEREUPON, the jury exited the courtroom at 12:20 p.m.)

THE COURT: All right. We got some pretrial we need to take up; is that right?

MR. HIXSON: Yes, Your Honor.

THE COURT: All right. Let's go -- let's go eat -- we've been going pretty much all morning -- and then come back, and we can do that.

MR. MUREDDU: Can we take up the bond issue? My understanding is we have the bondsman.

THE COURT: Okay. All right.

Stand up. What's your name?

MR. HOLCOMB: Al Holcomb.

THE COURT: You swear everything you're about to tell me is the truth?

MR. HOLCOMB: Yes, sir.

THE COURT: Are you a bondsman?

MR. HOLCOMB: Yes, sir.

THE COURT: Okay. And what kind of bond is this young lady on?

MR. HOLCOMB: She's under a surety bond.

THE COURT: Of how much?

MR. HOLCOMB: I don't really can remember, Your Honor. I've had so many people, I --

MR. HIXSON: I think it's 10,000, Your Honor.

THE COURT: Okay. And you had her on bond the whole time?

MR. HOLCOMB: Yes, sir. She checks in with me once a week like clockwork.

THE COURT: Okay. Has she been any problem?

MR. HOLCOMB: No problem.

THE COURT: In no way, shape, or form?

MR. HOLCOMB: No, sir.

THE COURT: Okay. If I agree -- and I'm not saying I will -- but if I do leave her out on bond, will you commit to staying on the bond?

MR. HOLCOMB: I will commit to staying on the bond up until the jury goes out for deliberation.

THE COURT: Okay, all right. Thank you very much. You can leave, Mr. Holcomb.

MR. HOLCOMB: Thank you, sir.

THE COURT: All right. We'll take that -- at this point, the jury is not sworn, so she is fine for today and for tonight. But the solicitor's office can think about their position on that, and we can talk about it this afternoon.

All right. Now, listen, Ms. Taylor, I don't know you, I've never seen you in my whole life. I'm just telling you, person to person, if I do decide to leave you out on bond and you don't show back up, this case

is going to go forward whether you're sitting in that chair or not. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. I mean, whether you're here or not, the case is going forward. And if you are not here -- the way it works is, if you are not here, there will be a warrant issued for your arrest, and if you are convicted -- again, I know about that much about your case, so I'm not saying you are guilty. I'm just saying, if you are convicted, then it will be a sealed sentence, and when you're apprehended, the sentence will be read to you at that time. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. Thank you very much.

All right. Let's take a lunch break. It's 12:20. Is 2:00 good for everybody?

MR. HIXSON: Yes, sir.

THE COURT: 2:00?

MR. MUREDDU: Yes, sir.

THE COURT: Okay. And do they know -- does the State know what witnesses you need for this afternoon?

MR. HIXSON: All we really -- my understanding is Jeff Cauble is the headline witness for the Jackson v. Denno hearing.

THE COURT: Okay.

MR. HIXSON: And I think it's just pretty much oral arguments relating to -- and we may work that out.

THE COURT: Okay. But if we need Cauble here for the Denno?

MR. MUREDDU: Yes, sir.

THE COURT: Do you need anybody else for the Denno?

MR. MUREDDU: No, sir.

THE COURT: Okay. All right. 2 o'clock. Thank you very much.

MR. HIXSON: Thank you, Your Honor.

(WHEREUPON, a luncheon recess was taken at 12:23 p.m.)

THE COURT: So I got somebody here from WBTW; where is that person? Okay. Horry Independent newspaper.

THE DEPUTY: He stepped out.

THE COURT: WPDE?

THE DEPUTY: He just stepped out.

THE COURT: WMBF? Sun News? Okay. Who are you with?

REPORTER: WPDE.

THE COURT: Is this the last guy? Horry Independent newspaper? Is he out there?

THE DEPUTY: Horry Independent? He went to his vehicle, Judge.

THE COURT: Okay. So this is how this works. Y'all can have one video camera in here. You can share a feed. No jurors are allowed to be on the news in any way, shape, or form; okay?

If you have an iPad or a cellphone or something that you want to take a picture with or you want to take a video with, that's fine as long as I don't hear it. I don't want to hear it going off or hearing any clicking. If you have a camera, that's fine too, as long as I don't hear it. Again, no jurors are allowed to be on anything in any way, shape, or form.

Now, here's one thing that will cause me to become very unhappy is I like to start court on time. So if I say 9:30, y'all need to be in here set up, ready to go at 9:30. Walking in with all your equipment at 9:45 is going to cause all your equipment to be outside. So I'm not going to -- we're not going to -- you're not going to -- I'm going to let you come in, but with the big equipment, I'm not -- you can't be disruptive with it. The big equipment needs to be in here and set up before court gets rolling; okay? Everybody got that, everybody good? Okay, all right. That's over with, okay.

Okay. We're back on the record in 2015-GS-26-1938, State versus Ms. Shelby Taylor. The Prosecution is present, Defense is present, and we're here for the purposes of some pretrial motions. And what do you want to start with?

MR. HIXSON: Your Honor, we're fine to start with the Jackson v. Denno hearing, I believe.

THE COURT: Okay. Are y'all ready to go forward on that?

MR. McCOLLUM: Yes, Your Honor.

THE COURT: Okay, all right.

MR. HIXSON: Thank you. At this time, The State of South Carolina would call former Detective Jeff Cauble from the Horry County Police Department.

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

JEFF CAUBLE, after being duly sworn, testified as follows:

THE CLERK: Please be seated. Please state your full name and spell your last name for the Court.

THE WITNESS: Jeff Cauble, C-A-U-B-L-E.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir. How are you?

A I'm okay.

Q Can you please tell this Court what you do for a living.
A I actually manage a sport and health club now.
Q Okay. And so, at some point in time, were you employed by the Horry County Police Department?
A Yes.
Q And let's take you back in time a little bit, specifically around the timeframe around April 9th of 2015.
A Yes, sir.
Q Okay. And what was your assignment during that period of time back in 2015?
A What was the assignment?
Q What was your job with the Horry County Police Department?
A Oh, I'm sorry. I was a detective with major crimes.
Q Okay. And did you have an opportunity to come to investigate a situation where a young -- a newborn child was found in a dumpster in an apartment complex?
A Yes, sir.
Q Okay. And since we're not in front of the jury, we're just trying to get to the substance of the statement. Did you have an opportunity around that time period to come into contact with the Defendant in

this case, a Ms. Shelby Harper Taylor?
A Yes, I did.
Q Can you please tell the Court the facts surrounding that interaction.
A Yes. A report came out that there was a baby that had been thrown in a dumpster. At that time, my sergeant assigned me the case. We went and did some interviews at the scene itself, and during that time, the -- one of the officers -- I can't remember which one at this point; I've got it here, I'm sure -- but showed us a receipt from Mon Cafe.
THE COURT: Would you spell that.
THE WITNESS: Mon is M-O-N. And Cafe, C-A-F-E.
Q It is a Japanese hibachi-style restaurant?
A Yes, sir. Yes, sir. It was dated for the day before the incident.
Q Which would have been April 8th?
A April 8th, yes, sir. At that time, I went to Mon Cafe and asked for video surveillance of that date and time and -- of the receipt. And it was shown that the Defendant was actually in the Mon Cafe with her, I guess, daughter, I believe.
Q And when you say daughter, approximately what age group are we talking about when you say daughter?
A Between a year and two years, maybe.

Q A baby, no question?
A Yes.
Q A young child?
A Yes, sir, young child. And so I made still pictures of her going into the store. And at that time, it was sent to Sergeant -- and I can't remember now. Do you mind if I look here?
Q Yes, sir.
A Okay. Sergeant Dennis, I believe it was. And to get it out -- to at least get the photos out to the media.
Q Before we go forward, can you just back up just for a second.
A Yes.
Q Why did you feel the Mon Cafe receipt was probative of what was going on with the child that was found in a trash bin?
A The actual trash bag that the child was found in had the receipt in it, had the Mon Cafe paraphernalia, if you will, in it as well. So that's the reason that we wanted to look into this.
Q I gotcha.
A And so we got the photos out there to the media. And I guess around 7:00, 7:30, we got a phone call that she was at the south precinct.

Q And with a pronoun, you're saying she. When you say she, who was that?
A The Defendant. And at that time, myself and Detective Seipt responded down there to interview her.
Q Okay. When the Defendant -- do you recall if anybody accompanied Ms. Taylor, the Defendant, to the south precinct?
A I believe her husband was there and her parents were there as well.
Q And just for clarification, do you recall the name of her husband, in case we hear that name throughout the course of the trial?
A Let me double-check.
Q Just to speed it up, since we're not in front of the jury, is it Patrick Taylor?
A Yes, Patrick.
Q Okay. Now, let's just kind of clarify something. So at the point that you come in contact with this Defendant, Ms. Taylor, was she in custody in any way?
A No.
Q How did she arrive there to the south precinct?
A On her free will. On her own.
Q On her own?
A Yes, sir.
Q Prior to her arriving, did you know who Shelby

Harper Taylor was?
A No, sir.
Q Please continue. Please continue.
A It was at that time that we interviewed her. We basically asked her if she knew why she was there. And she -- I believe she told us at that time that she just saw her picture on the news and wanted to know why her photo was on the news.

So it was at that time that we told her what the situation was, that a baby had been found, and that it was found in a dumpster, that it was found in a white trash bag that was tied, and that the --
Q And when you say tied --
A -- reason that she was --
Q I'm sorry. I'm sorry. When you say tied, what do you mean by that?
A I mean it was a trash bag that had the red ties at the top, and so it was tied in knots, together.

And so we explained to her that the reason she was there is because of the receipt that was found inside. And the reason the photos came out of her is because we knew that she was the one who purchased the Mon Cafe the day before.
Q Okay. Now, during the course of this statement, was that memorialized in any way? In other words, was

the substance of a statement was recorded, was it handwritten? What was the nature?
A It was recorded.
Q It was recorded. Was it audio or video recorded, or do you recall?
A Audio.
Q Audio recorded? Okay. Do you recall if any other officers were present during the course of --
A Detective Seipt.
Q Detective Ryan Seipt, okay. Let me show you -- and I'll talk to more questions with you -- about what's been marked as -- it hasn't been marked yet, so...
(WHEREUPON, State's Exhibit No. 3 was marked for identification only.)
Q I'm going to show you what's been marked as State's Exhibit 3. Do you recognize that?
A Yes, I do.
Q And how do you recognize that?
A It's got my initials on it.
Q Okay. And what is this that I'm showing you?
A It's a tape recording of the interview.
Q Or a DVD recording?
A DVD, yes.
Q A digital recording of it?

A Um-hum.
Q Have you had an opportunity, prior to court and the hearing today, to hear the contents of this DVD?
A Yes, sir.
Q And is this recording a fair and accurate representation of the interview that you took with the Defendant, Ms. Taylor, on or about April 9th of 2015?
A Yes, sir.
Q Okay. Now, just follow up a little bit to close the loop so we know we're going to listen to before we ask to publish it, generally speaking, what is the nature of the conversation you had with Ms. Taylor? In other words, was it confrontational, was it heated? What do you feel the nature of it was?
A No. We were just following up, actually, asking her questions as to why the baby might have been in her trash.
Q Okay. Did you ask Ms. Taylor in the statement if she had been pregnant?
A Yes.
Q What was her response to that about whether she --
A She did not state that she was pregnant.
Q Did she deny that she had been pregnant --
A Yes.
Q -- in this period of time? During the course of

this part of the interview, did you provide Miranda warnings of any kind to the Defendant?
A No, we did not.
Q Okay. And why did you not do that?
A She at the time wasn't under arrest. She wasn't -- she was free to go at any point. We were just -- again, just following up on trying to figure out what had happened to this baby.
Q Okay. Is this the only statement that's recorded on this disc that you've made with the Defendant, Ms. Taylor?
A Yes, sir.
Q In other words, at some point in time after this, did you talk to Patrick Taylor?
A Yes.
Q And at some point in time after talking to Patrick, did Ms. Taylor come back in and you interviewed her then?
A Yes.
Q Okay. What happened between the first part of the recording that we have had marked as State's-3 and a subsequent interview with Patrick Taylor and then again with Ms. Taylor?
A Okay. You're asking what happened -- what was said during Patrick's interview?

Q Yes. Not specifics. Just the general theme of what you understand Patrick to have told you.

Let me back up and be more direct. At some point in time after the first statement, did your focus of the investigation go to Shelby Taylor as being the Defendant?

A Yes, it did.

Q And tell us why and tell us about it.

A After speaking with her husband and basically asking him the same question, you know, or letting him know the facts is that we found that there was a baby that was thrown away in his trash, that's when his reaction to that statement or question led us to believe that possibly she would have been the person who did this.

Q Okay. After talking with Patrick, did the Defendant, Ms. Taylor, come back into the interview room?

A She did.

Q Okay. And tell us about that part of it.

A Patrick, I believe, was still in the room at that time, and we let her know at that point that, you know, there's more to this story than basically what she is telling us.

He broke down in the room as well at that point,

and I believe that's what caused her to go ahead and say, yeah, I had the baby.

Q Okay. So at some point in time, in the second interview --

A Yes.

Q -- while Patrick Taylor was in the room, Ms. Taylor admits that she had a child and placed the child in the dumpster? Is that your understanding of the second statement?

A Yes.

Q Okay. At some point in time after that, did you Mirandize Ms. Taylor?

A We did.

Q Okay. And then after the Miranda warnings were given her, did she reiterate the second part of the statement, not the denials but the admission?

A Yes.

Q Okay. Was that second part of the interview, was that memorialized or recorded in any way?

A Yes, it was.

Q And with Patrick and the admission with Ms. Taylor?

A Yes.

Q Okay.

MR. HIXSON: Your Honor, at this time, we would

try to move State's-3 pretrial, to publish that for the jury. Or, excuse me, publish that for the Court, I'm sorry.

MR. McCOLLUM: Obviously, I don't have any objection to him publishing it to the Court.

THE COURT: Okay.

MR. McCOLLUM: It just threw me off --

THE COURT: When he said jury?

MR. McCOLLUM: Yes, sir. I think he meant Court.

MR. HIXSON: I'm trying to go too fast.

MR. McCOLLUM: We would not object to the Court hearing it, Your Honor.

(WHEREUPON, State's Exhibit 3 was admitted into evidence.)

THE COURT: Okay, all right. Do we have a way to play it?

MR. HIXSON: Yes, sir. And that's a good point, Your Honor. Our understanding is there is no order for sequestration; is that correct? I understand the family members are on the witness list, we're happy to have them in here. I just want to make sure we don't have -- we're not both under a sequestration order.

MR. MUREDDU: We're not making a motion to sequester.

THE COURT: Okay.

(WHEREUPON, the audio was played at 2:18 p.m.)
(WHEREUPON, State's Exhibit Nos. 4 to 27 were marked for identification only.)
Q Detective, you heard that statement. Did you ever -- your voice is nice and loud. That's refreshing for a lot of the statements we hear. Is that a fair and accurate representation of the interview you took with this Defendant on April 9th of 2015?
A Yes, sir.
Q Now, we mentioned --
MR. HIXSON: And, Your Honor, just at this point, that's what we intend to offer, that first part of that interview, unless you want to file one for a complete record outside the presence of the jury so we understand the issues we're kind of dealing with, that's appropriate.
Q After you left the room with Ms. Taylor, what did you and the detectives -- what did you do then?
A We spoke with her husband at that time.
Q Okay.
A Brought him in.
Q Okay. And, generally speaking, without playing his statement -- we're not offering that, of course -- what is the nature of his statement? In other words, were there denials? What is the substance of

Mr. Taylor's statement?
A Basically, after, you know, we had told him what was found in his trash bag, he said, oh, my god, she did it, I can't believe she did it. Or it was something to that effect.
Q That's fine.
A And, you know, we asked him at that point, you know, did you know she was pregnant? He said, I had my suspicions. He said, I even asked her at one point, and she denied that she was ever pregnant. But he had, according to him, no idea.

So, you know, it was after our interview with him we decided to bring her back in at that point after he said that. And then during that particular time is when -- you know, he was in the room as well, and like I said before, I believe that was what made her break down and actually tell us the truth at that point.
Q Yeah. Now, the first interview and the second interview, were those in two separate interview rooms?
A It was the same interview room, but she was not present.
Q Okay. Two separate times?
A She was outside with her family at that point.
Q Because there are two separate recordings; is that correct?

A Yes, right.
Q You had the initial one?
A Right, yes.
Q Did you say the end of the recording on that one?
A Exactly. We started another one with him.
Q Now, let me direct your attention to State's-3. We presented that to you earlier, and you authenticated that with your initials. Do you recall the second half of the interview being on that same disc that you had reviewed?
A Yes.
Q Okay. And it's already in evidence. We would like to play -- we have excluded the part of Patrick, because we don't have a hearsay exception to play Patrick's statement. Just from the point where Ms. Taylor comes back into the room, it's a relatively brief statement.

So Your Honor understands, during this point in time, had Ms. Taylor become a heightened subject to your suspicion in this case?
A Yes, she did.
Q And that's based on Patrick's statement; is that correct?
A Well, yes. Even at that point with him still telling us that he did not know that she was pregnant,

you know, there was still that doubt there. But it certainly made it, you know, more likely that she was.

Q Okay.

MR. HIXSON: Your Honor, at this time, we would play State's Exhibit 3. And our intention would be to take that off the disc, based on Your Honor's ruling, to understand when the Miranda invocation was given on this short part.

May I publish that to the Court, Your Honor?

MR. McCOLLUM: Your Honor, may I be heard briefly?

THE COURT: Yes.

MR. McCOLLUM: Is it possible for the Court to listen to Patrick Taylor's statement as well? And I can say why I'm asking for that if I need to.

THE COURT: Any objection from the State?

MR. HIXSON: No. I mean, it would be probative for cross-examination potentially, but --

MR. McCOLLUM: I understand they're not offering it in their case in chief. However, I think that the motion that we're making regarding the statement that she gave, the statement that she gave again, I think it is probative for the Court to see the entire process of how this works.

MR. HIXSON: And to clarify, Patrick --

THE COURT: I thought y'all weren't offering the

second part.

MR. HIXSON: That's correct.

MR. McCOLLUM: Your Honor --

THE COURT: I mean, I'll listen to whatever you want me to listen to. My understanding was what we just heard is -- was the only thing that the State was going to offer.

MR. McCOLLUM: That's true, Your Honor. It's a little unusual, if you think about it. And when Solicitor Hixson first told me what the strategy was, my initial reaction is, well, that's very good, thank you. I'm very happy about that.

But then when I thought further about it, the initial statement of the denials, I think, is very damning for her; okay?

THE COURT: Okay.

MR. McCOLLUM: It's a little ironic that the part, you know, where she does, you know -- she is given a Miranda warning is the part that they concede or take the position that that's not admissible. The reason it's not admissible is because of all the stuff that's going on. Does that make sense?

THE COURT: Yeah.

MR. McCOLLUM: So that's why I think -- for the Court to hear the conversation with the husband,

because he's not an agent of the State, but he's a part of the State's formula to do this type of interrogation.

MR. HIXSON: Let me clarify. Initially -- and we can take testimony, but just to assert to the Court, the initial statement is with Patrick Taylor. Ms. Taylor -- excuse me, the Defendant and Mr. Cauble and Mr. Seipt have the conversation you heard. At the end of it, you hear, I'm going to go talk to Patrick.

When he goes to talk to Patrick, Ms. Taylor is not present and Investigator Cauble has a discussion with him. At the end of that, he says, well, let's bring Shelby back in here and talk to her. Patrick Taylor stays in the room. That's when I was going to start the recording because then you hear Patrick and Ms. Taylor talking in the interrogation room, leading up to her admission, and the Court would hear that.

If, after that, the Court wants to hear all of Patrick's statement that leads into that, that's fine. I just can't think of any mechanism that that's admissible. It's not a statement of a party opponent. You know, it's not a hearsay exception. It's "I got to call Patrick to have him testify to his statement," so we didn't intend to do that in a Jackson v. Denno hearing.

MR. McCOLLUM: Your Honor, look, I understand, and I understand that what I'm saying may seem a little irregular. But I think it's just an interrogation technique, and I think that it would be helpful for the Court to see the entire technique.

MR. HIXSON: May we start this and hear this and then revisit after? This is really eight minutes.

THE COURT: Sure.

MR. HIXSON: It's relatively short.

MS. WALKER: It's ten and a half.

MR. HIXSON: Ten and a half. I apologize, ten and a half.

MS. WALKER: Your Honor, are we good to go?

THE COURT: Yes.

(WHEREUPON, the audio recording was played at 3:12 p.m.)

Q Is that the substance of the second part of the interview? It doesn't include you and Patrick's discussion, but once Ms. Taylor came back in --

A Yes.

Q -- and was in the room with Patrick. And the voice that you heard crying, was that Patrick Taylor's voice that was crying, saying, tell them, tell them, Shelby; is that correct?

A Yes.

Q Just to summarize, as it relates to the admissibility of the first one -- take you back to the first statement. That's the one we're offering; right?
A Right.
Q Was Ms. Taylor in custody at that time?
A No.
Q Did she show up to the police department on her own volition based on the pictures of her on TV?
A Yes.
Q You heard a lot of conversation about you attempting to solve the crime. Would you consider a suspect in the matter -- or how would you categorize her willingness or her willingness to make a statement voluntarily or leave on her own during that period of time in the first statement?
A She was still just a person of interest in that -- in the first part of it.
Q Okay. And at the time that you left the room and we shut the first recording off; is that correct?
A Yes.

MR. HIXSON: Your Honor, I have no further questions as it relates to what we're offering for the first statement.

THE COURT: Cross?

MR. McCOLLUM: Your Honor, are we going to be able

to listen to the statement of the -- of her husband, Patrick Taylor?

MR. HIXSON: I have a copy of it. But, once again, I'll be happy to play it. Yeah, we didn't authenticate that because we're not offering it, but it's the copy we have. He can hear Patrick. But it's not -- it is what it is. If he wants to play it, that's fine.

THE COURT: Do you want me to listen to it? I will.

MR. McCOLLUM: Yes, sir.

THE COURT: Doesn't bother me.

MR. HIXSON: Do we need foundation on that, I guess? If I'm not moving it, I don't need to put a proper foundation in. Let's just play it, huh?

And I guess, if I can, talk to my witness again, even though I was trying to rest to some degree.

Q Take a listen to this, Detective -- former Detective Cauble. I'm going to ask you some questions about it, if that's a fair and accurate representation of the interview you remember.

THE COURT: Were you present for this?

THE WITNESS: Yes, sir.

THE COURT: Okay.

(WHEREUPON, the audio recording was played at

3:26 p.m.)

Q Is that you?

A Yes, sir.

THE COURT: Is that a fair and accurate recording to the point you've heard so far of your interview with Mr. Taylor?

THE WITNESS: Yes, sir.

THE COURT: Okay. Keep going, go ahead.

(WHEREUPON, the audio recording was played at 3:26 p.m.)

THE COURT: All right. So, for the record, I listened to the interview of Patrick Taylor taken by the Horry County Police Department in between the interviews of Ms. Taylor. So we heard that at the Defense's request.

MR. McCOLLUM: Thank you, Your Honor.

THE COURT: Cross-examination?

MR. McCOLLUM: Yes. Prior to that, Your Honor, there's just a couple of cases I'd like to hand up.

THE COURT: Okay.

MR. McCOLLUM: State versus Evans, which is South Carolina Supreme Court, 354 S.C. 579. And then there is also State versus Navy, South Carolina Court of Appeals, 370 S.C. 398. And then also a U.S. Supreme Court case, Missouri versus Seibert, S-E-I-B-E-R-T, 542

U.S. 600.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MR. McCOLLUM:

Q Officer Cauble, how are you today?

A I'm okay. I'm all right.

Q So you got out of law enforcement?

A Yes, sir.

Q How long were you in law enforcement originally?

A From 2003 to 2015, so...

Q 12 years?

A Yes, sir.

Q And during that time, how many of those years did you spend as an investigator?

A I think right at two and a half or three years.

Q Okay. And did you do a lot of interrogations during that period of time?

A I wouldn't say a lot, but, you know...

Q Did you investigate homicides?

A Yes.

Q Attempted murders?

A Yes.

Q Special victim kind of crimes?

A Yes.

Q And when you say a lot, I know that's a relative

term. Have you conducted over a hundred --
A No.
Q -- investigations in terms of questioning people?
A No, I wouldn't say that at all.
Q Dozens?
A You could go dozens, yeah.
Q Okay. Seems like we're always running into you. I thought you were -- so you were all -- you know, that you had done a lot of things.

Now, in terms of your skill set, do you consider yourself to be a qualified investigator when it comes to talking to somebody and doing an interview?
A Sure.
Q Okay. Have other people told you that you're quite good at it?
A No.
Q No one ever said that?
A No.
Q Okay. Did you ever interview someone and not get some type of incriminating statement?
A Sure.
Q Okay. In terms of this investigation, the Mon Cafe receipt was extremely important; right?
A Um-hum.
Q This is State's-1 for identification. You're

familiar with that; right?
A Yes.
Q And I'll come back to that. Because when you first interviewed Shelby Taylor, you asked her about the Mon Cafe and what she ordered. What she said was what's on that receipt in terms of the number of chicken bowls and the price and all that; right?
A Yes.
Q So that would be described as a very high level of certainty in a criminal investigation; right?
A Sure.
Q I mean, it's like the pieces of glass matching up; right?
A Um-hum.
Q And that type of thing, that's a very significant event; right?
A Well, it just proved that she was at the Mon Cafe the day before.
Q In terms of her identification, at some point you went to -- I think it was Mon Cafe to get video surveillance; right?
A Yes.
Q And, in fact, the reason you went to Mon Cafe is because you had the receipt which you found as part of the investigation; right?

A I didn't find it, no. But another officer did and gave it to me.
Q And so by finding the receipt, the receipt has the date and the time of when something was purchased; right?
A Right.
Q So since all that is mechanized, computerized, and very precise, it was very easy for you to then go to the Mon Cafe and pull the video and see who was walking in and out at that time; right?
A Yes.
Q And then after you saw the individual, Shelby Taylor, how did you identify her, what steps did you take to identify her?
A We put that out. We actually -- like I said before, we put it out for the media to see, because we didn't know at that time who she was.

So it wasn't until she actually called and wanted to know why her photo was on TV, that we knew who she was.
Q So she called and wanted to know why her photo was on TV?
A Yes.
Q And you did not talk to her; right?
A No.

Q But somebody relayed that to you?
A It was relayed to Detective Seipt, I believe.
Q And then what did Seipt or you do as a result of that?
A We were in Conway at the time, at the precinct in Conway, and we were told that she had come to the south precinct that's on Scipio Lane. And at that time, I believe she stated that she wanted to know why her photo was on the news.

So they called us when she got there, and we immediately left from Conway and went to the south precinct.
Q Had she not called and had they not called you, what would the next step have been?
A Not sure, to tell you the truth. We -- you know, the -- we would have probably went ahead and did what -- do what we could have with the baby itself to get all DNA that we could. We would probably go and interview quite a few people at the complex there to see if they knew or saw anything. We would have, you know, investigated all leads that we could that were coming in.
Q From the time that you got the call that she was at the police precinct, how long did it take before you arrived there?

A 30 minutes.
Q And so do you know what she was doing there in that period of time?
A No, I really don't. I don't know if she was in the parking lot with her family or if she was inside the precinct itself, waiting.
Q When you arrived -- and the south precinct is on Holmestown Road --
A Yes, sir.
Q -- in Horry County; right?
A Right.
Q Scipio Lane; right?
A Right.
Q And in Conway, you said it took 30 minutes. That's about a 14-mile trip; right?
A Yeah. Main Street in Conway.
Q When you arrived, if you can remember -- I know it was almost three years ago -- do you know where she was at the time you first saw her?
A I don't. Maybe in the waiting room, but I'm not sure.
Q Was anyone with her, to your recollection?
A I really -- no, I don't know that, to be honest with you.
Q At some point, you talked to her and asked her to

go back to a room at the police station; right?
A Yes, sir. And I'm not sure if we were talking -- if I talked to her in the parking lot or if she was in the waiting room when I asked her to come back to a room with me.
Q And the room at the police station, that precinct -- how many rooms are in the precinct? And I don't mean the -- I'm not talking about the judge's office and the lobby and the clerk's office. I'm just talking about the precinct office.
A Six or seven maybe.
Q Okay. And was anybody in the precinct, were there all police officers in there?
A There were -- yes. There's always an officer inside.
Q And the interview room -- describe the interview room. And by that, does it have a one-way mirror? Does it have videotaping equipment there?
A No. It's just a table. There was no videotaping equipment.
Q Is there a window in the room?
A I can't -- I think so, actually.
Q And inside the room, what's inside the room; a table and some chairs?
A A table and some chairs. Maybe a TV, if I

remember correctly.
Q And at the time that she was in the interview room, was the precinct house, the police part, the station house, was it open to the public?
A It was late, 7 o'clock, so as far as -- no, I wouldn't say that it was open to the public, per se. Anyone could come, there's always an officer at the front office. But I think at that time it was 5:00 or 5:30 they go home.
So as far as someone, you know, coming up and wanting service at that point, I believe they have to call dispatch at that time.
Q Could a normal citizen get inside the building at that time?
A No. You would have to have a key to get in.
Q Okay. And so she didn't have access to anybody else. She was just with you and Officer Seipt; right?
A Yes.
Q All right.
A In the room, yes.
Q And at the time that she started talking to you, at some point you came to realize that either you were positive or extremely likely that she had given birth earlier that day; right?
A Not with her talking to me, no. I did not feel

that.
Q All right. So at some point in the questioning, though, you started bearing down on her pretty early; right --
A Pretty early as in when I was talking with her or...
Q Yeah. I mean, within -- I mean, within about two minutes, you had talked to her about the Mon Cafe --
A Um-hum.
Q -- receipt; right?
A Right.
Q So at that point your suspicions were growing that she was the perpetrator; right?
A No, they were not.
Q Okay.
A At that time, we still -- anybody could have put a child in her bag. So, I mean, we were just trying to get to the bottom of why her bag was -- there was a baby in her bag. We did not know at that time that it was hers.
Q At what point did her husband, Patrick Taylor, get to the precinct house?
A I don't know, sir, because we were interviewing her. I don't know what time he got there.
Q Do you know why he was there?

A In support of her, I guess. I don't know, I didn't call him.
Q How did you find out that he was there?
A I don't know. I don't remember, to tell you the truth. I do not remember how I knew he was there.
Q Had someone from your department talked to him earlier that day?
A No.
Q If he arrived at the precinct house and it was closed and no one could get inside, then he would not be able to get in there; would he?
A No, he shouldn't, unless an officer let him in or something. There were other officers there, so...
Q So you don't know what he was doing there, and you don't -- so you don't know what he was doing there?
A You know, her parents were there. I don't know if they called him and let him know where she was. I don't know.
Q All right. At some point, though -- well, there's no question but that once you talked to her, you made a decision to talk to Patrick; right?
A Right.
Q Right?
A Right. When we asked her if she -- if he would tell us the same thing, then that's when we decided

that we probably need to talk with him as well.
Q And then you made -- you or Seipt or both of you made the decision that you would have him go in and talk to Shelby Taylor to have him convince her or ask her or do something to get her to make an incriminating statement; right?
A In listening to everything that has come out today, if you're getting to the point where you think that we probably should have written -- or given her rights earlier, then I should have read her rights after we talked to him. That's when I felt like I should have done that. So, you know, I will admit to that. But up until that point, I did not know she was my suspect.
Q In your past experience, when you put somebody on the news like that, does that usually trigger a response for them to come in and talk?
A It just depends on the person.
Q Depends on who it is?
A Yeah.
Q How many other suspects or persons of interest did you publish in the news?
A Me personally? I don't think I ever did.
Q Well, how many other subjects or persons of interest were published in this particular case?

A One.
Q And how many suspects were there initially in this particular case?
A How many suspects?
Q Yes.
A We didn't know initially. All we had was this receipt to go on, and the person who bought this showed up after she saw her photo on the news. But, again, she was a person of interest, which was told -- which was actually stated by Mr. Seipt or Detective Seipt.
Q And you questioned her for about 45 minutes the first time; right?
A Yeah. Something like that, yes, right.
Q Okay. And at what point did you determine that you believed that she was guilty of this particular offense?
A Not until after, like I said, that we had talked with her husband. And even at that point, you know, with him saying, no, I don't think she could do it, there was still doubt.
Q In terms of the questioning, then, it seems like -- and you're pretty -- I mean, it seems like you're being not unduly hard on her but that you were, you know, questioning her pretty good; right?
A Well, I was interviewing her, yes.

Q And in interviewing her, you were using just standard techniques; right?
A Right.
Q And those techniques are generally designed to -- in part of solving a case, are designed to produce conflicting or incriminating statements; right?
A No. Basically, I just wanted to know why there was a baby in her trash. I didn't particularly know that it was her. But if she knew someone or she was trying to protect someone, we wanted to know that as well.

At no time when I was speaking with her did I feel like that she gave us that undeniable clue that she was the one who had this child.

Q How many neighbors of hers were interviewed?
A Before this point?
Q Yes.
A There were three, just the two kids that actually found it and the mom, at that point. When they told me they had the receipt, that's what I went to do immediately. I felt that was very important. So at that time I hadn't interviewed anyone, next-door neighbors or anything like that, at that point.
Q You're not saying that your interview was to clear her; are you? The purpose of the interview was not --

A I never said that.
Q -- to clear her; right?
A No, sir. I never said that.
Q And you heard the interview; right? I mean, not only conducted it, you heard what we just heard in here; right?
A Yes.
Q And so you continue to assert that you did not think that she was the suspect or going to be charged in the case until after you talked to her husband?
A In listening to this, it was very clear in listening to this, I think, that she was very calm in our interview. Very calm in our interview. So, no, I did not know she was my suspect when I was talking with her.
Q There is no question, though, that through your investigation you learned that she had given birth earlier that morning; right?
A At that point, when I was talking with her, no, I did not know she had given birth.
Q I'm talking about later on after -- once you did your complete investigation.
A Yes, sir.
Q You know now that she gave birth that morning?
A Right.

Q Sometime prior to 6:00 a.m.; right?
A Right.
Q You know that she gave birth alone in her apartment in the bathroom; right?
A Um-hum.
Q Right?
A Right, yes, sir.
Q And you know that she did that without any type of medical care; right?
A I do, yes.
Q And you know that she did that -- she didn't have any narcotics or epidural or anything like that; right?
A Epidural, no.
Q She had no medical care whatsoever?
A No.
Q Okay. And you also learned that there was, as would be expected in a birth, a lot of blood loss and that type of thing; right?
A Yes, sir.
Q Okay. And you knew that when you were questioning her -- that was that night, so it was about 12 hours later; right, give or take?
A Yes, sir.
Q Maybe a little more. I think it was more like 9:30; right?

A Yes, sir.
Q So maybe 14 or 15 hours later; right?
A It was, I think, 7:30 when it started, I guess, 7:30 or so.
Q And you had learned that she had done things all day, like take her daughter to the doctor and go to her mother's house to pick something up and that type of thing; right?
A Yes.
Q So did it come to your attention that she really had not had any physical rest; right?
A Yes.
Q And then after you finished the second statement, you arrested her; right?
A Yes.
Q You handcuffed her; right?
A Right.
Q You put her in the patrol car and drove around and talked to her family and said that you were charging her or something to that effect; right?
A I didn't take her to the hospital, I don't believe.
Q You didn't transport her?
A I don't think I did.
Q Okay. But some officer transported her to the

hospital; right?
A Yes, sir.
Q And that was -- was that Waccamaw Hospital?
A Not certain, actually. Was it Conway maybe? Conway Hospital.
Q And this was on April the 9th; right?
A Right.
Q And then she was admitted into the hospital; right?
A Yes, sir.
Q And then your police report indicates that at some time on the 11th, at least two days later, she was discharged and taken to jail; right?
A I believe that's correct, yes, sir.
Q So the hospital, after you had interviewed her, after being up all day, having had a baby with no treatment, she was then hospitalized for two days before she was taken to jail; right?
A Yes, sir.
Q Okay.
MR. McCOLLUM: Thank you, sir.
Just one question, Your Honor. Just one moment. Just one thing, Your Honor.
Q In terms of the Mon Cafe footage, did you see other people coming and going from Mon Cafe during that

brief period of time?
A Probably. I know that when I saw the -- when I knew that it was her or that particular time is what they were saying, that that was the person that came in at this time. That's when I stopped it and took the photos and left at that point.
So -- but, yes, I'm sure there was other folks that came in and out, but I can't say for sure.
Q Right. But if other people that came in and out, which you saw on the video, right, other people came in and out of Mon Cafe on the video; right?
A I'm assuming they did, yes, sir.
Q But she's the only -- Shelby's the only one -- Shelby Taylor is the only one that you zeroed in on --
A Yes.
Q -- and put on the news?
A Yes.
MR. McCOLLUM: All right. Thank you, Your Honor.
MR. HIXSON: Briefly, Your Honor. Just a little housekeeping matter. Since we played Patrick's statement, I thought I'd mark this as State's-4 for Court purposes only, just have that in the record, Your Honor, if that's appropriate.
(WHEREUPON, Court's Exhibit No. 1 was marked for identification only.)

REDIRECT EXAMINATION

BY MR. HIXSON:

Q Let me show you two items that are marked as State's-16 and 17. Take a look at those. I'm going to keep calling you detective out of habit. So, Mr. Cauble, do you recognize those items?

A Yes.

Q And what are those?

A That's the still photos I took from the video surveillance.

Q Okay. And so when you're looking for and you're investigating -- is it safe to say, if you're investigating a case that involves a woman that may or may not have put her newborn baby in a trash can, would you be looking for a female that appears to be pregnant --

A Yes.

Q -- as a potential suspect?

A Yes, correct.

Q And in your opinion versus -- does she appear, perhaps --

A Just my opinion.

Q My opinion.

A Yes, sir. Possibly.

Q All right. And that's for Court's Exhibit now. I

guess we can't move it into evidence quite yet, but I want the Court to be aware of it. And those are copies of what you posted online --

A Yes, sir.

Q -- and in the public sphere to find Ms. Taylor?

A That's correct.

Q Let me clarify one thing. When Ms. Taylor showed up at the south precinct, she went with her parents; is that correct?

A I believe that's how -- yes, sir.

Q And did Mr. Taylor go with her also, just to clarify?

A I can't clarify that at all.

Q Fair enough. That's fair enough.

MR. HIXSON: Your Honor, I have no further questions. Just argument.

THE COURT: Anything else, Mr. McCollum?

MR. McCOLLUM: I would just like to ask the officer a couple of questions, if I may.

THE COURT: Okay.

MR. McCOLLUM: May it please the Court.

RECROSS-EXAMINATION

BY MR. McCOLLUM:

Q So the individual -- and that's a picture of Shelby Taylor; right?

A Yes, sir.
Q In the picture, you just testified she appeared pregnant; right?
A Yes.
Q And is she --
A Possibly.
Q And she has a baby with her?
A Yes.
Q And the baby would be the age to wear diapers?
A It appears so, yes.
Q All right. And when you interviewed her at the station house the next day, the next day from when the video was taken, did she appear pregnant?
A Probably not at that point.
Q All right, thank you.
THE COURT: Anything further for this guy?
MR. McCOLLUM: No, Your Honor.
THE COURT: Okay. You can step down.
(Witness excused.)
THE COURT: Thank you. You got any further witness on this issue?
MR. HIXSON: No, Your Honor. That's it as it relates to --
THE COURT: All right. Does the Defense have any witnesses on this issue?

MR. McCOLLUM: No, Your Honor.

THE COURT: Okay.

MR. HIXSON: Just argument, Your Honor. We've thrown a lot at you in a short period of time. We're just simply offering the first statement -- the first one that was played into evidence, Your Honor, and specifically because we do concede, and the witness did indicate that, there's no question that this Defendant showed up to court on her own with her parents.

THE COURT: Showed up to the precinct.

MR. HIXSON: To the precinct station on her own after seeing and asking, why are you guys looking for me? It's a voluntary act. Going there is a voluntary act. Talking to law enforcement is a voluntary act. And, interestingly enough, with the cases Seibert and Navy, those cases offered, all those are inculpatory statements. We're not offering this for an inculpatory statement. It's distinguishable on its facts on this point alone. She doesn't say anything inculpatory across the board.

It's mainly relating to a state-of-mind concern about an absolute denial and the existence of malice. We'll talk about malice down the road. But overt attempts to cover up a crime can be circumstantial evidence of malice, and we'll talk about that as it

relates to a charge to the jury down the road.

But it's not offered for an inculpatory purpose in that it's not facially inculpatory, Your Honor. There is no question, when you hear the series of events concerning a discussion with Patrick, there's no basis for us to ask for Patrick's statement to be admitted. It's not an exception to a hearsay rule. It's not a statement of a party opponent. And as such, we would have to have Patrick testify live in order to do that. And we'll see what happens as the trial goes on, if we have to do that or not, but we're not offering it for that.

As a result, when Patrick's in the room helping talk to her about it, I'm concerned what the Court might do down the road. It's a pretty aggressive situation at that point in time, and that's why we're not offering and trying to defend that lack of Miranda up to that point. And, as such, that's the only reason we're offering the first.

But I do think it's important for potential cross-examination because we can cross with inadmissible information, depending upon what happens at trial, for Your Honor to be aware of it, that there are a few land mines out there. But we believe that she was -- it was a voluntary statement. It was

voluntary at the time it was given. She was not in custody.

It was in response to questioning, but the body of the statement itself shows, well, what else could we do to find out? Was any of your friends pregnant? Did any friends come over to your house? Do you know of anything else? What else could it be?

And that's throughout the statement to indicate she was not the subject matter. That part of the statement was not a ruse or any kind of misconduct on the part of law enforcement. After they talked to Patrick and came back in is when she was a suspect, and that's why we're not offering those subsequent statements, Your Honor.

THE COURT: All right. Mr. McCollum?

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

THE COURT: Yes, sir.

MR. McCOLLUM: So it's our understanding that the State is offering the first statement, and so we are arguing that that is inadmissible based on the three cases that we've handed up, and I'll explain why. That's State versus Evans, State versus Navy, and also Missouri versus Seibert or Seibert.

Your Honor, the Seibert case, they say that the

Seibert case tests the police protocol for custodial interrogation that calls for giving no warnings of the rights to silence until the interrogation has produced a confession or some type of incriminating statement. I think they call it -- it even has a name as a technique. The Supreme Court of the United States calls it the question first strategy.

So we submit that this is exactly what the question first strategy entails. First of all, Your Honor, we would look at State versus Navy, which is 270 S.C. 398. In that case a child had died, the police went out to question somebody, and then what happened is the person who was initially charged ended up going into the police station voluntarily.

So he goes to the police station voluntarily, and what happens is his -- his 23-month-old son had died while in his care. So the officer in that case had learned of the autopsy results and the things that had gone on and was actually in contact with the medical examiner or the coroner, had specific information.

So, basically, he was taken to the police station, he was questioned. They went through things very much like in this case. The Navy gives an incriminating statement like he knew he knocked the breath out of the child. They go back and they talk to somebody else to

get some more information and come back and question him. And then he gives the confession, okay.

In that case, there were three statements, one oral and two written. The two written statements were made after Miranda warnings, okay. So what the Court ruled is that, you know, all three statements were excluded, okay, because of the question first strategy which they relied on, the case of -- the Seibert case.

THE COURT: But is that -- the first statement in that scenario was inculpatory. He made a statement about hitting the toddler in the back of the head; correct?

MR. McCOLLUM: Yes.

THE COURT: Okay.

MR. McCOLLUM: The same thing basically happens in Evans. In Evans, there's a mobile home fire, three children died. The police or the arson investigator talked to Evans briefly. Ten days later, they went to talk, and Evans found out that the police wanted to talk to him, or actually the arson investigators.

So Evans then goes to the police station, is talking. The two male officers talk to Evans for some period of time. Evans is distraught. And then once she, you know, starts to beg for some help or something, they go out and talk to another woman, who

is a SLED agent, Jennifer Edwards, who is a child -- the SLED Child Fatality Division officer. She goes in there, talks to her as well.

And so in that case you could say it's two statements or one statement, but in that case as well, the Court suppressed both of them.

Now, the reason for their motion, Your Honor, is that we're saying that this is just -- you know, oftentimes, when we look at case law and we look at things that happen in cases, you know, they're not -- they're never quite so similar. These are.

It's the same -- almost the same fact pattern, same questioning pattern, same issue where she's in a situation where she's -- you know, she's given birth that day without any kind of medical care. She's been up all day, she's traveled around.

THE COURT: Now, let's stick to the things that are in evidence at this point, not speculation.

MR. McCOLLUM: There's no question but that this is somebody who had given birth earlier that day.

THE COURT: There's no evidence that states that this investigator knew that.

MR. McCOLLUM: I'm not -- and I'm not necessarily saying --

THE COURT: I'm not saying she didn't give birth

that day.

MR. McCOLLUM: I understand.

THE COURT: But I'm saying in the mind of the investigator at the time of the interview, where is the evidence that says -- to make an analogy to the other cases, the coroner's report that this is how the person died or something of that nature, that he knew that Ms. Taylor had given birth that day while he's interviewing her, other than she looks -- I mean, she looks one way in the photo and she may look different then.

MR. McCOLLUM: I understand. I was offering that not so much to say that he knew that with absolute certainty. I was saying more that the condition of the person who is talking, the condition, the state of mind of the person that's giving the statement.

THE COURT: I understand that.

MR. McCOLLUM: Okay. That's why I said that, and also the part about, you know, her going to the hospital.

THE COURT: Right.

MR. McCOLLUM: Just to give the Court the benefit of the type of condition.

THE COURT: I understand. Afterwards, she goes to the hospital.

MR. McCOLLUM: Yes.

THE COURT: Right.

MR. McCOLLUM: So we're simply saying that given this type of situation where she comes in voluntarily, okay, of her own will, she did that because, you know, she was in the news as being a suspect, a person of interest, so that drew her to the police station.

She's in the police station. She's going through pretty extensive kind of interrogation questions, questions that are elicited -- that are designed, you know, to cause somebody to confess or to make contradictory statements. She makes several contradictory statements to law enforcement. Later, they then obviously confront her. She makes a confession, then they read the Miranda warnings.

The only thing I'm saying, Your Honor, is that that's the same thing that's happened in Evans and Navy. And in Evans and Navy, given the similar circumstances, then the Court suppressed all of the statements, not just the second one.

THE COURT: Okay. All right. Mr. Hixson, any response?

MR. HIXSON: Just quickly, initial distinguishment is that's a custodial interrogation. There is no evidence of custody of any kind, and a Miranda facially

doesn't apply. The record's replete with the voluntariness of her arrival there to exonerate herself. And the interview actually is replete with reference of her being innocent of the charge. Even after Mr. Cauble comes back in and says, people in the neighborhood say you're pregnant. He didn't interview her any more than that, and that's when the interview broke down and stopped.

And that's the point where it stops, where he gets information that looks like something is wrong here. So we believe it's voluntary, we believe Miranda warnings weren't required, and it was a voluntary statement. We would move the Court to ask that the -- for a finding that the statement is voluntarily made -- the first statement, Your Honor.

THE COURT: All right. There is a couple of analyses that the Court has to go through in these circumstances in a kind of overall 20,000-foot view. I have to look at the totality of the circumstances which include the factors such as the place of interrogation, the purpose, and the length of the interrogation, and as to whether or not the suspect was free to leave the place of questioning.

This is -- the custodial determination is an objective analysis based upon whether a reasonable

person would have concluded that he or she was in police custody.

In kind of going into the next part of that, the custodial determination is not based upon the subjective views of the suspect or of the interrogating officer but whether or not a reasonable person would have believed themselves to be in custody.

I think in -- you know, I would probably say, you know, more than a thousand police interviews I've either seen, been a part of, heard as a judge, handled as a lawyer, in one way, shape, or form, I think, in this case, it could not be clearer that she is not in custody -- for the portion of the statement that the State wants to admit, it could not be any clearer that she was not in custody.

She showed up to the police department upon, you know, her family telling her to go or somebody seeing her picture. She was not in handcuffs. She was not deprived of any type of comfort or anything else that she needed.

She is one of the calmest people I have ever heard in my life being interrogated for a crime such as this. She is very calm, she is very cool, she is very collected. She is having a perfectly normal conversation with the investigators.

At points they are laughing, they are joking. She is able to go through what she did for the day. She's very clear about who the people are in her life and the relationships that she is in. She is very calm. There is no -- one of these cases, and I'm going to -- in Navy's case, the Court gets into this bullying atmosphere that the police created.

In the portion -- again, I'm talking about the portion that the State is seeking to admit, which is the first portion, you know, it could not be further from a bullying atmosphere. In Navy, Navy was requesting help -- requesting -- requesting help. There is none of that going on here in any way, shape, or form.

In Evans, there is testimony that Evans was mentally disabled at the time that he was aggressively questioned -- I mean, at the time she was aggressively questioned -- I often don't look at the sex of these cases, I'm sorry -- during the fire of their home. Evans was questioned for three hours.

Navy was told that the questioning could not wait, that nothing else could -- that nothing else could go on. In Navy, they also had the coroner's autopsy report, so they were going into it. You know, basically, you know, loaded for bear.

I think in one of the -- I think one of the telling facts about this questioning scenario that makes it admissible is at the time they do the questioning, they don't have any information as to whose baby it is or really who did it, period.

And I think that's the difference in them coming into this investigation and into this questioning. Most of the time when I see these, they come in loaded for bear. There has been some expert, some doctor, some nurse, some DSS worker that said the only person who could have done this was this person, and they go in, and they already have their mind made up.

And I think -- I mean, they clearly have this conversation with her, and it's all recorded, you know. Thank God we're all moving towards recorded information so that these things can be preserved.

But, I mean, I think that they legitimately go into it with an idea that somebody else could have -- that that's not her baby and that they -- I don't mean -- I think it is clear, abundantly clear from the questioning that they don't think that she's a real suspect until they talk to Patrick Taylor. And then, at that time, they should have advised her at that very moment when they brought her back in and doing the thing with Patrick in the room and all that, you know.

I mean, if the State had not moved to keep all that out, I would have definitely kept all that out. I would think that would be completely appropriate to keep that out under those scenarios. And I'm not faulting law enforcement, that's just the status of the law as it sits here right now.

But I believe that she was not in custody, that she gave that statement freely and voluntarily. She was under no threat, coercion, duress, or anything else. If she was suffering in some way, shape, or form mentally or physically, she did a better job of covering it up than anybody I've ever seen being questioned by -- I mean, I've seen grown men who are Army rangers be questioned by law enforcement that, you know, broke under questioning more than she did.

And so I find that that first part of that statement is completely and totally admissible, I find that she was not in custody, and I will deem the first part of that statement to be admissible and allow it to be played for the jury based upon the totality of the circumstances.

She was only really questioned for around 50 minutes, and she voluntarily showed up to the police department and was having a very calm conversation with them about trying to figure out what happened, so...

All right, next issue?

MR. HIXSON: Your Honor -- Your Honor, the State filed a motion relating to the exclusion of evidence of diminished mental capacity. We have had substantive conversations about what that means. We have provided the Court a copy of that. I think we provided some authority for that.

We did have some discussions pretrial that have Your Honor have an understanding of it, so if Your Honor needs more --

THE COURT: I'm up to speed on it.

MR. HIXSON: -- questions. Okay. The basis for my --

THE COURT: I've read everything that everybody has given me.

MR. HIXSON: The basis for my filing the motion is not necessarily to exclude the testimony of the expert, which I think is a contentious issue. It's -- I don't know if there's any other basis for that expert testimony to be provided besides just the mens rea element.

THE COURT: Okay.

MR. HIXSON: So if there's more there, that's fine. I guess my understanding would be that if I need to withdraw the motion -- because I'm not trying to

block the expert testimony, I just want to be aware that if it goes to a jury charge issue or if I'm ejecting for cross-examination that you're talking about inadmissible diminished capacity evidence. Because I can't presume to know everything that the expert is going to testify to.

THE COURT: Right.

MR. HIXSON: So I'm trying to take a middle-ground approach some. I'm not trying to Santiago -- trying to block the expert completely.

THE COURT: Okay.

MR. HIXSON: I'm not trying to block the expert. I just want to make sure the law -- that the jury hears that the law of the state of South Carolina, not diminished capacity, which is not the law of the state of South Carolina related to mens rea.

THE COURT: Okay.

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

THE COURT: Yes, sir.

MR. McCOLLUM: Yeah, we were not -- it was not our intention to ask for a diminished capacity instruction.

THE COURT: Charge, okay.

MR. McCOLLUM: We are not asking for it.

THE COURT: Okay.

MR. McCOLLUM: We understand the law.

THE COURT: All right. So you're okay with him calling the expert as long as they don't get a diminished capacity charge.

MR. HIXSON: Yes. And, you know, as it relates to proffering witnesses and testimony concerning the content of that, I may object contemporaneously with the admission of expert testimony on -- a lot of times experts say they're not doing, but they testify entirely diminished capacity, but they say, that's not what I'm doing.

THE COURT: Well, I mean -- and I'm not sure we don't need to do that outside the presence of -- you know, as far as qualifications and for you to hear all the qualifications. Of course, I haven't sat around and studied this issue, so, you know...

I did a big case with Munchausen syndrome by proxy, so, you know, if you had said those words to me, I would have been tracking right with you. But I think probably the best thing for the expert is, when we get to that point, let's kind of put things on hold and take that outside the presence and go through the 702 factors and the Council factors and all that kind of different stuff.

And I'm not saying -- and so, you know, we --

we're not -- I'm not hashing all that out in the first time while the jury is sitting in here.

MR. McCOLLUM: Thank you, Your Honor.

THE COURT: Does that make sense?

MR. McCOLLUM: Yes, sir.

MR. MUREDDU: I would inquire of the Court, Judge, we discussed this earlier, but I never actually gave the Court a copy of his report. Obviously, the prosecutor has a copy and has had it for several months.

I would disagree with him in one aspect in that everything that expert is going to testify to, as far as her state of mind and a specific condition known as transient peripartum psychosis, okay, they're aware of it, it's in there, and he's -- that's what we intend to have him testify about.

As the Court is aware, this is -- malice aforethought is an element of the crime. So the mental state of the Defendant, the ability to form malice aforethought, which is required to convict somebody of attempted murder, is -- that's what the expert is going to testify to. I'm sure that the State's going to object to that because it cuts directly into one of the elements of the crime.

Quite frankly, I believe that that is the primary

issue as to the charge of attempted murder. I think the facts are -- the facts are she birthed the baby, she discarded the baby. It's undisputed, at some point in time, we're working towards a concession of that.

THE COURT: Okay.

MR. MUREDDU: My understanding of the law is she's charged with attempted murder. The statute says that she should get five lesser-included charges, all the way down to A and B third degree. You've got no injury to the child. So we're looking, I believe, at the end of the day, six possible verdicts that could be rendered by this jury.

Certainly we're not happy that they decided to charge her with attempted murder, the assault that includes malice aforethought, but they have. And so that's knowing that there is established science, psychological, mental health science out there that there is a mental disorder, psychological disorder, whatever you want to call it. It has a name, it's not made up. It's a recognized science. That's what we're going into.

THE COURT: And I wasn't saying that it was. I was just saying that it wasn't one that, when you said it, it -- it wasn't something I personally experienced in court before.

MR. MUREDDU: I understand. Well, and that's why -- look, having said everything that I just said, basically, I guess the point of what I'm saying is would the Court care to --

THE COURT: I would like to know -- I would love a copy of the report, so that way I can read it and get up to speed it on and feel like I'm one more -- one degree more informed of what's going on.

MR. MUREDDU: I agree. And, Judge, I'll further show my cards. And the reason why I would like a little more definitive guidance is our whole case is based on this. We're going to talk about it in opening statement. We're going to talk about it with the State's witnesses. We're going to talk about it with our witnesses.

If at some point in time that I'm going to hear from the Court, hey, this transient peripartum psychosis, can't go there because it is quasi-related to diminished capacity, which we don't recognize in this state, that's going to torpedo the case, Judge. I can't say it any other way.

THE COURT: Okay.

MR. HIXSON: Well, to be as blunt as I can, either she is sane or she is insane. If she is sane and if she's competent, then she faces the full thrust of the

law.

Similar to imperfect self-defense in South Carolina, we don't have imperfect self-defense. We don't have a defense that I made a mistake, but I thought I was okay with self-defense and so let me get that charge.

If she is sane, she is not entitled to diminished capacity because she is considered to be -- have the same ability to form mens rea as a sane person. Can't say she can't form it legally and fail on the element of a crime because a psychiatrist says that she has an accepted syndrome that is not to the level of insanity.

So either she's insane and she gets a charge on guilty but mentally ill. There is no insanity defense. There's no assertion that she is not competent or that she's insane and, as such, diminished capacity is only there to reduce the mens rea to say, yeah, she put him in a bag, but she didn't mean to kill because she can't form the mental intent to kill because she has postpartum depression.

It is the same argument by the -- Santiago was an Asperger's syndrome murder case where the doctor wanted to testify the kid had Asperger's, so he can't form the capacity to kill.

This case, she has a postpartum issue, according

to Defense witness, and as such, she can't form the mental capacity to kill. It is the same thing, exactly the same thing. That's why, in the state of South Carolina, diminished capacity is not accepted.

Now, if there was another basis to talk about the expert's report besides what is barred, then I think it's great. I'm not challenging the qualification of the doctor, that the doctor is not an expert in psychiatry, psychology, the background and all that. But that is what State versus Gill and Santiago and their progeny are for, is to bootstrap a mental health argument into a prohibited area.

THE COURT: I mean, I don't know how I get around these cases that say diminished capacity is not a defense. They're -- I mean, Gill and Santiago could not be any clearer. In Santiago, they barred -- Judge Goodstein barred the Defense's -- the expert from testimony completely and totally.

So tell me, if the expert -- tell me -- help me with the expert's going to say she has got this condition. Is he going to say that she's competent? I mean, does the expert say she's competent?

MR. MUREDDU: Judge, as the Court knows, the issue at hand is not whether she's insane or not. It's the mental state at the time of the alleged criminal

offense, okay.

The transient peripartum psychosis, what it is, is it is a transient as in it is in a -- it's impermanent; okay? It only arises in severe cases of peripartum, postpartum depression. That's basically what we're talking about. It is an extreme variation but one that exists and only appears at a certain time.

THE COURT: So is he going to say she doesn't know the difference between right and wrong?

MR. MUREDDU: What he's going to say is, in his expert medical opinion, that at the time of the birth -- in and around the time of the birth of the baby that, in his opinion, she was experiencing a psychosis as a result of this disorder. So that's what he's going to say.

Now, what does that mean? Just like when the State -- they will spend probably most, if not all, of their time with the witnesses who dealt with Shelby, particularly Jeff Cauble is one of them, about talking about how calm she was, and she was -- the doctors report she was calm, she wasn't upset, she wasn't stressed. And they're going to stress what does this mean. It's expressed if not implied intent of malice.

So her -- they're going to be going into her demeanor of being calm rather than being disheveled or

disarrayed or very extremely upset.

I would say that what we're talking about is analogous to that. This doctor is going to lay the foundation of what it is, when it occurs, what are the conditions where it is most likely to occur, and what the state of mind a person is in if it happens to them. And he's going to give the opinion it happened to her, he's going to tell all the reasons why he drew that conclusion.

They can certainly say that he's wrong, but it definitely goes into her intent, her state of mind, her mental capacity, and her ability to form malice or whatever at the time of the crime.

THE COURT: But he's not going to say she can't tell the difference between right and wrong.

MR. MUREDDU: No, he's not going to say that.

THE COURT: Okay. Mr. Hixson?

MR. HIXSON: I just don't have any follow-up. I think the issues are joined in that the first page of the report specific -- refers to the issue of baby dumping, that the baby dumping turns to a crime of discarding or leaving alone an extended period of child [sic] with a specific intent to dispose of that child. She is diagnosed with that, and the doctor says that she has the specific intent to commit the crime in the

first page of the report.

I don't know how else to articulate it anymore other than I do not know what the doctor is going to testify to. I don't want to chill the Defense's ability to put up a case, but I don't want to allow inadmissible evidence in a trial in South Carolina. We don't accept that.

So I don't mind if we hear it. The reason I filed the motion prior to trial is a warning shot over the bow to Defense counsel in opening statements so we don't get off on the wrong foot. That's why the timing of my motion.

THE COURT: So, I mean, what I -- if you walk this dog to the end of the street, my question is, is Defense counsel going to be standing in front of the jury in closing arguments and saying she's not guilty of attempted murder because she didn't have the mental ability to form the mens rea of malice aforethought, which they're never going to hear the judge say because that's not the status of the law.

MR. MUREDDU: Well, two things, judge. I want to -- I'm going to say this so I don't forget about it, to come back to it, is we touched in chambers the timing of this motion, having had months to do this -- it was filed on -- 5 o'clock on Friday, on the eve of

trial, as eve gets when you've had access to that.

Judge, I'll read you the question right here, the money shot, so to speak. Someone experiencing transient peripartum psychosis, as to their state of mind, are they acting maliciously, are they acting sadistically, are they acting wickedly, with evil intent, are they acting with a depraved heart?

All of those things that I just went into, when I'm asking the doctor about the state of mind of someone experiencing transient peripartum psychosis, that is how we define the -- of course define malice.

THE COURT: Right.

MR. MUREDDU: And our position is, is that she was experiencing transient peripartum psychosis, and in that state of mind, she wasn't acting maliciously with malice. And that is where we're going to go to with this witness.

The State can argue all the other things. They know what he's going to say, and they can say that he's full of it or it didn't occur here or whatever, but -- and, again, having said all of that, Judge, this case has been on the radar for months, and we have actually -- well, I don't want to say this on the record, but there have been negotiations between the State and the Defense as a possible resolution to this

case.

And to have -- we could have waited until Friday at 5 o'clock and gave a notice that we were going to call an expert and what that was. We didn't do that. And if the Court is going to limit our testimony into the exploration of this recognized medical mental disorder, we would certainly ask for a continuance.

THE COURT: Do you want to say anything?

MR. HIXSON: Just briefly. I guess what I was trying to do was track a middle ground. State versus Santiago, decided by our Courts, psychiatrist testimony on Defendant's Asperger's disorder was not admissible to establish that the Defendant did not have the requisite mental state to commit murder.

So the number one part that I have the problem with is to confront the testimony of the psychiatrist on a disorder that's not -- excuse me, on a doctrine that's not recognized. That is what the jury has to decide. Did she form malice or not? Did she have malice aforethought when she tied a knot in a trash bag and threw it away and then lied about it for the next little bit until, finally, she was apprehended for it?

Nothing else is in dispute. It's the only issue, as Mr. Mureddu indicated when he called it the money shot. That's the whole thing. That's the entire

trial. Did she form malice when she put her baby in the trash? Is she guilty of attempted murder or did she not form malice to do it? That is the entire thing.

And I guess, I don't know, absent barring the counsel from asking the ultimate issues of fact, which go into some other cases that I have relating to their allegations of battered spouse and other things in the memo -- or, excuse me, in the report, I guess it has to be for the Court to ask because that is the entire issue if the counsel --

THE COURT: I mean, what it sounds like to me is the Defense counsel is arguing that she's culpable of a lesser offense because of her diminished capacity.

MR. HIXSON: And just to sum up also --

THE COURT: I mean, is that not right?

MR. MUREDDU: Judge, again, we're talking about state of mind, a mental state.

THE COURT: Right. I mean -- but, I mean -- and I don't know how I get around this case that says, essentially, Defense counsel is arguing that Santiago was culpable of a lesser offense because of his diminished capacity. However, the diminished capacity defense is not recognized in South Carolina. South Carolina does not recognize this defense; thus, the

trial Court did not commit an abuse of discretion when she refused to allow Donna Schwartz-Watts to testify regarding his diminished capacity.

I mean, the whole purpose of -- tell me another purpose for the doctor for -- besides -- and of course, we're going to have to proffer all this testimony anyway. We're all talking about it, you know, outside the presence of the doctor, but I mean, all this is going to have to be proffered.

But, I mean, what's he going to testify to if he -- what's he going to testify for if he's not going to sit up here and say she doesn't have the ability to form malice aforethought?

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

THE COURT: Yeah.

MR. McCOLLUM: And I know that one person is supposed to do this.

THE COURT: I don't get upset about those things, so you're fine with me. Y'all jump -- I mean, y'all are her lawyers, whoever wants to talk can talk. You know, that rule -- or whoever created that rule that I've never read that said only person can talk doesn't apply to me.

Y'all jump in -- I'm having a conversation with

you at this point. So y'all -- whoever wants to jump in, feel free to jump in. You won't offend me in any way, shape, or form, Mr. McCollum, I promise.

MR. McCOLLUM: Thank you, Your Honor.

THE COURT: But help me -- do you see what I'm saying?

MR. McCOLLUM: Yes, Your Honor.

THE COURT: Help me with where I am.

MR. McCOLLUM: And in terms of -- is there -- do we all agree that our expert is going to testify?

MR. HIXSON: I'm not prepared to seed the field. If the only purpose is malice aforethought, then that's the entire thing, and I need to stick with it. I thought there was another basis for the testimony. It wasn't my intention to block all the expert's testimony, but the only reason the expert is going to testify that she can't form an element of a crime in my expert opinion, that's Santiago, and I would have to support my motion.

MR. McCOLLUM: Your Honor, a couple of things. One is that Your Honor's ruled under Jackson versus Denno that the statement's admissible.

THE COURT: The first part of her statement.

MR. McCOLLUM: Yes, sir, Your Honor. We also have a right to have the jury determine --

THE COURT: The voluntariness of her statement.

MR. McCOLLUM: Yes, sir.

THE COURT: So, I mean, is the doctor going to be able to shed some light on that?

MR. McCOLLUM: I think so, clearly, because of everything that she went through. He examined her. He's done an extensive report on her. He has extensive knowledge of these type of things. He diagnosed her with other disorders. He talks about her state of mind and why she appears so calm. Even Your Honor picked up on that.

THE COURT: Right.

MR. McCOLLUM: It's completely --

THE COURT: It is what it is, yeah.

MR. McCOLLUM: It's completely abnormal. And he can explain all of that of what's going on.

THE COURT: Okay. Now -- and see, in that scenario, I think you're in a different boat, because my guess is, although I don't know what they're going to do, but my guess is they're going to say she's pretty calm, you know, to just have thrown her baby in a dumpster or whatever, you know.

And so when you start going down those roads, I'm tracking with you. I understand. I think what we need to do is we need -- the first thing we need to decide

is what are we going to say in opening tomorrow. Let's cross that bridge this afternoon, and I don't need to hear your whole opening; I'm just talking about this issue.

And then we just need to block off some time maybe Wednesday afternoon after we do that other hearing to get the doctor in and get him up here, and let's see where he is. Does that make sense? Because if one of the purposes in calling him is to contradict this idea, you know, look how calm she is, she's in there, sitting there denying this and, you know, that kind of thing, you know -- because I can see the State turning the non-inculpatory statements into evidence.

I'm not saying they're going to do that; it's just a guess, you know, just from being in the courtroom the majority of my legal career.

But -- so I -- if we're moving down that road, that's one thing. I think we just have to be -- I mean, we're going to be walking a fine line, for lack of a better term. But one situation where I don't know that anybody wants to be in is, you know, y'all get to this "she can't form the mental state," and then I never tell the jury that this diminished capacity thing exists.

Because it's going to create -- you know, what it

does is it creates this huge level of confusion of, the judge didn't tell us any of this was an option, but all those lawyers stood up there and talked about it for 20 minutes. So I think we can walk the line; we've just got to walk the line cautiously.

MR. McCOLLUM: Your Honor -- and when your clerk arrives maybe sometime tomorrow, if he or she is going to be here, we would like to get a copy of Your Honor's malice charge.

THE COURT: Okay. Yeah, sure. And when we leave tonight, everybody write down their e-mails on a little sticky note for me. And then when she gets here in the morning -- and my malice charge changes a lot based upon what county I'm in and what kind of case it is. So a lot of prosecutors have their own things and so it gets tweaked a lot.

So I can give you what's in the charge book. I can give you things that I've used before. I'm open to other charges of malice as long as they are in accordance with the law. But, yeah, we can certainly do all that. That's no problem at all.

Tell me where -- and I'm not asking you to give me your whole opening statement, but what's the plan for opening about the doctor's testimony?

MR. MUREDDU: Judge, I was going to do it, and

I've got...

THE COURT: And I don't need you to give it all to me.

MR. MUREDDU: I've got it, I just have to find it.

THE COURT: I mean, this case is coming up on three years old. Everybody needs resolution to the case. We don't need anybody to say anything that would cause a mistrial or anything, not that anybody would do any of that intentionally, I know. I'm not saying that they would.

MR. MUREDDU: Well, one of the things I was going to basically say the reason why this happened is because she experienced an episode of transient peripartum psychosis. I was going to say, you're going to hear from a doctor who has been -- is an expert in the field, who's been working in the mental health field for 45 years. He's going to define it. He's going to tell you what its symptoms are. He's going to tell you what conditions are present which make it likely to occur. And he's going to tell you that, in his opinion, that it was present in her case.

And he's going to further go into that, you know, this -- this type of thing -- you know, call it baby dumping, call it what you want; we can call it transient peripartum psychosis -- it happens about --

on average, about a hundred times a year in the United States alone. It's -- you know, it's an extreme variant of postpartum depression but more severe. I was going to go right into that.

THE COURT: Do you want to be heard on that?

MR. HIXSON: Just -- I guess, as a central point to concede it somewhat, that discussion isn't bad. The point is, is the testimony on an ultimate issue of fact --

THE COURT: Right.

MR. HIXSON: -- that is contrary to the law in South Carolina.

THE COURT: I think what you just said is fine. You know -- but, you know, there's a difference in saying that and saying she is not guilty of attempted murder because she has this condition. Those are two different things.

MR. MUREDDU: Well -- and, well, the doctor is not going to say that.

THE COURT: All right.

MR. MUREDDU: Nor -- well, I mean, I'm fast-forwarding the closing argument.

THE COURT: Right.

MR. MUREDDU: Obviously, at some point in time, I'm going to be looking at the jury and saying, she's

not guilty of attempted murder.

THE COURT: Right, right. And I'm not saying you can't say that. It's just we can't create a fallacy of law that she is -- and, again, I mean, the only thing I know about this case is what I've heard today. I have no history with it at all. I mean, but we can't create a fallacy of law that there's some exception to somebody being guilty because of some diminished capacity that's not -- it's just not recognized in the State.

But, you know, I think based kind of -- the way we've kind of massaged through it this afternoon, I think we're fine, and I think you can say what you said in opening --

MR. MUREDDU: Okay.

THE COURT: -- without kind of, you know, reaching that ultimate issue. But you can lay the foundation for who your expert is and what he's going to testify to, and we want you to listen out for this and listen out for that. And, you know -- I think, you know, explain -- I think the way that -- you know, it's using it as a methodology to explain her behavior and why she's so cool, calm, and collected on the audio and all that kind of stuff. That's a whole different road from a diminished capacity argument.

MR. MUREDDU: Well, and certainly, judge -- and I think that you're being -- you understand it's like we want to clear this up because I'm --

THE COURT: No, no, no.

MR. MUREDDU: I'm not going to try to tank the case.

THE COURT: No, I know. In this -- I can only imagine all the different emotions that are going on in the courtroom with the family, many different levels, and the case, you know, it's got a little bit of age on it, and it's a complex case and it has complex issues. I'm not fussing at anybody for that in any way. You know, she's been out on bond and behaving and all that good stuff.

So, I mean, I just -- I wanted to get kind of a level playing field so that we're all singing from the same sheet of music in going forward.

(Discussion off the record.)

MR. MUREDDU: Judge, this is -- we need to make you a copy of this.

THE COURT: Okay.

MR. MUREDDU: I'd like to do that today.

THE COURT: Okay, that's fine.

MR. McCOLLUM: I have a copy downstairs, Dean, if you want it.

MR. MUREDDU: Yeah, we just want to make sure that he -- because, again --

THE COURT: Yeah. I'll wait before I go, and that way, I can read it tonight and be up to speed for tomorrow.

MR. McCOLLUM: Thank you, Your Honor.

THE COURT: What else?

MR. HIXSON: Two brief things. We requested -- like the charge on malice, just so we're talking about it, the Mouzon line of cases.

THE COURT: Yes, I'm with you.

MR. HIXSON: And depraved heart, those type of things.

THE COURT: If y'all have specific stuff you want me to look at, you know, sometime today or tomorrow or, you know, go ahead and e-mail all that stuff to the clerk. And then I'll -- we can send out what we normally charge and so you have that. And we can e-mail all that to you.

I like everybody to see that ahead of time and, you know, I charge Victor versus Nebraska, firmly convinced. I always give the new circumstantial evidence charge. I can't remember the name of that case, but there is a new circumstantial evidence charge. I always give that.

Most of my charges are, you know, relatively simple and straightforward and out of the book, but we can look at the malice charge. Of course there's no evidence of a deadly weapon.

MR. HIXSON: No, sir.

THE COURT: So there's no evidence of inferred malice.

MR. HIXSON: There's no express malice of any kind.

THE COURT: We won't have anything -- any of that kind of stuff in there. But we can -- we can look at the malice charge and, over the next couple days, and see if there's something we can all come to agreement with. Is that fair enough?

MR. MUREDDU: Yes, sir.

THE COURT: Okay.

MR. HIXSON: Absolutely.

THE COURT: Okay. What else?

MR. MUREDDU: Judge, one -- I don't think we've gotten into lesser included yet, but there is, in this case, a 9-1-1 recording.

THE COURT: Okay.

MR. MUREDDU: Basically -- and the prosecutor, I'm sure, will correct me if I'm wrong. Basically, as I think we've shared with you a bit, you got two

teenagers find the baby in the dumpster. Okay? And the older one sends his younger one to get his mother. Mother comes down, and then people are screaming and yelling, "Call 9-1-1." 9-1-1 is called.

So there's about an eight-minute 9-1-1 recording to the police just calling for help. There's screaming, moaning, groaning, extremely inflammatory background noises beyond -- I don't have a problem with anything that the caller said, but you can clearly hear very, very inflammatory, people upset, crying, saying things, et cetera, et cetera.

Judge, we would be moving to keep that -- to suppress that evidence. It's, first off, clearly a 9-1-1 -- a recording is hearsay on its face. It's not probative of anything. The solicitor is going to call, I'm sure, one or both of the boys and the mother. They're going to call these witnesses, I heard a baby or I heard crying, I found a baby, got my mama, 9-1-1 was called, we called for help.

THE COURT: Okay.

MR. MUREDDU: Certainly, those witnesses can appear in court, testify, et cetera. And but for the -- all of the inflammatory stuff in the background, I don't know that I would have a problem with the 9-1-1 call. But it's out there. It's got no probative

value.

THE COURT: Let's see what their intent is.

MR. HIXSON: That's correct, Your Honor. Raymond Price is on one of them, and he is actually fairly calm. The inflammatory thing is people crying, saying, Oh, my god, who would do something like this? The nature of that isn't anything more than when you hear screaming or a home invasion or "my husband's been shot" or something like that. So it's nothing -- it's not -- no improper prejudice, it's not unduly unfair. It's a business record, and the only legitimate argument, I think, would be is it cumulative based on live testimony, and our intention is either/or at this point in time based on the availability of the witness we expect to be here tomorrow morning.

THE COURT: Okay. Can somebody e-mail me the recording or give me a copy of it?

MS. WALKER: We can do that. Or we can play it now.

MR. HIXSON: There are quite a few phone calls, so the only one we're talking about specifically is when Mr. Price is on there.

MR. MUREDDU: I think we only have one in our discovery.

MR. HIXSON: There is -- well, that's the one

you're talking about. There's all -- under one file, and they're separate calls.

MR. MUREDDU: I've looked at everything. I've only got one.

MR. HIXSON: Well, I'll show it to you right here. Do you want to hear --

MR. MUREDDU: Let me ask you this, though: Which -- how many or which do you plan on publishing?

MR. HIXSON: Once again, if Raymond Price testifies live, then I probably will not put the 9-1-1 call in because he's going to say what he said on the 9-1-1 call.

THE COURT: Okay.

MR. HIXSON: If he is not available, then we would like to offer that statement, basically, as a business record in through the 9-1-1 call. We will know in the morning.

THE COURT: Okay. Is that a copy or is that the original?

MS. WALKER: No, sir, Your Honor. This is my original.

THE COURT: Okay.

MS. WALKER: But we could e-mail you, play it now, burn a copy --

THE COURT: Why don't you e-mail it to me. E-mail

it to me, and I'll listen to it tonight, and then we can talk about it in the morning. And it may be a nonissue because the gentleman is here.

MR. MUREDDU: All right.

THE COURT: But I'm going to have to hear it for me to make that call. Does that make sense?

MR. MUREDDU: Yes, sir.

THE COURT: Okay. What else?

MR. HIXSON: Oh, as it relates to stipulations concerning DNA, that's just relating to trial scheduling for our purposes with our witness coming in, just -- it relates to that. Only whether or not -- I have the copy of the report. All I was -- we were talking about in chambers and after that was just the DNA report where the Jane Doe at that time is the offspring of Shelby Harper Taylor and all of our witnesses are available. We have to call Ryan Seipt on Thursday morning, is the only convenience; otherwise, we'll put the witnesses up.

THE COURT: Okay.

MR. HIXSON: But that is what it is.

MR. MUREDDU: Judge, the best I can tell you is we're not ready to stipulate that at this moment in time.

THE COURT: All right. That's fine.

Anything else?

MR. McCOLLUM: I don't want to say anything else, Your Honor. I think we've been over a lot. You know, we have talked about the malice. Obviously, we're going to be looking at some lesser includeds. I don't know if we need to go into that right now.

THE COURT: No, we don't. But what I would -- you know, just don't lose sight of, as the trial progresses, you've got the -- the sooner y'all get that stuff to me and the stuff you want me to look at or the cases you want me to read, the easier it is for me on a break or lunch or whatever to sit there and do it and process through it, and, you know, get it printed and all that kind of stuff.

So, yeah, the sooner you get it to me, the easier I can work through it in my mind, because I like to read stuff that you give me and make sure I'm up to speed on what you're doing. Is that good?

MR. McCOLLUM: Thank you, judge.

THE COURT: Okay.

Now, Ms. Taylor -- all right. Now, I don't know you. Okay? I've never met you in my whole life. Okay? Now, you have shown up for court today. You've been on bond now for almost three years. Okay. I'm going to let you go home tonight. Okay?

THE DEFENDANT: Okay.

THE COURT: Now, you are to be here tomorrow morning. The Court will start at 9:30. Obviously, you need to be here prior to that. If you do not show tomorrow morning, we're going forward whether you're sitting there or not. Okay?

THE DEFENDANT: Yes, sir.

THE COURT: If you do not show up, I'll also issue a warrant for your arrest. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. And -- but, you know, we've been through a lot today. You've behaved appropriately. You haven't, you know, done anything crazy in court or given me any kind of impression that, you know, you're not, you know, behaving inappropriately, communicating with your attorneys, and all those kind of things.

And so I'm going to let you go home tonight. You need to be back here tomorrow morning. Court will start at 9:30. Be here whatever time your attorneys tell you to be here or be at their office or whatever that may be. And we'll see you tomorrow morning at 9:30. Okay?

All right. Anything else from the State?

MR. HIXSON: No, sir, Your Honor.

THE COURT: Anything else from the Defense?

MR. MUREDDU: Nothing, Your Honor.

THE COURT: Okay. All right. Thank you, guys, very much. Thank you for your hard work today. I'm glad we got through that stuff. And we'll be ready to go at 9:30 tomorrow morning.

Oh, just some housekeeping things: Y'all can move about the courtroom as you need to. I know some judges, you know, say you got to stand here or you got to stand there. Y'all can use the podium and move about as you need to. If you need to move somewhere to see something, that's perfectly fine.

If you want a witness -- I'm going to assume the witnesses are excused from their subpoena. If you want somebody held under their subpoena, just wave your hand and say let's hold this guy or girl under their subpoena.

And, y'all -- I don't get upset when lawyers -- you know, people say, "Can we have just a moment to discuss" before you finish with a witnesses. That's perfectly fine. None of that bothers me or upsets me. You know, I'm going to let you try your case and let y'all move about as you need to. You don't need to ask permission to approach witnesses or anything like that.

And if you've got something we need to take up

outside the jury's presence, just say, you know, judge, we have a legal issue, and I'll send the jury out and we can go through it. Okay? All right? Everybody good?

MR. MUREDDU: Yes, sir.

MR. McCOLLUM: Yes, sir.

MR. HIXSON: Yes, sir. Thank you.

THE COURT: Okay. Thank you.

(The hearing adjourned at approximately 5:07 p.m.)

(The hearing resumed on Tuesday, February 6, 2018, at approximately 9:35 a.m.)

THE COURT: All right. Good morning. Thank you very much. Take your seats.

Anything we need to take up before we bring the jury in from the State?

MR. HIXSON: No, sir.

THE COURT: From the Defense?

MR. MUREDDU: Nothing from the Defense, Your Honor.

THE COURT: Okay. All right. So when the jury comes in, we are to swear them in, the oath you read yesterday.

(Discussion off the record between the Court and the clerk.)

THE COURT: You ready? Let's bring them in.

(WHEREUPON, the jury came into open court at approximately 9:39 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen. Welcome back. Thank you very much for being on time. I didn't know that y'all had a nice tradition of bringing breakfast in for the jurors, so they told me that after I had sent y'all out yesterday. So I asked them to get you something, but tomorrow, if you come a few minutes early, they'll have a little bit of something more substantial for you. So I do apologize; that was news to me.

Okay. All right. So the first thing that we're going to do this morning is you are going to be sworn in. Now, yesterday, you took a couple of oaths, and those were to tell me the truth in response to my questions. This oath that you're going to take this morning is completely different.

The oath that you're going to take this morning is your promise to me, to the parties, to the litigants, to the lawyers, and to each other and to yourself that you will try this case fairly and impartially without any bias or any prejudice to either side. You will sit there fairly and impartially much like a judge, with no one to reward and no one to punish.

You will hear the evidence in the case, determine

what the facts are, and apply those facts to the law that I will give you at the end of the case. So if you will please rise; the clerk will swear you in for the trial.

(WHEREUPON, all jurors were duly sworn.)

THE CLERK: Thank you. You may be seated.

THE COURT: All right. Thank you very much.

Now, before we begin the trial of this case, I thought it might be helpful to explain to you how a trial will work. First, the State, that is the solicitor's office, will be allowed to make an opening statement.

Now, opening statements are not evidence. They are simply outlines to help you understand what that party expects the evidence will show. The Defendant may, if she chooses, present an opening statement, but she does not have to, for reasons that I will explain to you in a moment.

Now, as I go through this brief, short explanation of the law, I want you to listen for the word "evidence." Okay? So the word "evidence" is a defined term. I'm going to tell you what is evidence and what is not evidence. So listen for that as we process through this first instruction on the law.

So following the opening statements, you will hear

testimony and evidence in the case. This will consist of testimony from the State's witnesses as well as any physical exhibits which will be introduced into evidence. Following the completion of the testimony, the attorneys will again have an opportunity to make what is called closing statements or closing arguments to you. This is an opportunity for the attorneys to summarize the case from their respective points of view. Again, the opening statements and the closing arguments of the attorneys are not evidence.

Following the closing statements by the attorneys, I will instruct you on what the law is in South Carolina as it pertains to the issues that have arisen during the case. When I've completed my instructions to you, you will then be permitted to begin your deliberations in order to reach a verdict.

You are now the jury in this case, and I need to take a few minutes to explain to you your duties as jurors and give you some instructions. Again, at the end of the trial, I will give you more detailed instructions, which will go on for probably 30 minutes or more. Okay? And at the end -- those instructions will control your deliberations and the things you must consider at that time.

In a nutshell, your duty is this: It is your duty

to decide from the evidence what the facts are. You and you alone are judges of the facts. You will hear the evidence, decide what the facts are, and then apply those facts to the law that I will give you at the end of the case. That's how you'll reach a verdict. In doing so, you must follow the law that I give you, whether you agree with it or not.

So what is evidence? So evidence will consist of the testimony of the witnesses, documents, or pictures or anything else received into evidence as an exhibit and any facts on which the lawyers agree or anything that I tell you to accept.

So sometimes the lawyers say, "We can all agree on the day in question, the sky was blue." So I will tell you, you must accept as a fact in this case that the sky was blue. Okay? And, of course, that's a very simplistic one. That's just an easy way to explain to you.

So evidence is the testimony of the witnesses, the documents and the exhibits that are received into evidence, and any facts on which the lawyers agree or anything that I tell you, you must accept. Do not take anything that I say or do during the trial as any indication of what I think the evidence is or what I think your verdict should be.

Essentially, there is a line in the courtroom, and where you are, you control the facts, and I control the law. You can't tell me what the law is, and I can't tell you what the facts are unless the parties agree that I can tell you what the facts are. Okay?

Now, this is a criminal case, and it's been brought by the State of South Carolina. The State has charged the Defendant with attempted murder. The charge against the Defendant is contained in the indictment. I read the indictment to you yesterday. The indictment is not evidence of anything. It is not proof of anything. It is simply the description of the charge made by the State against the Defendant.

The Defendant has pled not guilty to this charge and is presumed innocent unless and until proven guilty beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. A Defendant has the right not to testify and never has to prove innocence or present any evidence at all. The burden of proof is always upon the State of South Carolina.

Now, some things that you are going to hear during this trial are not evidence, and you must not consider them as evidence. Number one: The statements and the arguments of the attorneys are not evidence. Number

two: The questions and the objections of the attorneys are not evidence. Number three: Anything that I tell you to disregard.

So in almost every single case that I try, whether as a lawyer or as a judge, somebody says something and I have to tell the jury or the judge had to tell the jury disregard what that person just said. Okay? And if that happens in this case, you must act as if whatever statement was made or whatever picture was shown, you never saw it. You must not consider it in your consideration of the evidence. Okay?

Now, there are two types of evidence which may be presented. Evidence may be direct or it may be circumstantial. Direct evidence is what somebody saw, heard, or did or touched or smelled, something that that person personally knows. Circumstantial evidence is indirect evidence. It is proof of one or more facts from which you can find another fact. You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give any evidence at all.

Now, in this courtroom and throughout this trial, there are rules that govern how we do everything. Okay? Literally from who goes first to who goes second

to -- everything that happens in here, there 's a rule for how it works. Okay? So this is my own personal rule book with all my notes and everything in it. Okay?

Now -- so here's what happens: When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it's not permitted by the rules, that lawyer may object. So they'll stand up and they'll say, "Objection. Relevance. Objection. Hearsay," something of that nature. If I overrule the objection, then the question can be answered or the exhibit can be received. If I sustain the objection, the question cannot be answered or the exhibit cannot be received. So whenever I sustain an objection to a question or deny a motion to admit an exhibit into evidence, you must ignore the question or the existence of the exhibit, and you can't guess as to what the answer would have been or what the exhibit would have shown.

Now, in every single case I've ever tried in my entire life, there comes a point where certain legal issues arise, and the judge has to make the decision on those issues outside the jury's presence. This happens in every single case. So it will be necessary at times for me to ask for you to leave the courtroom while I

discuss legal issues with the attorneys. If this occurs, you should not speculate about what we are discussing or why you were asked to leave the room. This is a procedure that the law requires when certain legal issues arise.

There will also be occasions where I ask the attorneys to approach the bench so that I can discuss a legal issue with them in private. I will do this as often as possible so that you will not be required to leave the courtroom more than is absolutely necessary. Again, if I ask the attorneys to step to the bench or if I ask you to leave the courtroom, please don't think that anyone is trying to keep anything from you or hide anything from you. This is simply a procedure used by all lawyers in all courts to determine and to decide legal questions.

Now, so to decide the facts of the case, you may have to decide which witnesses to believe and which witnesses not to believe. We call this the credibility of witnesses. Here are the rules: You can believe everything a witness says, you can believe none of what a witness says, or you can believe part of what a witness says. In deciding which witnesses to believe, you may consider a number of factors which you are not limited to, but these are just some common factors you

can consider: What was the witness's ability to see, hear, or know what he or she testified to? How good was the witness's memory? What was the witness's demeanor while they were on the witness stand and testifying? Does the witness have an interest in the outcome of the case or do they have any motive or bias or prejudice? Was the witness contradicted by anything he or she said or wrote before the trial or by other evidence you believe? How reasonable was the witness's testimony when considered in light of the other evidence that you believe?

The bottom line is this, ladies and gentlemen: You judge people's credibility every single day, and you really don't even understand that you're doing it. Okay? And, you know -- and I give you the best example in my house. The best example in my house happens right before you get on the school bus and I say to the two small children, "Did you brush your teeth?" Right? Okay. And at that moment, as that child answers, I judge their credibility. Right? Maybe it's the way their breath smells. Maybe it's the food I see in their teeth. Maybe it's the fact that one likes to brush their teeth and one doesn't. But I judge that person's credibility, and you do that every single day.

And when you came in this morning, no one asked

you to leave your common sense at the metal detector. Right? So you bring your common sense with you. That's why they picked you, because they believe in you. And so don't leave your common sense, you know, somewhere other than the jury room. You bring your common sense with you here in court and use it to determine the credibility of witnesses.

Now, here are some basic rules which I gave you yesterday, but I'm going to stress to you again. Until I advise you, you are not allowed to discuss this case with anyone, including each other. That means each other, friends, family members, and anyone involved in the case. This includes discussions face to face and by telephone, e-mail, text message, blog, Facebook, Twitter, any other type of social media that I don't even know what it is, you can't use it to discuss this case with anyone in any way, shape, or form.

You may not use the computer or a cellphone or any other type of electronic device to get or send information about this case. During your breaks for meals or overnight, you're allowed to use your phones, but you may not use them to get or send information about the case. This includes information about a party, a witness, an attorney, or a court officer.

You are not allowed to watch any news accounts

about the case. You are not allowed to do any research on any topics raised or any topics that you think might be helpful. You can't go home tonight and say, I'd really like to know this, so I'm going to go look it up. Okay? And those are your basic rules. You are not allowed to watch any news reports about this case. This includes newspapers, Internet, radio, or television. You must not consider anything you have read or heard about the case outside of the courtroom, whether before or during the trial.

Now, there is news media on this case. While you were not here yesterday, I had a very long conversation with them and outlined the rules. Okay? And their rules are this: The rules are that you are not allowed to be on the news in picture, in camera, in video, or anything else in any way, shape, or form. Okay? And I promise you that if anybody in the news media violates that, I will not only put the person who did it in jail; I will put the owner of the news station in jail. Okay?

You have a right -- they have a right to be here, and under our court rules, the rules, they are allowed to be here, and this is a public courtroom, and I understand that, but they are not allowed to put you on the news or video you or take a picture of you in any

way, shape, or form. Okay? They are not going to be disturbing to our process. They are going to be -- act as if they're not even here so that you can focus on the case and the lawyers and the witnesses. Okay?

Now, once the case is submitted to you, you must discuss it only in the jury room with your fellow jurors. The attorneys and the parties in this case have been advised that they are not to talk to you in any way, shape, or form. So if you see anyone involved in the case and they don't say hello, they're not being unfriendly; they're just following my rules. It is important that you keep an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments, and I have told you what the law is in this case.

It is your responsibility to determine the guilt or the innocence of the Defendant, and your verdict must be based solely on the evidence that is presented in this trial and on the law that I give you at the close of the case.

All right. Now, a couple of things that jurors often ask: Number one: Are we allowed to take notes? I do not allow note-taking. Okay? The main reason is this: When you start taking notes, you stop listening.

Reason number two is this: Your notes are not an accurate record of what occurred here. The only true record of what occurs lies with the court reporter. Okay? So that's why I don't allow notes. This case isn't going to be so complicated that you're going to, you know, need to have notes.

The second thing is my two alternates need to sit in these two seats. Okay? And when we take our morning break, you-all need to elect a foreperson amongst yourselves. That person doesn't get paid any extra. That's a joke. Okay? My one joke failed this morning. That person doesn't get paid any extra, and their vote doesn't count any more. They're just in charge of communicating with me about things that go on. Okay? So when we take a break, elect that person, and then where the gentleman with the gray sweater is, whoever is the foreperson needs to sit right there. Everyone else can sit wherever they want to. Okay?

All right. Any exception to the charge from the State?

MR. HIXSON: No, sir.

THE COURT: From the Defense?

MR. MUREDDU: Nothing from Defense, Your Honor.

THE COURT: All right. Ladies and gentlemen, you have done a good job of giving me your undivided

attention. If you will please give your undivided attention to the attorneys.

All right. Ms. Walker?

MS. WALKER: Yes, sir, Your Honor.

THE COURT: All right. The floor is yours.

OPENING STATEMENT BY THE STATE

MS. WALKER: Taking out the trash is one of the most mundane and common things that we do in our lives. It's the process of sorting through stuff in your house, whether it's in the refrigerator or elsewhere, and deciding what is no longer useful, what needs to be discarded and removed from your life. It could be the box of tissues that your kid used last week when she had the flu; it's now time to get rid of that. Or the Domino's box in the bottom of your refrigerator with leftover pieces of crust; no need for that anymore, that goes into the trash.

And so a lot of times, we deal with our trash without even thinking about it because it is, it's discarding things that are no longer useful from our lives. And that's why, on April the 9th, 2015, when Raymond Price's mother asked him and his older brother to take out the trash in the apartment complex where they were staying, they probably didn't think anything of it. Just another chore for teenage kids to do.

So Raymond and his brother took the bag and headed towards the garbage dump. It's one of those communal dumpsters that apartment complexes often have. So Raymond and his brother were making their way towards the dump, and they started to hear a noise that sounded unusual to them; it drew their attention. And, immediately, they took note of the noise but continued walking closer to the dumpster.

As they got to the dumpster, the noise had not stopped. They thought that perhaps there was a puppy or a kitten, something trapped inside the dumpster. It was clear from the noise that, whatever it was, was calling out, using what it had to ask for help. And so Raymond and his brother acted very bravely, and the two of them sprung into action once they decided that it was something that needed help.

The two of them jumped inside of the metal dumpster, fished through the garbage, searching for the source of the noise. And when they found the bag, they found the bag that contained the source of the noise, and they jumped out of the dumpster and appraised what they saw. And, unfortunately, they did not see a puppy, they did not see a kitten or any other kind of animal, other than a human baby. There was a baby, a live baby, crying inside a plastic garbage bag.

So Raymond and his brother immediately tore open the bag and started running for help. They were able to get help. They got their mother to come and assist them. Some people called 9-1-1, and the process began to start to save that baby's life, which, luckily, did happen.

But for the bravery of those two boys, perhaps that wouldn't have happened, and upon hearing these facts, the set of events, the first question that naturally comes to people's minds might be who on earth did this? Who put the baby in a trash bag and sealed up the knot at the top and carried that bag full of common household trash and a human being to the dumpster and threw it away, leaving it for dead?

And, folks, the answer to that question is: The Defendant, Shelby Taylor. Shelby Taylor is the woman who gave birth to that baby several hours before the boys found it. Shelby Taylor is the woman who formulated a plan to end the life of her newborn baby. Shelby Taylor is the one who acted -- took extreme action to snuff out the life of her baby by placing it inside the plastic bag, tieing a knot at the top, placing her into the garbage bin in the parking lot of an apartment complex and leaving her there.

And, folks, that's the reason why we're here this

week. Shelby Taylor's actions are why she is charged with attempted murder. And in order for us, my co-counsel and I, to prove that set of facts to you, we're going to put up several witnesses. We're going to present several pieces of evidence for you so that, at the end of this trial, you can all unanimously agree that Shelby Taylor is guilty of attempted murder.

So some of the people you're going to hear from, you're going to hear from Raymond Price. He was one of the boys who found the baby in the dumpster. You're going to hear from him exactly what he saw that day, what he heard, what he experienced firsthand. And you're also going to hear from multiple members of law enforcement and first responders. You're going to hear from Captain Drabick. He's a veteran paramedic with the Horry County Fire and Rescue and was one of the first responders who attended to the baby. He provided hand -- you know, one-on-one care to the baby as she was found on-scene and also as she was transported to the hospital to receive further care.

You're also going to hear from Detective Neely. Detective Neely was one of the first responding police officers onto the scene. And Detective Neely plays a really, really crucial role in this case, as everybody does. But the reason why his bit is in some ways more

crucial is this. Seems pretty benign, but this is a receipt from the Mon Cafe, and it's dated April the 8th, 2015. This receipt, as I said, dated for the day before the infant was found in the garbage, was found inside the bag with the baby. And this receipt is what law enforcement used to then go to the Mon Cafe and obtain surveillance footage from that transaction and ultimately determine that Ms. Taylor was a person of interest because she was the person who was seen in the Mon Cafe on the surveillance footage associated with that receipt that was found inside the tied bag with the baby.

So that receipt was crucial in beginnings to develop the investigation. Once this receipt was found and the surveillance footage was obtained, photographs from that surveillance footage were released to different media sources, looking for this person of interest. And in an interesting set of events, Ms. Taylor actually heard from different people that her photograph was on the news, and she reached out voluntarily to law enforcement, inquiring about why on earth her picture is on the news. And this was the day the investigation all started unfolding, which was the day that the baby was found.

And so Shelby Taylor actually reached out to law

enforcement and voluntarily came to the precinct and met with two investigators. And that's going to be an interesting part that you guys are going to get to hear. You're going to hear the recorded statement that Shelby Taylor provided to law enforcement in that questioning. And what's really interesting about that statement is all the denials. Shelby Taylor is a woman who we know now had given birth several hours before and concealed that pregnancy, and, yet, she denies, denies, denies in her statement. She tells the officers how much she does want another baby, but it couldn't be now, had to be in five years. Right now was not part of she and her husband's plan.

You're also going to hear her say that she would maybe adopt this baby if she could. If she could financially afford it, she would possibly adopt this baby. You hear her deny multiple times having been pregnant at any point immediately prior to this baby being found. So, as part of that interview, Jeff Cauble, who was one of the chief investigators on this case, gained more information, and he ultimately was the one who decided to charge Shelby Taylor with the crime of attempted murder.

You'll also hear from Jeff Cauble. You'll hear from him what other pieces of information he was able

to obtain and why he ultimately did pursue these charges. And then you're going to hear from several medical personnel. You're going to hear from a doctor who actually treated Shelby at the hospital. You're going to hear from this doctor about the postnatal care that he did give her. You're going to hear from him that, yes, in fact, she was pregnant and had recently given birth.

You're also going to hear from a social worker who had an interview with Ms. Taylor in the hospital. And these are all going to be crucial pieces of evidence for you to hear and understand in order to build the big picture and link together how it is that Shelby Taylor was charged with attempted murder. And at the end of all of this, at the end of our witnesses, we're also going to present a couple of witnesses from South Carolina Law Enforcement Division. They are the ones who basically did the paternity and maternity test on the baby. And you're going to hear from them -- and the results that they found from that DNA analysis -- that, in fact, Ms. Shelby Taylor is the biological mother of that baby.

So we've got a lot of information that's going to be coming at you throughout the course of this trial, but every single bit of it is important and crucial;

otherwise, we wouldn't be sharing it with you. But what is most crucial to understand going into this and keeping in your mind throughout is that we are, in fact, here because of her actions. We are here because, on April the 9th, after several hours after giving birth to her baby, she gathered the plan, gathered the intention to kill her child, and she executed this plan by putting the newborn in a bag of common waste, household trash, put her in the bag, sealed the baby's fate at the top by tying the ties and walking from her apartment down to the community dumpster and leaving her there for dead, intending for the baby to die there. And that's why, at the conclusion of this trial, I'm confident each of you will be able to return the correct verdict of guilty for attempted murder.

THE COURT: All right. Thank you very much, Ms. Walker.

All right. Mr. Mureddu?

MR. MUREDDU: Thank you, Your Honor. May it please the Court.

OPENING STATEMENT BY THE DEFENSE

MR. MUREDDU: Folks, this is a very emotional case. And when the event occurred, a decision was made. This is an evil act by an evil person. Case

closed. And I get that. It's not lost on me as to why that decision was made. But it's not that simple.

Shelby Taylor is literally the girl that lives next door to you. She is somebody's daughter, she's somebody's granddaughter, she's somebody's sister. She's never been in trouble before. She doesn't use drugs. She's never, in her life, harmed another person. Why? Why would something like this happen?

There is a psychological disorder called transient peripartum psychosis. Now, most of us have heard of postpartum depression. This is an extreme variation of that. This is why that happened. It happens about a hundred times a year in the United States alone.

Now, you're going to hear from a doctor who is an expert in this field, Dr. Robert McCarthy. Now, Dr. McCarthy is not some hired gun that we've flown in from someplace like California and paid tens of thousands of dollars to say what he's going to say. He lives in Myrtle Beach. He's been treating folks in the Myrtle Beach area for -- since 1994. He's been an expert in the field of mental health for 45 years. That's almost as long as I've been alive, not quite.

Dr. McCarthy is going to explain transient peripartum psychosis. He's going to describe to you its symptoms. He's going to tell you the conditions

that exist that make it likely to occur. More importantly, he's going to testify that it was present in Shelby's case.

Now, out of all the jurors, we picked you. We picked you because we believe that you can set aside and not get overwhelmed by the emotion in this case. We believe that you're going to listen, we believe that you will use your powers of reason, and we believe that you'll render a fair verdict in this case, a verdict. That's the reason why you're here, is to render a verdict.

The word "verdict" itself comes from a Latin word, and that word means to speak the truth. What is the truth in this case? One truth is what actually happened is what they say happened. But there is a second truth. There is more to this case than that. It's not that simple.

If you want to find the truth in this case, it won't be found if you allow yourself to be overwhelmed by the emotion of it all. The answers will be found through the power of reason. Transient peripartum psychosis was present in this case. To ignore it, to deny it, to dismiss it as some type of made-up mumbo jumbo, that's just not the truth. It's not justice.

THE COURT: All right. Thank you very much,

Mr. Mureddu.

All right. Is the State ready to call their first witness?

MR. HIXSON: Yes, sir.

THE COURT: All right. You may call your first witness.

MS. WALKER: Your Honor, the State calls Raymond Price.

THE COURT: All right. Come on forward, Mr. Price.

RAYMOND PRICE, after being duly sworn, testified as follows:

THE CLERK: Please state your full name and spell your last name for the Court.

THE WITNESS: Raymond Price, P-R-I-C-E.

DIRECT EXAMINATION

BY MS. WALKER:

Q Raymond, how are you doing today?

A Good. How are you?

Q Good. Do you go by Raymond or Ray?

A Ray.

Q Ray?

A Yes, ma'am.

Q Okay. Stick with Ray then. So, Ray, do you know why you're here today?

A Yes, ma'am.
Q Okay. And why do you think you're here today?
A Because me and my brother found an infant in the garbage can.
Q Okay. And do you remember approximately when this was?
A The time of the day was probably about 2 o'clock.
Q Okay. And was it in April 2015?
A Yes, ma'am.
Q Okay. And so how about you give me a little bit of a story about how this happened. What did your mother ask you to do?
A Okay. So my mother asked me and my brother to take out the trash. And we didn't want to at the time. We waited about an hour to take out the trash. So whenever we took out the trash, me and my brother, we went down there. We put the trash in the bucket. We started to hear a noise. I thought it was a cat. We heard it again. So my brother got in on one side; I got in on the other side. We started searching through the garbage.
Q And by "got in," do you mean into the metal dumpster?
A We got into the dumpster, yes.
Q Okay.

A We got into the dumpster. We started searching through the garbage. We found a bag with the baby's face pressed up against the bag. So my brother pulled out the bag, and we ripped it open.
Q Okay. And so tell me a little about the bag. When you found it, was it tied shut?
A Yes.
Q Okay. Do you remember at all what color the bag was?
A It was a white bag with a blue tie.
Q Okay. And so, tell me again, could you see the baby through the bag?
A Yes, you could.
Q Okay. And I'm just going to show you a couple pictures. If you could, please, these are State's Exhibit -- what's been marked for identification purposes -- 27, 25, 23, and 26. Does that picture look familiar to you?
A Yes, it does.
Q Okay. And could you tell me what that is?
A That's the dumpster.
Q Okay. And is that a fair and accurate representation of what it looked like in April?
A Yes, it is.
Q In 2015?

A Yes.
Q Okay. And what about this picture? What's this of?
A That was inside of the dumpster.
Q Okay. And is this what it looked like when you guys jumped in?
A Yes, ma'am.
Q Okay. And that was State's Exhibit 25. And this is State's Exhibit 23. Can you tell me what that is?
A That's the bag that we got the baby out of.
Q Okay. And how can you tell it's the bag you got the baby out of?
A The blue tie.
Q And does it look like -- were all of those items inside the bag?
A Yes, ma'am.
Q Okay. And do you remember there being those items in the bag with her?
A Yes, ma'am.
Q That was State's Exhibit 23. And what about this one? What does that reflect?
A Afterwards, whenever the baby was taken out of it.
Q Okay. Is that the contents of the bag as you remember them?
A Yes. Other than the shirt that I took off.

Q Oh, okay. So that black shirt?
A The black shirt, yes.
Q Is that your shirt?
A Yes, ma'am.
Q Why was it there?
A Because I took it off so my mother can clean off the baby.
Q Okay. Okay. And that was State's Exhibit 26.
MS. WALKER: And, Your Honor, I would ask permission to publish these to the jury at this time.
THE COURT: Any objection?
MR. MUREDDU: No objection, Your Honor.
THE COURT: Okay. Do you want to move it into evidence?
MS. WALKER: Yes, Your Honor.
THE COURT: All right. So State's 23, 25, 26, and 27 -- are those the right numbers?
MS. WALKER: Yes, Your Honor.
THE COURT: -- are admitted without objection.
You got it? Okay. You may publish.
(WHEREUPON, State's Exhibit Nos. 23, 25, 26, 27 were admitted in evidence.)
THE COURT: So, ladies and gentlemen, in every trial -- it doesn't matter what county I'm in -- lawyers handle pictures and things like that

differently. Some of them will put them on boards like this and show them to you. Some will hand them to you and let them pass them around. Some will show them to the witness, they'll never show the jury. But whatever they do, the evidence -- the pictures like this that are admitted into evidence will be back with you in your jury room for deliberations. So if you don't feel like you've had enough time to look at it now, during your deliberations, the items that get admitted as evidence will be with you so you can have more time with them. But I'll let the lawyers do it however they want to.

So you may publish, Ms. Walker.

MS. WALKER: Thank you, Your Honor.

This is the photograph that Raymond has just identified as the dumpster where the baby was found. And this is what he said was inside the dumpster where they jumped.

BY MS. WALKER:

Q Is that correct? Inside the dumpster?

A Yes, ma'am.

MS. WALKER: And then these two are of the ripped-open bag where she was found. And this one is a different angle but shows --

Q Could you point to me which shirt it is that was

yours?
A This one right here with the orange on it.
Q Okay. So, Raymond, when you guys found the bag, I know you said it was tied shut.
A Yes.
Q Was there anything that you two either added or took out of that bag?
A No.
Q So when law enforcement got there, was the bag as you had found it?
A Besides the shirt, yes.
Q Okay.
MS. WALKER: Beg the Court's indulgence.
THE COURT: Yes, ma'am.
Q And do you remember where this happened?
A It was in Island Green Apartments.
Q Okay. And is that here in Horry County?
A Yes.
Q Okay. And so, after you found the bag and ripped it open and all that, what did you do next?
A I went upstairs to the apartment to get my mother.
Q Okay. And what did you tell her or what happened?
A I told her there was a baby in the trash.
Q Okay.
A And she came downstairs. And then I think it was

Melissa that called 9-1-1.

Q Okay. Were you there when law enforcement came?

A Yes, I was.

Q Okay. And were you there when the paramedics came?

A Yes.

Q Okay. Have you had any other dealings with this case beyond that day?

A No, ma'am.

Q Okay. If you would, please answer any questions that Mr. Mureddu may have.

MR. MUREDDU: Judge, we have no questions of this witness.

THE COURT: Okay. Thank you very much. Have a nice day.

(Witness excused.)

THE COURT: All right. Call your next witness.

MS. WALKER: And, Your Honor, may Mr. Price be released from his --

THE COURT: Sure.

MR. MUREDDU: No objection to that.

THE COURT: Okay. I'll assume witnesses are released from their subpoena. If somebody wants them held, just -- y'all just need to let me know, and that will be fine. Okay.

Who's next?

MR. HIXSON: Keith Drabick.

KEITH DRABICK, after being duly sworn, testified as follows:

THE CLERK: State your full name and spell your last name for the Court.

THE WITNESS: Keith Drabick. D, as in dog, R-A-B, as in boy, I-C-K.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good morning, sir. How are you?

A Good. How are you?

Q I think you probably have an idea, but we'll share with the jury anyway: What do you do for a living?

A I am a paramedic for Horry County Fire and Rescue. I currently hold the rank of captain, and I am assigned now to the training division.

Q All right. So how long have you been doing that for?

A I started my public service career in 1986.

Q All right. So '86, I bet that means that you were working for Horry County Fire and Rescue around April 9th of 2015; is that correct?

A That is correct.

Q Okay. And did you have an opportunity to respond

to a call around the Island Green area in Horry County, and specifically in reference to an infant child that was found in that location?

A Yes, sir.

Q Please tell us about that.

A We received the call at approximately 1447, I believe, for a report of a child found in a dumpster. At that point, I was a lieutenant on Engine 20, which is located on Scipio Lane, five miles or so from the location. We responded along with our medic unit. I got there first in the engine where I found the infant still in the trash bag being attended to by some of the civilians.

Q So spend a little time describing the scene that you saw. What did you take in when you got there?

A It is pretty chaotic. There was a lot of people wandering around. Several people gathered around the dumpster area. As I approached the dumpster area -- I exited the fire truck, walked over to the dumpster area, had some of my other guys that were with me grab the equipment off the truck, approached over to the bag. There was a lady in the area of the bag and the young gentleman that was here before me, Mr. Price.

I went up to the bag where I found the infant with the umbical cord still attached to the placenta in the

garbage bag. Lots of food and common household trash about the baby's face. A lid from a canned good -- a sharp lid was on the baby. I proceeded to move some of the stuff off the baby, cleared the airway for the baby. The baby was alive. The baby was breathing. Not really making any purposeful noises or purposeful movements. I proceeded to open up my equipment and remove what we call an OB kit. It's an obstetrical kit that's used for childbirth.

From that kit, I removed a bulb syringe, and I proceeded to clear out the airway of the infant. After I cleared out the airway and made sure that the airway was patent, I then proceeded to cut the umbilicus, which is part of our standard procedure. I put my clamps in place, and I used the scalpel, and I cut the umbilicus. I removed the placenta at that time from the bag and placed it in the bag that my obstetrical kit came in, set it off to the side, proceeded to pick up the baby.

I had had somebody -- one of the neighbors run and get me a clean towel from their house. They come down, I wrapped the baby in the towel, and continued to monitor the baby and stimulate the baby and provide care for the baby. Our ambulance arrived, one of the other paramedics that was working the ambulance that

day. I got into the back of the ambulance, still maintaining care of the child, Sat on the stretcher. They strapped me in as I held the baby, and we transported the baby to Waccamaw Hospital, caring for it.

Q Very nice. Just as a matter of detail --

A Sure.

Q -- your run report on that --

A Yes.

Q -- you put a timeline on this. So what time did you show as arriving as your run report?

A Let me switch to the time section.

Q Or at least to the best of your recollection.

A The best of my recollection, the medic unit arrived -- the first set of patient vitals we recorded were at 1447.

Q Okay. So 2:47 p.m.?

A 2:47 p.m., sir.

Q On April 29th.

A On April 29th? April 9th.

Q Excuse me. April 9th. I'm sorry.

A 4/09/2015.

Q Okay. So the first medical care she gets --

A The first medical care she got would have been --

Q 2:49?

A -- a couple of minutes prior to that, upon my arrival. The medic unit, if I remember correctly -- and I'm not a hundred percent sure -- was returning from another call, so they were not in-house with us.
Q So it's safe to say roughly 2:30 is the first time someone's attending to her?
A 2:30, 2:40. Yeah, somewhere in there.
Q That's fair enough. Take a look at these. These were already admitted into evidence. And I'm referring to several photographs: 27, 26, 23, and 25. Just take a look at them all at once, see if you recognize that. And that's the scene that you responded to?
A That appears to be the dumpster that we responded to. 26 holds the contents of the bag in which I found the infant.
Q Okay. Is that consistent with the detritus and stuff that you removed from the newborn and food particles and canned goods?
A Yeah. It -- initially, when I walked up, I had thought that it was possibly a -- maggots on the child's face. I subsequently found or believed it to be rice at this point or some type of grainy or noodle-type substance. Removed it.
The canned good lid is here in this picture.
Q Can you point to that?

A Yes, sir. The silver lid there (indicating).
Q All right.
A And I remember the box of diapers in there as well.
Q Let me grab that last one.
A Yes, sir.
Q So you didn't go in the dumpster?
A No. I have no recollection of that, sir.
Q And take a look at that one while I show the jury this one. Is that the can lid you're talking about? That's right there?
A Yes. This picture, which is 28, this would be the wrapper from the obstetrical kit that I removed from my equipment, opened up, took my equipment out of the sterile obstetrical kit, used the equipment to remove the placenta from the child, cut the umbilicus, suctioned the nose and such. And these kits come with a paper-type blanket that I also used to wrap, and then the towel from the neighbor is used to warm, but I placed the placenta in there as the -- add some containment, sterility to it.
MR. HIXSON: Okay. And I've handed the witness State's-28.
Q That's a fair and accurate representation of the scene that you saw?

A Yes, sir.

MR. HIXSON: We'd move 28 into evidence, Your Honor.

THE COURT: Just 28?

MR. MUREDDU: No objection.

THE COURT: Just 28?

MR. HIXSON: Just 28, Your Honor.

THE COURT: 28 is admitted without objection.

(WHEREUPON, State's Exhibit No. 28 was admitted in evidence.)

MR. HIXSON: May I publish this, Your Honor?

THE COURT: You may.

BY MR. HIXSON:

Q And this -- for us laypersons, us non-paramedics, that's afterbirth, basically?

A That's correct, sir.

Q And that's the sterile bag that you placed it in to preserve it?

A Correct. That bag is sterile prior to opening the equipment that's kept in there. It's kept sterile. It's dated with an expiration date.

Q Okay.

MR. HIXSON: Beg the Court's indulgence just one moment.

THE COURT: Yes, sir.

Q Now, after you took this young lady to the -- let me talk about her physical condition a little bit.
A Sure.
Q You indicated -- do you have any idea about oxygen levels or how close to suffocation or anything like that, in a tied-up garbage bag, this child was? Would you be able to answer that question given your role as a first responder?
A In my -- it would be purely speculation. I could tell you that the --
MR. MUREDDU: Objection, Your Honor. He just said it's speculation, and he's not qualified to give an answer like that.
MR. HIXSON: That's fine. I'll ask a general question, then, related to non-expertise.
Q Did you feel like this infant was in need of emergency care to prolong this infant's life?
A Absolutely.
Q Let's talk about -- do you have any idea, as to your role in the fire and rescue agency, as to what Daniel's Law is?
A No, sir.
Q Specifically, I'm going to ask you --
MR. MUREDDU: Objection, Your Honor. May we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

Q Let me be precise when I ask this question. All right?

A Okay.

Q Where are you -- at the time this was going on, you're stationed at a particular location, I assume?

A Correct.

Q Was your fire station in close proximity to the response location where you went to?

A Yes.

Q About how far away do you think that was?

A Five miles or less.

Q Okay. And is there anything, as it relates to children or potentially unwanted children, is there any -- is your station called a particular thing for that purpose?

A We -- our station, along with every station in Horry County that is staffed, is designated as a safe place, a safe place for someone to drop off children in such a case that they can no longer take care of them or don't want them or anything of that nature. Yes, we are designated. It's placarded on the front door of

every station with a sticker.
Q So you can -- a parent can drop off an unwanted child?
MR. MUREDDU: Objection, Your Honor. Leading.
THE COURT: Rephrase your question.
MR. HIXSON: Yes.
Q Describe in more detail what you mean by "a safe place," what that means.
A If a parent, guardian, caregiver can no longer provide for that child, no longer can take care of that child, no longer wants that child, they can bring that child to the firehouse, give that child to us, and without any questions, anything, we will take control of that child and turn that child over to the proper authorities, whether it be Social Services -- we'll, obviously, notify the police department right away and our supervisors.
Q Okay. And is there an age limits as it relates to -- up to some particular age? Are you aware of that?
A I'm not aware of the age, no.
Q Okay. And you indicated that that's publicly displayed with placards on the fire station?
A Yes, sir. It's a yellow triangle with a black outline of a triangle with, I believe, the figure of an

adult and a child in black on that yellow sticker. It says "safe place."
Q Okay. And I think you testified earlier it's less than five miles from the incident location?
A Yes.
Q Okay. Let's just go back and close the loop for the jury.
A Sure.
Q You indicated, I think, you ran -- you took care of the child to the hospital?
A Correct.
Q You turned her over to more advanced medical care?
A I turned her over specifically to an RN at Waccamaw Hospital by the name of Stephanie and a Dr. Brian Gibson in Room 2 of Waccamaw ER.
Q And then let's just close your testimony out. Was that the extent of your involvement in the case? Did you offer any more care? Or tell us about --
A No, I haven't offered any more care to that child. I have seen that child twice since then. Once, the caregivers for the child brought her by the firehouse, and I was working. And once, we -- the station and the department was invited to attend a birthday party for that child and to thank us for what we had done, and we attended that. That was, I believe, at Socastee Park.

Outside of that, I've had no interaction or anything else with the child.

MR. HIXSON: Thank you for your service. I have no further questions.

THE COURT: All right. Cross-examination.

MR. MUREDDU: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MUREDDU:

Q Captain, do you know how long between the 9-1-1 call was placed that y'all arrived?

A No, sir, I do not. I don't have those times in front of me.

Q Can't estimate? I mean --

A Nope.

Q Five minutes? Ten minutes?

A I have no idea, sir.

Q All right. Well, let me ask you this: I'm hearing from your testimony, did you say that when you arrived that the child was in the trash bag in the dumpster?

A Not in the dumpster, sir, no. The child was in the trash bag outside of the dumpster, still in the trash bag.

Q In the trash bag?
A Yes, sir.
Q Okay. So what that would suggest, then, that when the child was found and 9-1-1 was called, that all the people around just left the child in the trash bag. Are you sure about that?
A Yes, sir. I'm a hundred percent positive about that.
Q You're sure that that child, from the moment it was found, was not held by the bystanders, was not attended to? They found it, they ripped open a trash bag, and they just left it there until --
A To the best of my knowledge, yes. Whether the child was picked up or not before I got there and placed back in the bag, I couldn't tell you. When I got there, I moved the garbage -- the common trash off of the child and took care of the child and picked up the child.
Q Okay. But you heard the testimony of young Raymond, didn't you?
A I did.
Q Okay. So the trash bag and the child were taken out of the dumpster; right?
A That's correct.
Q So, clearly, the child and the trash had been

moved before you got there?
A That's correct.
Q All right. So you made a big emphasis about there was a can that was on the child's face.
A That's correct.
Q The bag had been moved.
A Sure it had. I'm not disputing that.
Q Okay. Just want to cover that.
MR. MUREDDU: Thank you. No further questions.
MR. HIXSON: Briefly, Your Honor.
THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. HIXSON:
Q In preparation for trial like this, are certain instructions given to laypersons on the scene by your emergency dispatch on how to handle the situation?
MR. MUREDDU: Objection, Your Honor. He would be testifying to what somebody else, maybe 9-1-1, told the other bystanders. He's not qualified to answer what may have been told to bystanders as far as what to do.
MR. HIXSON: Your Honor, I'm just asking about policy procedure, and Mr. Mureddu opened the door as it relates to the conduct.
THE COURT: You can ask him about the policy. You can't ask him as to what actually happened. He

wouldn't be the person to testify to that if it was some kind of communication. But you can ask him what their procedures should be.

MR. HIXSON: I agree with -- thank you, Your Honor.

THE COURT: Okay.

BY MR. HIXSON:

Q Are -- in the fire service in Horry County, are emergency dispatchers trained, to some degree, in your understanding, to deal with crisis situations?

A Absolutely.

Q And to help instruct laypersons on what to do until the fire station service gets there?

A Absolutely.

Q Do you know if that was done in this case?

A I believe EMD procedures were followed. And that's emergency medical dispatch procedures.

Q Okay.

A They're all trained to that level. They have a certain series of cards that they must follow per each call and ask certain questions and provide certain direction.

Q And is it your understanding it would be the policy to instruct laypersons --

MR. MUREDDU: Your Honor, objection again. We're

getting into speculative testimony. The point of the solicitor's thing is he's trying to establish that whoever was on the phone told the people not to move the baby. There is no evidence.

THE COURT: Slow down with the speaking objections. Your objection is overruled.

You can finish the question.

MR. HIXSON: I have no further questions.

THE COURT: Okay. Any recross?

MR. MUREDDU: None, Your Honor.

THE COURT: Thank you. All right. Thank you, Captain. Have a nice day.

THE WITNESS: Thank you, Judge.

(Witness excused.)

THE COURT: Call your next witness.

MR. HIXSON: May we approach briefly, Your Honor?

THE COURT: Of course.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

JEREMY NEELY, after being duly sworn, testified as follows:

THE CLERK: Please be seated. And please state your full name and spell your last name for the Court.

THE WITNESS: Okay. Jeremy Neely, N-E-E-L-Y.

DIRECT EXAMINATION

BY MS. WALKER:

Q Hey there, Detective Neely. How are you doing today?

A Doing well, ma'am.

Q Are you aware of why you're here today?

A I am.

Q Okay. And did you have an opportunity to respond to a call on April the 9th, 2015, for a child being found in a dumpster?

A I did. I was the first uniformed officer to arrive on scene.

Q Okay. And so once you arrived on scene, what did you do?

A I arrived just prior to or basically simultaneously with the captain that just previously testified.

Q Okay.

A As I approached the dumpster that's been identified, the child was laying on the ground. I saw the child laying on the ground. She was inside of what appeared to be a ripped-open trash bag. There were several articles of trash both on and around the child as well as blood and what appeared to be afterbirth of some sort. I noticed that the umbilical cord was still

attached. There were people around. It was warm that day so there was somebody -- I remember somebody fanning the baby, trying to possibly keep her cool. I immediately bent and checked for vitals, trying to determine if the child was alive at that point. I didn't know.

Q And were you able to confirm that?

A I was. She was breathing. Her eyes -- actually, she did look at me. She wasn't making -- she wasn't making, like, noises, like talking -- like, you know, like child noises, but you could tell that she was making sound and that she was alive. Excuse me.

Q It's all right. So I'm going to just show you, as you said, what's already been presented just so that you can authenticate what you saw that day. Just to be clear, is that the dumpster that you responded to?

A It is.

Q Okay. And that's State's Exhibit 27, which has already been introduced into evidence. And this, Exhibit 23, what does that show?

A That is the trash bag and the trash where the child was found.

Q Okay. And so where was she when you responded, when you got there?

A When I responded, she was lying amongst the trash

within that bag.
Q Okay. Okay. And that was Exhibit 23. And what is this?
A That's further contents of the bag --
Q Okay.
A -- of trash, as well as the -- there was some bloody, I assume, cloth of some kind.
Q Okay. And at what point was the baby moved from the trash pile?
A The captain, who previously testified, arrived, as I said, almost simultaneously with me.
Q Okay.
A Once he arrived, he immediately began providing first aid, at which point, you know, we were kind of getting people back away from the child. And that was when EMS removed the child from the bag and took her to the unit.
Q Okay. And did you do any special inventory of the contents of the trash bag?
A Other than, as I arrived on-scene or saw the child in the trash, obviously, my job is law enforcement. So once we were assured that the child was getting the proper care as far as medically, you know, we kind of switched gears a little bit and trying to figure out, you know, what's going on.

Q Okay.
A At which point I started to recognize what type of trash. Based on my experience, people will throw away anything without giving it a second mind.
Q Okay.
A And a lot of times, that can lead to further information in a case.
Q And did it in this case?
A It did. Part of the -- the first thing I noticed was there was what appeared to be Chinese food.
Q Okay.
A That was -- I just noticed it because, you know, it was all over the place. Once the baby was removed, I observed what -- I initially was trying to find some sort of mail, something with an address that could lead back.
Q Okay.
A I observed what appeared to be a receipt. Once I saw the receipt, I gave it a further look. I saw that it had a time stamp on it, and it was for the Mon Cafe on Beaver Run Boulevard in Surfside Beach.
Q Okay. And I would like to show you what's been marked as State's Exhibit 1. Can you tell me what that is?
A That is the receipt that I located in the trash

bag where the child was found.
Q Okay. And are you certain this is the same receipt?
A I am.
Q Okay.
MS. WALKER: Your Honor, the State would like to move Exhibit 1 into evidence.
THE COURT: Any objection?
MR. MUREDDU: No objection, Your Honor.
THE COURT: All right. State's Exhibit No. 1, admitted without objection.
(WHEREUPON, State's Exhibit No. 1 was admitted in evidence.)
BY MS. WALKER:
Q And I'd also like to show you --
THE COURT: Hold on.
Q And I'd like to show you what's been marked as State's Exhibit 19. What is that?
A It appears to be a photograph of the receipt you just showed me.
Q Okay. So is it enlarged in any way or --
A A little bit.
Q Okay. But is it still a fair and accurate representation of the original receipt?
A Yes.

MS. WALKER: Okay. And, Your Honor, the State wishes to move State's Exhibit 19 into evidence as well.

MR. MUREDDU: No objection, Your Honor.

THE COURT: State's No. 19, admitted without objection.

(WHEREUPON, State's Exhibit No. 19 was admitted in evidence.)

MS. WALKER: Okay. And, Your Honor, permission to publish to the jury.

THE COURT: Of course.

MS. WALKER: And as the judge said, y'all will have this back in the jury room.

BY MS. WALKER:

Q So can you tell me whether there -- I believe you already mentioned it, but whether there is any sort of a time stamp on that.

A I can.

Q And what is that?

A The time stamp is for 4/8/2015 at approximate -- or, excuse me, 4:25:25 p.m. in the afternoon.

Q Okay. And so once you had that information, what did you do?

A At that point, obviously, we were attempting to secure the crime scene. I knew that was going to be

something of note as far as evidentiary-wise. So I made sure that it didn't go anywhere. Once Crime Scene arrived on-scene, I informed them of the receipt. I also informed the detectives, once they arrived on-scene, the lead detectives in the case, I had known -- I informed them that I had located the receipt and that I knew from prior investigations that Mon Cafe had a good surveillance video feed.

Q Okay.

A Something that some businesses don't have. So I told them that they might want to take a look at that and it might lead them to who the trash belonged to.

Q Okay. And did you have any other involvement with this case?

A No, I did not.

MS. WALKER: Okay. Beg the Court's indulgence.

THE COURT: Yes, ma'am.

Q So, Detective Neely, after Ms. Taylor was arrested, were you able to determine whether any calls for domestic violence had been received --

MR. MUREDDU: Objection, Your Honor. May we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the

hearing of the jury.)

THE COURT: All right. Cross-examination.

MR. MUREDDU: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MUREDDU:

Q Just quickly, Detective. I just want to clear up one more point. Did you fill out the police report when you -- contemporaneous with your investigation in this case?

A I did not.

Q Okay. It's common for police to fill out police reports contemporaneous with the case; is it not?

A It is.

Q Okay. I want to hand you Jeff Cauble's report. I would like for you to just review it, and I'd like to ask you some questions about it. I'm really just going to cover what I've got highlighted, but I want to give you time to review that.

A Okay.

Q Did you interview folks as part of your investigation?

A I did.

Q Did you interview Jessica DeTray, who is Ryan Price's mother?

A I spoke briefly with the mother. More in-depth

with the two brothers.
Q Okay. Now, that report, without saying exactly what's in it, that report indicates that she was interviewed --
A Yes.
Q -- specifically with what she did concerning the baby when she was called to the scene by her son; right?
A Yes.
MR. HIXSON: Your Honor, just -- I'd object. Is he crossing him on some other witness's report?
MR. MUREDDU: Uh-huh.
MR. HIXSON: I would object to -- you can ask for personal knowledge, but he can cross Jeff Cauble when he testifies.
THE COURT: That's right.
Q Did you interview Jessica DeTray?
A I spoke with Ms. DeTray.
Q Okay. Did she indicate to you that she had handled the baby?
A Not that I -- the extent of what I remember of Ms. DeTray's statement was that she did not have a phone and she ran into the golf course to get someone to call 9-1-1. Other than that, I don't know.
Q Isn't that what Raymond actually said?

A I believe that's what the mother said. I could be mistaken. Like I said, I spoke briefly with her. I did not do a formal interview with her.
Q Cauble investigated the case; right?
A Yes.
Q You're familiar with the investigation?
A Yeah.
Q All right. Does the investigation reveal that she handled the baby before 9-1-1 responders got there?
A Nothing that I know of my portion of the investigation would state that.
Q All right. Thank you.
THE COURT: Redirect?
MS. WALKER: Nothing, Your Honor.
THE COURT: All right. Have a good day.
(Witness excused.)
THE COURT: All right. Ladies and gentlemen, we've been going for about an hour and a half. We're going to take our break.
Now, we're about to take our first break, so let me remind you that you are not allowed to discuss this case with anybody and that includes each other. Y'all can talk about the weather, you can talk about Valentine's Day, you can talk about the Super Bowl, or you can talk about the stock market or whatever you

want to, but you can't talk about this case in any way, shape, or form. Okay? You made a promise to me, you made a promise to the parties, you made a promise to the lawyers, you made a promise to each other, and you made a promise to yourself that you will adhere to that. So do not talk about the case and do not allow anybody to talk with you about the case. Okay?

And we're taking about a 10-, 15-minute break. Do not discuss the case. You are to keep an open mind. Now, I promise you, I will tell you that to the point where you will think I have lost my mind about "do not talk about the case," but it's absolutely critical and essential. And make sure on this break that you pick a foreperson so when you come back out. Okay? All right. Thank you very much.

Everyone else, remain seated.

(WHEREUPON, the jury exited the courtroom at 10:57 a.m.)

THE COURT: All right. We're going to take a break. Now that I have my law clerk, I will send out that malice charge via e-mail on this break. Instead of her cutting -- I'm just going to leave the inference part in there. Just know we're taking out the inference part about deadly weapon. So y'all can look at it and play with it and see what it's like.

MR. MUREDDU: Your Honor, I think, for housekeeping purposes, we haven't -- the jury is now sworn. I don't know that you have specifically ruled on Shelby's ability to --

THE COURT: Right now, I'm going to let her stay where she is. She doesn't need to go in custody. Let me make it to the end of the day, and then I'll make a decision by the end of the day on whether or not she needs to go in custody.

MR. MUREDDU: Can she move about the courthouse?

THE COURT: Yes.

MR. MUREDDU: Thank you, Your Honor.

THE COURT: Okay. And then I'll hear from the State at the conclusion of the day as to their position. At this point, she's shown up, she's on time, she's behaving appropriately, she's participating, she's -- you know, she was fine all day yesterday. She didn't present any problems or any issues all day yesterday. So I'll -- you know, let me kind of watch things throughout the day, and then I'll hear from the State by the end of the day. But for the purposes of these breaks and lunch, she can, of course, move about as she needs to. And she knows that if she doesn't come back, the case is going forward. So I've advised her of that at length. Okay?

MR. MUREDDU: Thank you, Your Honor.

MR. HIXSON: Your Honor, I have a quick housekeeping matter. The disc that we used for the Jackson v. Denno hearing that Jeff Cauble authenticated, that has two separate files on it.

THE COURT: Right.

MR. HIXSON: It has the file that's admissible and the file that's not admissible, and at the break, we would like to make sure we get that correct one on one because we didn't want it going back to the jury room.

THE COURT: Perfect.

MR. HIXSON: So it's been -- I'd like to take that out of here, if you're good with it, and I'll show it to counsel.

THE COURT: That's perfectly fine. Let's make sure the one that's in evidence only has the portion of the statement that's coming in on it and nothing else.

MR. HIXSON: And that's the one I intend to play when he testifies so we all hear exactly what's on it.

THE COURT: Perfect.

Is that good?

MR. MUREDDU: Yes, sir, Your Honor.

THE COURT: Okay. And you can help him with that?

COURT REPORTER: Yeah, he knows where it is.

THE COURT: Okay. All right. We'll be in recess.

(WHEREUPON, a brief recess was taken at 11:00 a.m.)

(WHEREUPON, the jury came into open court at approximately 11:21 a.m.)

THE COURT: All right. Welcome back, ladies and gentlemen. Thank you very much.

And State may call their next witness.

MR. HIXSON: At this time, the State would call, excuse me, Jeff Cauble.

THE COURT: All right. Please come forward and be sworn, Mr. Cauble.

JEFF CAUBLE, after being duly sworn, testified as follows:

THE CLERK: Please be seated. Please state your full name and spell your last name.

THE WITNESS: Jeff Cauble, C-A-U-B-L-E.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good morning, sir. How are you?

A Fine.

Q Can you please this tell jury what you do for a living.

A Currently, I manage a health club.

Q Okay. And so, at some point in time, were you employed by the Horry County Police Department?

A Yes, sir.
Q About how long ago -- how long did you work for the Horry County Police Department?
A From 2003 to 2015, so right at 12 years.
Q Okay. So, 2015, were you working for the Horry County Police Department on April 9th of 2015?
A Yes, sir.
Q And what was your duty assignment during that time?
A I was a detective with the major crime unit.
Q Okay. And what is the major crime unit?
A We investigate just that, major crimes, murders, attempted murders, rapes, criminal sexual conduct with kids. All the bad stuff.
Q And so were you working April 9th of 2015?
A Yes.
Q Okay. And did you have an occasion to be called out to a scene in the Island Green apartment complex somewhere kind of around Enterprise Road/Socastee area of Horry County?
A Yes.
Q Please tell us about that.
A It was April 9th, as he said. It was around 2:30 p.m. that we were called out to the scene. The situation was that an infant, a newborn child, was

found in a dumpster. And so we were called to go investigate. So it's our job to go out and speak with the investigating officers, speak with any witnesses, and then investigating leads that we get from that.

While we were there, Sergeant -- or he was a corporal -- Neely -- Lance Corporal Neely, I think, at that point showed us a receipt that he had found in the bag that the baby was put in with. And from that point, we decided to take that receipt, which was a Mon Cafe receipt, and -- which was tagged for the day before, which was 4/8/15, and it had a time stamp of 4:25 p.m. on it. So I knew that, when I went to the Mon Cafe, that that's the time and date that I was looking for on the video surveillance.

Q Let me interrupt you just for a second. Just for a second.

Did you, in fact, go to the Island Green location?

A I did.

Q Okay. Just so we're talking about the same thing, State's-27, do you recognize that?

A That's the dumpster, yes, sir.

Q That's the scene that you responded to?

A Yes, sir.

Q Okay. All right. And let me show you a couple items, which have been marked as State's Exhibit 1 and

State's Exhibit 19. Just take a look at those and see if you recognize those.
A Yes, sir. That's the Mon Cafe receipt.
Q And what is State's-19?
A That's the blown-up copy of it.
Q Easier to read?
A Yes, sir.
Q Okay. Let's start from there. I think you were at the point you said that you got on-scene with Corporal Neely. And he gave that to you, I believe?
A Yes, sir.
Q And then you acted on it?
A Yes, sir.
Q So please tell us some more.
A When I got to Mon Cafe, I got, I believe it was the manager. We reviewed the video. I told them exactly the time that I was looking for. They were able to fast-forward right to that time, at which point I saw the Defendant walk in with her child. The child at the time, she was a small child. And I believe she was carrying the child. And so at that point --
Q Let me clarify something.
A Yes, sir.
Q Are we referring to a newborn child?
A No.

Q How old was the child that you saw?
A In between a year to two years old.
Q Okay.
A At that point, I decided to go ahead and take two still photos of the person who came in and purchased the Mon Cafe at that time, because we knew she would be a person of interest in the case.
MR. HIXSON: May I approach the witness with what's been marked as State's Exhibit 16 and 17?
THE COURT: All right.
Q Can you take a look at those?
A Yes, sir.
Q Do you recognize those?
A Yes, sir.
Q And what are they?
A That's the photos that were taken from the video.
Q Okay. And is this exhibit a fair and accurate representation of the photographs you took from the surveillance video in the Mon Cafe on April 9th of 2015?
A Yes, it is.
MR. HIXSON: May I publish these, Your Honor?
THE COURT: Any objection?
MR. MUREDDU: No objection, Your Honor.
THE COURT: 16 and 17 admitted without objection.

(WHEREUPON, State's Exhibit No. 16 and 17 were admitted in evidence.)

BY MR. HIXSON:

Q So after you took the still photographs of -- I think you described at that point in time a person of interest?

A Yes.

Q What do you mean by that?

A Just that. She -- since this receipt was found in the same trash bag as the baby, this person had to be a person of interest in the case that may be able to tell us what happened.

Q Okay. So once you got these, then what did you do?

A We then decided that it would be best if we could get them out to the media to release it. So we sent the two photos to Lieutenant Dennis to get them for media release at that time.

Q And who is Lieutenant Dennis?

A He was a lieutenant with Horry County Police Department.

Q Did he serve a role as a public information officer?

A Yes, he was a public information officer.

Q Okay. Did, in fact, Lieutenant Dennis do that?

A Yes, he did.
Q Tell us about that. What happened after that?
A After that, I -- I'm not really sure exactly what time it got released, but according to the report here, approximately 7:40, we received a phone call from the south precinct on Scipio Lane.
Q Okay. And let's just clarify, just for the purposes -- are you looking at a report that you wrote contemporaneously with your investigation?
A Yes.
Q And would that refresh your recollection of the events of three years ago for testimony today?
A Yes, sir.
Q Okay.
A Okay. At that time, we received a phone call stating that the Defendant was at the south precinct, wanting to know why her photos were on TV. So it was at that time that myself and Detective Seipt left. We were at Conway -- the Conway precinct on Main Street. We left immediately and went to talk with her.
Q Okay. When was the first time that you came in contact with Ms. Taylor?
A When we got there.
Q Okay.
A At the south precinct.

Q Do you know whether or not she came to the south precinct with anybody?
A I know that her parents were there. I don't know if she came with them or not, but she was -- her parents were there.
Q Okay. Was anybody else affiliated with Ms. Taylor there at the south precinct also or showed up at the south precinct?
A Her husband did as well.
Q Okay. What is her husbands's name?
A Let me double-check. I can't remember his name for some reason. Patrick. Patrick Taylor.
Q Patrick Taylor. Okay. Well, then, please tell us about the nature of your conversation that you had with Ms. Taylor.
A We basically just wanted to know if she knew anything about the case. We -- like I said, when she showed up, she just wanted to know why her photos were on the news.
Q Did she tell you how she found out about the photos?
A I think maybe she said her grandmother had called her or something or someone had told her that her photo was on the news.
Q Someone had told her --

A Yes.
Q -- that they saw her photo on the news?
A Right.
Q And she reacted accordingly?
A Right, exactly.
Q Very good.
A So we began interviewing her, talking with her, letting her know the situation. And she was very calm during the investigation -- or not investigation, during the interview. And she denied having any knowledge or anything about the case or why a baby would be in her trash.
Q Okay. Who was present during the course of that interview?
A It was myself, Shelby Taylor, and Detective Seipt.
Q Okay. And you mentioned the south precinct. For those that aren't terribly familiar, where is the south precinct in Horry County?
A It's off of Scipio Lane.
Q Is that the Holmestown Road --
A Yeah, off of Holmestown Road, yes, sir.
Q -- area?
A Yes, sir.
Q And it's a substation; is that safe to say?
A Yeah.

Q And what would you consider the feeling in the room? You know, was it confrontational? Was it cordial? What was your --
A No, it was very cordial. We were just speaking with her.
Q Okay. Was that interview memorialized in any way? Was it written? Recorded? What --
A It was recorded.
Q Okay.
A Audio recorded.
Q Audio recorded. Okay.
A Um-hum.
Q Let me show you what's been marked as State's Exhibit 3. Let me ask another question before I introduce this. At that point in time, was she under arrest or in custody in any way?
A No, she was not.
Q Okay. As a matter of fact, did you do anything initially to contact Shelby Taylor to come to the police station?
A No, I did not.
Q But that call was a surprise to you?
A Yes, it was.
Q Okay. So, as such, did you read her Miranda warnings since she was not in custody or --

A No, I did not.
Q -- a suspect at that time?
A No, sir.
Q Okay. And let me show you what's been marked as State's Exhibit 3. See if you recognize this.
A Yes, sir. It's a DVD disc, a CDR disc of the interview.
Q Okay. And how do you know that's what it is?
A It's has my initials and the date on it.
Q And so you reviewed this?
A Yes.
Q And the recording on this disc, is this a fair and accurate recording or representation of the interview that you had with Ms. Shelby Taylor at the substation on Scipio Lane on April 9th of 2015?
A Yes, it is.
MR. HIXSON: We would like to publish this for the jury, Your Honor.
MR. McCOLLUM: May it please the Court, Your Honor.
THE COURT: Yes, sir.
MR. McCOLLUM: Subject to court rules, we'd make a contemporaneous objection based on the matters we took up earlier.
THE COURT: All right. Your objection is noted

for the record. I understand the objection that you're making. My ruling upon it is the same.

MR. McCOLLUM: Thank you, Your Honor.

MR. HIXSON: May we publish, Your Honor?

THE COURT: Yes, sir.

(WHEREUPON, State's Exhibit No. 3 was admitted in evidence.)

THE COURT: All right. So now the goal is that you-all can hear this. So if somebody can't hear something, wave your hand at me. Okay?

MS. WALKER: Sorry about that.

THE COURT: That's okay.

Go ahead, Ms. Walker.

(WHEREUPON, the audio recording was played at 11:34 a.m.)

MR. MUREDDU: Your Honor, before questioning resumes, there is a matter that we need to take up.

THE COURT: Okay. All right.

Ladies and gentlemen, do not discuss the case. Keep an open mind. We are going to take a lunch break. We're not going to take it right now. Give me just a few minutes, and I'll be right back with you. Go back to your jury room and give me just a few minutes. Do not discuss the case. Keep an open mind. Thank you.

(WHEREUPON, the jury exited the courtroom at

12:22 p.m.)

MR. MUREDDU: Judge, I anticipate that the solicitor, when he begins to question Detective Cauble, is going to cover and ask -- cover the part where the -- the Daniel's Law issue, for lack of a better word. Now, if you listen to that recording, Cauble leaves the room to make that phone call, and he's out for almost 20 minutes, so Shelby is in there with Detective Seipt. And Seipt is continuing to question her. Obviously, the jury's heard it. It's in evidence.

But it's Seipt who's having the discussion with Shelby about Daniel's Law, and if you listen to exactly what they said, Seipt gives about a minute-and-a-half dissertation on what Daniel's Law is, what you can do, those type of things. Shelby's response is very minimal. But he was not present during that conversation. Okay? And just like Detective Neely couldn't testify earlier as to what Cauble did in his investigation where Cauble determined that the baby was moved before, Neely wasn't allowed to testify, Cauble wasn't present during the conversation with Seipt where that went down. I can't cross-examine him and, like, point out, for instance, whether you did about a minute-and-a-half monologue on Daniel's Law before she

even chimed in. He can't answer that because it wasn't with him. So I can't cross-examine him about that point.

So my motion is -- or what I'm saying is is for them to question him about what she knew about Daniel's Law and that topic would be improper because he wasn't even in the room at the time. It's hearsay. And -- but more importantly, I can't cross him on that because he's going to say, Hey, I wasn't -- I don't know, you know.

MR. HIXSON: I agree; I was not going to ask him that question. She says that she knows about Daniel's Law in the report from the psychiatrist, so we'll talk about that in cross-examination, because she said she knew about Daniel's Law at the time but not with this witness.

MR. MUREDDU: I just don't want to -- and the second thing that he may cover -- again, he was out of the room -- about a comment that she made about, "I would adopt the baby if I could," again, he wasn't there. I would ask that not be covered with this witness as well. The jury's heard it anyway, but it just -- he wasn't in the room. I would ask that topic not be covered with him that as well.

MR. HIXSON: I'm not going to do that. I think

the 45-minute statement stands for itself. I'm just going to -- I'm going to mention Patrick and I'll talk about the substantive statement and try to wrap it up with the DNA stipulation.

THE COURT: Okay.

MR. MUREDDU: That's all, Your Honor. Thank you.

THE COURT: Bring them back in.

(WHEREUPON, the jury came into open court at approximately 12:26 p.m.)

THE COURT: All right. Welcome back. Thank you very much. Sorry about the short break.

And, Mr. Hixson, you may continue with your direct examination.

MR. HIXSON: Thank you, Your Honor. Getting close to lunch here, so I'll try to wrap it up, Judge.

BY MR. HIXSON:

Q So you heard the recording. You sat here through it and listened to it all, and that's a fair and accurate representation of that interview?

A Yes, sir.

Q Is that correct to say? At the end of that interview, I believe you made a comment -- and I think you testified earlier -- just trying to jump ahead -- that Patrick Taylor, her husband, did come to the police station along with her parents and were there --

outside the interview room, but were there during that period of time?
A Yes, sir.
Q I think that the way that the interview ended, you said, Well, I'm going to ask some questions of Patrick. Did you, in fact, do that?
A We did.
Q Okay. And I don't want to talk about any of the nature of the conversation; the rules have a problem with that. Based on your conversation with Patrick Taylor, did you go to the marital home of Patrick and Shelby Harper Taylor to look for evidence of any kind?
A Yes.
Q And let me show you what's has been -- has not been marked yet.
(WHEREUPON, State's Exhibit No. 29 was marked for identification only.)
Q In order to go into a private home of a suspect or something like that, can you just walk in the door or do you have to have some kind of legal process to allow you to do that?
A You have to have permission from the owner in order to do that or a warrant.
Q I was going ask, if you don't get permission, what recourse do you have if someone says, "No, you can't

come into my house"? If you have probable cause, what do you do?
A We have to go see a judge and try to get a warrant to get into the home.
Q A search warrant?
A Yes, sir.
Q Did you get a search warrant for that home in this case?
A We did not.
Q And why not?
A He gave us permission to go into his home.
Q Okay. And when you say "he," who --
A Patrick Taylor.
Q Okay. And do you memorialize that in any way?
A No.
Q In other words, if someone gives consent and they say, Hey, you can search my car or you can search my house if you want to, do you do something to record that consent?
A Yes. We have to have written consent.
Q Okay. Let me show you what's been marked as State's-29 and see if you recognize that. What is that?
A That is a Horry County Police Department Consent to Search Form.

Q Okay. And what location was the --

MR. MUREDDU: Judge, we would stipulate the consent to search was given on the residence.

THE COURT: Okay.

MR. HIXSON: And that means 29 is coming in without objection?

MR. MUREDDU: Let me see what -- I'll stipulate to -- let me see what you got there.

Yep.

THE COURT: 29 is in without objection.

(WHEREUPON, State's Exhibit No. 29 was admitted in evidence.)

MR. HIXSON: May I publish 29, then?

THE COURT: You may.

MR. HIXSON: I still need to make sure the jury knows what this is, though, Judge.

THE COURT: Sure, I understand that.

BY MR. HIXSON:

Q Just to tell the jury, I don't have to lay a foundation. That's what that means.

A It's a Horry County Police Department Consent to Search form. It's signed by Patrick Taylor, giving us permission to enter his home at 500 Fairway Village Drive, Apartment 8-G, on April 9th, at, it looks like 11:00 p.m., 2015. He printed his signature and then he

gave his signature, and I witnessed it.

MR. HIXSON: May I publish this to the jury, Your Honor?

THE COURT: You may.

Q So, in essence, this says, Go in there and look around and see what you can find.

A Yes, sir.

Q Did you, in fact, go into the marital home of Shelby Taylor and Patrick Taylor?

A We did.

Q And did you search that home for anything of evidentiary value?

A We did.

Q Did you find anything and collect anything that you thought was of evidentiary value in this case?

A We did.

(WHEREUPON, State's Exhibit No. 30 was marked for identification only.)

Q Let me show you a series of photographs.

MR. HIXSON: Specifically, Your Honor, I'm referring to State's-4, State's-5, State's-6, State's-7, State's-8, State's-10 -- it's probably out of order -- State's-10, State's-11. Forgive me, Your Honor; making a mess of your courtroom.

Let me make sure I got those numbers, ma'am.

Throwing stuff around. What was that up to, ma'am?

COURT REPORTER: What was your new number? This --

MR. HIXSON: I'll start over.

COURT REPORTER: Sorry.

MR. HIXSON: State's-4, State's-5, State's-6, State's-7, State's-8, State's-10, and State's-11. Okay?

Q Just take a look at those. Just look at them all at once -- you don't have to say anything -- and I'll ask you a group question, just to move things along. Okay? Do you recognize these?

A Yes, sir.

MR. HIXSON: Your Honor, we showed this to counsel pretrial.

Just to make sure there's still no objection, you're good?

MR. MUREDDU: Yeah.

MR. HIXSON: Okay.

Your Honor, at this time, we'd like to move -- authenticate. Do you want me to move these in without objection?

MR. MUREDDU: No objection to the introduction of those by the State, Your Honor.

THE COURT: 4, 5, 6, 7, 8, 10, 11?

MR. HIXSON: Yes, sir.
THE COURT: Admitted without objection.
(WHEREUPON, State's Exhibit Nos. 4, 5, 6, 7, 8, 10 and 11 were admitted in evidence.)
BY MR. HIXSON:
Q I'm going to show you what's been marked as State's-4 and -5. They are in evidence so we don't have to authenticate them. Can you tell us what those photos show?
A What appears to be blood stains in the carpet.
Q And is that in the Taylor residence?
A Yes, it is.
Q Okay. I'll show you 6, 7, 8. See if you recognize those. And you just take a look for a second and let me publish.
MR. HIXSON: May I publish, Your Honor?
THE COURT: Of course.
Q Did you come across, while you were in the apartment taking a look around, did you discover laundry facilities of any kind?
A Yes.
Q And what kind of laundry facility? Washer and dryer?
A Just the washer and dryer, yes, sir.
Q Was there anything in the washer and dryer?

A There were clothes in the washer and dryer.
Q Anything else in -- beyond clothes?
A A sheet. I believe it was the sheet that was in there as well.
Q Okay. How about what is marked as State's Exhibit 7, do you recall?
A Yes. That would be the mats to the bathroom, I believe it was.
Q And those were recovered in the washing machine --
A Yes, sir.
Q -- of the residence?
A Yes, sir.
Q Were they all cleaned?
A Yes.
MR. HIXSON: I'm going to show the jury 7, 8, and 6.
Q And these were in the washing machine when you recovered them?
A Yes, sir.
Q And, finally, State's-10 and -11. What is that?
A Again, it's a photo of the carpet that appears to be blood stains in it.
Q Okay. And State's-11?
A That's a photo of the bathroom floor.
Q Were the bath mats in the bathroom at that time?

A They are not.
Q When you searched the bathroom area, did you find any blood of any kind in the bathroom?
A No, sir.
Q How would you characterize that? Did it appear to be cleaned? Disheveled?
A It appeared to be clean.
Q Did it -- when you were there, did it smell of any cleaning products or anything like that that made you feel it was freshly cleaned?
A I can't testify to that. I can't --
Q Fair enough. Fair enough. Also in the recording that you talked about, you mentioned DNA testing several times. In a case like this where you're dealing with suspects and known suspects, would it be part of your investigative process to get DNA swabs for comparison of some kind?
A Yes, sir.
Q Tell us about that, and did you do that in this case?
A We did. We felt like that that was the best way to eliminate Ms. Taylor from this crime.
Q Okay. And what would the process be if you're dealing with a child; in other words, a paternity test? Do you recover samples from different individuals in

order for comparison?
A As far as?
Q Would you get one from the suspect mother?
A Yes.
Q Did you do that in this case?
A Yes.
Q With the suspect father?
A We didn't --
Q Patrick Taylor. Did you swab --
A I don't know if we swabbed Patrick Taylor or not. I can't remember.
Q Okay. Let me -- and then, ultimately, did you get a result from State Law Enforcement Division --
A Yes, sir.
Q -- concerning the paternity of --
A Yes, sir.
Q -- Patrick?
Okay. Let me show you what's been marked as State's Exhibit 30.
MR. HIXSON: And, Your Honor, we have entered into a stipulation relating to this.
THE COURT: All right.
MR. HIXSON: And that is stipulate to the authenticity of the DNA report and don't require the SLED chemist to come or the analyst to testify to that.

THE COURT: Okay. Is that correct, Mr. Mureddu?
MR. MUREDDU: That's correct, Your Honor.
THE COURT: Okay. Thank you.
BY MR. HIXSON:
Q What is that? Do you recognize that?
A South Carolina Law Enforcement Division. It's a forensic service laboratory report.
Q Okay. And can you read what the submission's in that SLED actually tested?
A Buccal swab from Patrick Taylor, buccal swab from Shelby Harper, and swab from Jane Doe, which, at the time, was the baby.
Q Okay. And so was there a conclusion to the comparison on whose offspring Jane Doe is?
A During the results, it says the DNA profile developed from Jane Doe is consistent with being from an offspring of Patrick Taylor and Shelby Harper.
Q Okay.
MR. HIXSON: Your Honor, we'd move State's 30 into evidence.
THE COURT: All right. Admitted without objection?
MR. MUREDDU: No objection, no.
(WHEREUPON, State's Exhibit No. 30 was admitted in evidence.)

Q So DNA matches mom and dad and baby?
A Yes, sir.
MR. HIXSON: Beg the Court's indulgence.
Your Honor, I have no further questions.
THE COURT: All right. Ladies and gentlemen, it's about 12:40. We're going to go ahead and break for lunch.
So I will tell Investigator Cauble in front of you: Investigator, you're not allowed to discuss your testimony with anyone in any way, shape, or form. You're not allowed to discuss anything about this case with anyone. You are allowed to go eat lunch and do the normal things that people do.
When we start back at 2 o'clock, when we start back, you need to be seated right there, and we'll go straight into his cross-examination. Okay?
Now, I'm about to release you-all for lunch, and as I've told you before, you are not allowed to discuss this case with anyone in any way, shape, or form. You are to keep an open mind about this case. We're in the very early stages of the case, and you are not to form any opinions or express any opinions about this case. You are also not allowed to allow anybody to talk with you about the case. You are allowed to go and enjoy your lunch and enjoy this day. Do not do any research.

Do not do any communication about the case. Do not have any contact with anybody involved in the case or any parties or any witnesses. You made that commitment to me, you've made that commitment to the lawyers, you've made that commitment to the parties, you've made that commitment to each other, and you've made that commitment to yourself that you will not do that.

You will also not watch, read, listen to, or view any type of news media about this case in any way, shape, or form. We will see you back here at 2 o'clock, ready to go. We'll jump right into Investigator Cauble's cross-examination, and the case will continue on. Thank you very much for your hard work this morning. We'll see you back at 2 o'clock.

Everyone also remain seated. Thank you.

(WHEREUPON, the jury exited the courtroom at 12:40 p.m.)

THE COURT: All right. Thank you, Investigator Cauble. You can step down.

Anything further from the State before we break?

MR. HIXSON: No, sir.

THE COURT: From the Defense?

MR. MUREDDU: Nothing, Your Honor.

THE COURT: All right. Let me see all of the media people up here.

All right. Court's in recess. Thank you. 2 o'clock. 2 o'clock.

(WHEREUPON, a luncheon recess was taken at approximately 12:41 p.m.)

THE COURT: Is the State ready to proceed?

MR. HIXSON: Yes, Your Honor. I believe we have --

Please answer any questions, Mr. Cauble -- excuse me. We'll wait until the jury comes in and I'll say that. Yes, sir.

THE COURT: Defense ready?

MR. MUREDDU: Defense is ready, Your Honor.

THE COURT: Okay. Let's bring them in.

(WHEREUPON, the jury came into open court at approximately 2:05 p.m.)

THE COURT: All right. Welcome back. Thank you-all very much for being on time. We're in the cross -- we're about to start the cross-examination of Investigator Cauble.

Mr. Mureddu or Mr. McCollum?

MR. MUREDDU: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MUREDDU:

Q Mr. Cauble, do you know what transient peripartum psychosis is?
A No, I don't, no, sir.
Q Okay. Now, did you consult with any mental health doctors before you charged Shelby with attempted murder?
A No, sir, I didn't.
Q All right. And she was actually arrested and charged with attempted murder short -- not long after that interview we listened to --
A Yes, sir.
Q -- that night? Okay. And she was transported to the hospital?
A Yes, by transport, yes, sir.
Q She was given a physical evaluation by the doctors?
A Um-hum.
Q Okay. She was also given a mental evaluation by the doctors?
A Yes, I believe the report states that.
Q Okay. All right.
But -- and she signed a consent for the release of all of her medical records; did she not?
A Yes, I believe that's in there, too.
Q Okay. But you never consulted with any mental

health professionals at all before you charged her with attempted murder?
A No, sir.
Q Okay.
A Not before she was charged, no, sir.
Q Okay. Now, the charge of attempted murder, one of the elements to that actual charge of attempted murder is malice aforethought, isn't it?
A Right.
Q Now, do you know what Shelby's state of mind was when she actually delivered the baby?
A No, sir, I don't.
Q All right. You -- likewise, you don't know what her state of mind was when she discarded the baby?
A True.
Q Okay. All right. And, as you said before, you don't have any knowledge or understanding or any training with the mental disorder transient peripartum psychosis?
A No, sir.
MR. MUREDDU: Your Honor, I have no further questions.
THE COURT: Redirect?
MR. HIXSON: No, sir.
THE COURT: All right. Thank you, Investigator

Cauble. You may step down.

And the State may call its next witness.

(Witness excused.)

MR. HIXSON: State would call Dr. John Burney.

THE COURT: All right. Please come forward and be sworn, sir.

DR. JOHN BURNEY, after being duly sworn, testified as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: So my full name is John Marcel James Burney. Last name is B, as in boy, U-R-N-E-Y.

THE COURT: Oh, I'm sorry. Go ahead.

Normally, the lawyers ask me for permission before they start. I was telling Bailey to do something, so I apologize.

Go ahead, Ms. Walker. I apologize. My mistake.

MS. WALKER: Just double-checking.

DIRECT EXAMINATION

BY MS. WALKER:

Q Dr. Burney, how are you doing today?

A Good. And yourself?

Q I'm doing all right. So what is your current occupation?

A So I'm an OB/GYN for Healthcare Partners of South

Carolina in Conway.
Q Okay. And what does your job entail? What do you do a daily basis?
A So I provide prenatal care for pregnant women. I also do annuals and physicals and pap smears and gynecologic care for women as well.
Q And do you ever provide any postnatal care?
A Yes.
Q Okay. And just a little bit about your experience. How long have you been a doctor?
A Well, I've been practicing here in South Carolina for the last four years at Healthcare Partners. I've been an OB/GYN for the last six years.
Q Okay. All right. And did you have an opportunity to ever treat the Defendant in this case, Ms. Shelby Harper Taylor?
A Yes. I treated her when she arrived at the hospital.
Q Okay. And do you have any recollection of what day that would have been?
A Well, according to my records, April the 10th of 2015.
Q Okay. And what was the nature of your care of Ms. Taylor?
A So she was brought into the hospital for

evaluation. She had said that she had some bleeding after a delivery. I was told that she had a delivery, and I was to examine her and make sure that she was okay. And I examined her after vaginal delivery of an infant.

Q Okay. And what did you find when you examined her?

A So she was first seen in the ER, and they did an ultrasound, which showed that she had, like, a uterus that was the size that should be postpartum, after having a baby, and that there was some retained clots within the womb. I examined her, and on physical exam, the uterus was at the level of the belly button, the umbilicus, which is in accordance with having -- the way it should be postpartum, after having a baby.

Q Okay. And when you say -- and, I'm sorry, I don't know your field very well, but when you say "postpartum," are you meaning after giving birth sometime in the not-so-distant past?

A Correct.

Q Okay. And could you give, like, a timeframe to that, approximate?

A Within a day. I mean, you know, I'm not sure what day she actually had the baby, but, you know -- but I saw her as, you know, once she was arrested and once

she was brought to the hospital.
Q Okay. And --
(Cellphone ringing.)
THE COURT: Stop for just a second.
Whose phone is that? Take it. Give him the phone. Anybody else's phone goes off, it's $250 to get it back. Go ahead, Ms. Walker. I apologize.
BY MS. WALKER:
Q So you examined her and determined that possibly sometime within the past 24 hours she had given birth?
A That's correct.
Q Okay. And you mentioned that there was a tear and some hemorrhaging. Was there any sort of a procedure that was required to attend to those issues?
A Yes. So they had done an ultrasound when she came into the ER because she had some bleeding after delivery. And since the delivery wasn't witnessed by a physician, the delivery of the baby or the placenta, the ultrasound showed that there was some retained clots within the womb, within the uterus, and so I decided to do a D&C to remove those clots because if I did have her discharged to the prison, you know, no one would really be able to assess her bleeding, and I didn't want her to have heavy bleeding in the prison without medical.

Q All right. And you mentioned a D&C. What does that stand for?
A So that's dilation and curettage. It's where -- if -- where we dilate the cervix, which is the entrance to the uterus, entrance to the womb, and also do a scrape or curettage of the womb to remove anything that may be left within the uterus that could cause bleeding. And that was the indication for the procedure so that she wouldn't have excess bleeding in an unsupervised or at least unmedically supervised environment.
Q Okay.
MS. WALKER: Beg the Court's indulgence. One moment.
THE COURT: Yes, ma'am.
Q And when you performed your exam of Ms. Taylor, was there anything that indicated that she had experienced above-normal trauma in her womb or uterus or vaginal area that would indicate that there was higher trauma than normal with her birth?
A No. No.
Q Okay.
A Just, you know, she did have the appearance that she had had a baby. The uterus was enlarged. It was, like, a 20-week size, the way that it should be after

you have a baby.
Q Okay.
A The vagina was actually intact, after reviewing my notes. But that can also, you know, happen even with a normal delivery, supervised.
Q Okay. So observing her uterus and all of the other parts that are necessary to giving birth to a baby, is there anything you could tell observing those parts to indicate that this baby would have been full term, or is that something you could have determined from looking at that?
A Well, I mean, the size of the uterus was 20 weeks after delivery. It was at the level of the belly button. Usually, that indicates that it was a full-term pregnancy. If it was less than that, it would be lower -- the uterus after delivery would be much lower.
Q Interesting. Okay. And did you learn anything else about the circumstances of the delivery that then led you to refer Ms. Harper to -- or Ms. Harper Taylor to speak with a social worker at the hospital?
A Well, yes. As, you know -- I mean, she was brought to the hospital in the custody of the officers, and so I referred her to the psychiatrist and to social work to make sure that there wasn't anything that I had

missed that was psychological or social of that nature.
Q Okay. And beyond the procedures and the information you've provided, did you provide any other care to Ms. Taylor?
A No. I was only allowed to -- I mean, I was the physician that was on-call that night, and so I was the one that saw her when she was brought into the hospital and then provided care for her while she was in the hospital, and she was discharged into the custody of the officers. And then beyond that, I didn't have any further contact with her.
Q Okay. And when you mentioned discharge, were you the physician who would have signed off on that discharge?
A Yes.
Q And was she ultimately discharged from your care?
A Right, yes. She was discharged after two days, I believe. I saw her, we did the D&C. I observed her for a day to make sure that she didn't have any additional bleeding that was beyond the norm after having a vaginal delivery. I gave her RhoGAM because she was Rh-negative to protect her, and she was discharged by postpartum day 2.
Q Okay. And would you please educate me on what RhoGAM is?

A So RhoGAM is like an antibody for people that are Rh-negative. Her blood type was Rh-negative. Since I didn't know the blood type of the father, we give those patients RhoGAM. And I didn't know the blood type of the baby either. But we give those patients RhoGAM at delivery to protect them from being immunized against an Rh-positive fetus or Rh-positive infant. So if the baby had been Rh-positive, it would protect her from forming antibodies to the Rh-positive factor.

Q Okay. All right. Thank you. And I don't have any other questions, but please answer anything that Mr. Mureddu may have.

A Yes.

MR. MUREDDU: No questions of this witness.

THE COURT: Okay. Thank you very much. Have a nice day.

THE WITNESS: Okay.

(Witness excused.)

THE COURT: All right. Call your next witness.

MR. HIXSON: Thank you. Weslyn Chickering.

WESLYN CHICKERING, after being duly sworn, testified as follows:

THE CLERK: Please be seated. And if you will state your full name and spell your last name for the Court.

THE WITNESS: My name is Weslyn Lack Chickering, C-H-I-C-K-E-R-I-N-G.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, ma'am. How are you?

A I'm good. Thank you.

Q Could you please tell this jury what you do for a living.

A Right now, I'm the general manager for Lack's Beach Service.

Q And have you always done that? And, specifically, let's get back around to April 9th of 2015.

A April 9th of 2015, I was the social worker at Conway Medical Center.

Q Okay. And what does that role entail? What would your job description be on a daily basis when you go to work?

A Anything and everything. I was the social worker/lead discharge planner, so basically, I would see every patient to ensure a safe discharge plan, to address any abuse or neglect concerns, all the way from unborn children to death and dying, across the lifespan.

Q Very good. So let's just zero right in on around April 10th of 2015.

A Yes.
Q Were you working that day?
A Yes, sir.
Q And did you have an opportunity to come into contact with the Defendant in this case, a Ms. Shelby Harper Taylor?
A I did.
Q Could you tell this jury about what gave rise to you coming in contact with this Defendant.
A The -- I got a consult through a nursing assessment, actually. And, basically, when the nurse meets with the patient on admission, they can go through a list of criteria of different issues that we may need to address. And the suspected abuse and neglect box was checked, and Dr. Burney did ask that I see the patient.
Q So did you, in fact, follow up and see the patient?
A I did.
Q Could you just give us kind of a visual of what that setting is like and what you did prior to having the discussion with Ms. Taylor.
A I received my referral. Due to the excitement of the issue at hand, I went ahead and saw her immediately, reviewed the chart, spoke with the nurse.

Knocked on the door, met with the patient. There was a police officer in the room, and he did excuse himself. So the patient and I met alone.

Q And so you're alone in kind of a private setting?

A We're alone in a hospital room, yes.

Q Is that pretty therapeutically typical --

A Yes.

Q -- to have a one-on-one situation?

A For this particular issue, yes.

Q Okay. When you say "this particular issue," what do you mean?

A We -- I was consulted to speak to the patient about suspected abuse or neglect, so I wanted the patient to feel safe enough to let me know if there were issues that needed to be addressed.

Q Okay. And was the patient -- in that situation, was she responsive to your questions? Did you guys have a good conversation?

A We had a good -- yes.

Q Okay.

A When I would ask questions, they were very basic answers, but I did get answers.

Q Okay.

A Yes.

Q And what is your primary focus? What is the

action line that you want to get from the patient for you to make a decision about her discharge status after your discussion? What are you trying to determine?
A Patient safety.
Q Safety. Whether -- if the patient is discharged from the hospital, is she going to be safe to go wherever she's going?
A Yes. And I knew that, at this time, that this is a little bit of a different circumstance, that the patient would probably not be returning to the home. But I still considered it exactly the same, as I needed to ensure her safety.
Q Okay. And so what kind of questions do you ask a patient and what questions did you ask Ms. Taylor specifically -- generally and specifically to assess that concern?
A I think, as a social worker, everything that -- confidentiality is a big issue with the things that we discuss. So I did want the patient to know that, unfortunately, with the surroundings of this issue, we probably were not going to be -- we weren't going to be able to enforce confidentiality. But I wanted to let her know that, as an employee of the hospital, I was a patient advocate, so I was actually advocating for her safety.

Asked who she lived with, if that person that she lived with was hurting her. She mentioned that she had another child. I asked where that child was that day. She said she was with her mother. I asked her specifically, "Do you feel safe at home?" And the answer was yes.

Q Yes. So did you ask her specifically if there was any abuse in the household that would make it unsafe for her to go home?

A "Is anyone hurting you in your home?"

Q And the answer was?

A "No."

Q Okay. Did she indicate -- I guess, did you -- during the course of your evaluation to determine whether you can safely recommend that she be discharged, do you take notes or do you record that information in any way to help refresh your recollection about the conversation?

A I do not. But I make practice that, as soon as I leave a room, I go to a computer to document.

Q Okay, okay. So that would be the documentation that you have of the conversation, I guess, memorializing what that is?

A It would have been in the medical record.

Q Okay. Specifically, I'd like to direct your

attention -- and let me show you -- I'm not trying to put that document in evidence yet. I just want to refresh your recollection, if you need it. Did she express to you any particular concerns about lack of family support or anything like that in the conversations with you?

A No. In fact, I believe, in my notes -- give me two seconds to read it to make sure I'm...

That she does have a good support system.

Q Okay.

A And that was following that her mother was keeping her child that day.

Q Okay. And also, specifically above that, just -- I want -- to your recollection, did she give any indication about her husband living with her and whether or not he would ever hurt her, do you recall what she said about that?

A Specifically that -- hold on -- that he would never hurt her.

Q Okay. Were you confident in the responsiveness and the nature of the answers the Defendant was giving you? Do you think she was being forthright with you?

MR. MUREDDU: Objection, Your Honor. That's asking whether you believe her or not.

MR. HIXSON: I'll withdraw that question. I don't

want to improperly bolster.

THE COURT: That question is withdrawn.

MR. HIXSON: Thank you.

Q Based on the conversation you had with this Defendant --

A Um-hum.

Q -- and when you left the room, what recommendation did you make concerning her discharge?

A To Dr. Burney, my recommendation was that, in terms of suspected abuse or neglect, I did not pick up on anything, but I also knew that a psychiatrist was going to come and see the patient later that day to handle any mental health issues. So I was very focused on my one particular issue that I was consulted on.

Q Okay. So on your particular issue, you're satisfied that you would be releasing her into a safe environment, not into an abusive relationship?

A Yes.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: Cross?

MR. MUREDDU: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MUREDDU:
Q How do you say your name?
A "Wes-lin."
Q Ms. Weslyn?
A Yes.
Q All right. I've got a copy of your report -- or a report. It says that you -- and I think you testified -- you let Shelby know that she was going to be meeting later, after you, with the psychiatrist; right?
A Yes.
Q And one of the things you indicated in here was you prompted her to be open with him.
A Yes.
Q All right. Now -- and what you do, if there is abuse in any given patient, oftentimes they don't tell you the truth, do they?
A Exactly.
Q Oftentimes they conceal the abuse, don't they?
A Um-hum.
Q Okay. That's why you want to prompt them, try to get some trust to -- because you know frequently, evidence of abuse or reports of abuse are not given; is that right?
A Yes.

Q In your experience.
A In this particular case, I'm a patient advocate. If she did not want to confide in me, I wanted to prompt her to confide in someone.
Q But just in cases in general, it's quite common --
A For abuse to --
Q -- that somebody will -- a female will conceal or anybody will conceal abuse that they're receiving?
A Yes, sir.
MR. MUREDDU: Okay. No further questions.
THE COURT: Redirect?
MR. HIXSON: No, sir.
THE COURT: All right. Thank you, ma'am. Have a nice day.
(Witness excused.)
THE COURT: You may call your next witness.
MR. HIXSON: May I approach, Your Honor?
THE COURT: Of course.
(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)
THE COURT: All right. The next witness is supposed to be here at 2:30, and they may be running just a couple of minutes behind, so we're going to take a break. Do not discuss the case. Keep an open mind.

As soon as that witness gets here, I'll bring you right back out and we'll jump right back into it. Okay?

Sometimes gauging how long witnesses take for anybody involved in a case is next to impossible because you don't always -- you don't always -- there's too many different factors. So they do their best to try to tell them what time to be here. So this won't be a long break. As soon as the next witness gets here, I'll bring you back out. Don't talk about the case. Keep an open mind. We'll see you back in just a few moments.

Everyone else remain seated. Thank you.

(WHEREUPON, the jury exited the courtroom at 2:28 p.m.)

(WHEREUPON, the jury came into open court at approximately 2:32 p.m.)

THE COURT: Fastest break ever. I apologize. That's just the way trials work. Sometimes those things happen. All right. Now you may call your next witness.

MS. WALKER: Dana Kiser.

THE COURT: All right. Ms. Kiser, please come forward and be sworn.

DANA KISER, RN, after being duly sworn, testified as follows:

THE CLERK: Please be seated.

THE COURT: What's this woman's name?

MS. WALKER: Dana Kiser.

THE COURT: She's not on the list.

MS. WALKER: Oh.

MR. HIXSON: Can we approach, Your Honor?

THE COURT: Oh, yeah.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right.

Is anybody related by blood or marriage, close personal friends with, have any connection to -- say your name, ma'am.

THE WITNESS: Dana Kiser.

THE COURT: -- Dana Kiser in any way, shape, or form? Anybody know her, seen her, ever been treated by her, have anything to do with her? No one is raising their hand. Okay. All right.

You may proceed. We'll put the objection on the record later. Go ahead.

THE WITNESS: My name is Dana, D-A-N-A, Osborne, Kiser, K-I-S-E-R.

DIRECT EXAMINATION

BY MS. WALKER:

Q Ms. Kiser, how you are doing this afternoon?
A Fine. Thank you.
Q Thank you for being here. What was your occupation in April of 2015?
A I was the director of women's services for Tidelands Health Waccamaw.
Q Okay. And what kind of a professional background do you have or did you have for that job?
A As a registered nurse and a nurse leader for the organization.
Q Okay. And approximately how long had you worked in the nursing field?
A I had been with Tidelands Health and in that field for 12 years.
Q And are you now retired?
A I am.
Q Okay. And would you have any recollection of a baby who, at the time, was known as Baby Girl Taylor coming into your facility around April the 10th -- April 9th or 10th, 2015?
A I do.
Q Okay. And if I asked you if you recall what the weight of that baby was, would you be able to recall that off the top of your head?
A No, ma'am, not without the record.

Q If I show you this, would it recall your recollection -- refresh your recollection?
A Yes, ma'am. This is Tidelands Health documentation from our nursery documentation.
Q Okay. And would you please tell me what the weight of the baby was.
A The weight is 8 pounds 4.6 ounces.
Q Okay. And would that be consistent with a viable full-term baby?
A That's a determination by the physician.
Q Okay.
A But that -- yes, that would be a determination for the physician, but eight pounds is a suitable weight for a full-term infant.

MS. WALKER: Okay. I don't have any questions. If you would please answer any that Mr. Mureddu has.

THE WITNESS: Certainly.

THE COURT: Cross --

MR. MUREDDU: No questions, Your Honor.

THE COURT: Okay. Thank you very much, ma'am. You may step down.

(Witness excused.)

THE COURT: All right. You may call your next witness.

MR. HIXSON: Your Honor, at this time the State

rests, Your Honor.

THE COURT: All right. Ladies and gentlemen, the State has rested its case. I have some issues of law that I have to take up outside of your presence. You are still not allowed to discuss your case. You are still to keep an open mind about the case, and we'll be back with you in just a few moments. Thank you very much.

Everyone else, remain seated.

(WHEREUPON, the jury exited the courtroom at 2:38 p.m.)

THE COURT: All right. Motions?

MR. MUREDDU: Your Honor, first, I would, just for housekeeping, I don't -- obviously, that witness was short. We don't have -- we don't need to be heard on that witness.

THE COURT: Okay. Thank you.

MR. MUREDDU: All right.

Your Honor, at this time, we would move for a directed verdict. I understand that some of these issues are ofttimes questions of fact for the jury. I would argue that there is no evidence to support the element of malice, which is a requirement of -- one of the elements of attempted murder. So based on that ground, the lack of any evidence that supports an

indication of malice, direct or otherwise, we think is lacking, and, therefore, we would move for a directed verdict of not guilty. Thank you.

THE COURT: All right. Mr. Hixson?

MR. HIXSON: Your Honor, I'd just draw the Court's attention to -- let's focus on the malice issue. I think, as it relates to the element of the crime, we certainly know that Baby Jane Doe Taylor -- ultimately, later on, we know the name [redacted] Taylor -- is a person. The question is an unlawful killing of a -- attempted unlawful killing of a person with malice aforethought, either express or implied. We believe the effort -- the Court will focus on the malice element because it subsumes everything else, and that is and a willful, intentional act.

The testimony is clear that this was a conscious individual having birth and making a decision on her own to place it in a situation to remove it from any effort of help, and finally, literally, tying the knot on it and secreting that child away to the point that no one else would be in a position to help that child.

I'll draw your attention to the malice elements in Ballington, Your Honor. That's 346 S.E. [sic] 262. Specifically, in that case, Your Honor, our Supreme Court or Court of Appeals, usually, shows that evidence

that the Defendant attempted to cover up the crime or how the crime occurred was circumstantial evidence, indicating a wicked or depraved spirit. So that's one the reasons the statement was initially provided to provide another basis for malice besides just a Mouzon, wicked and depraved heart. So we'd rely on the statements made to detectives, repeatedly given an opportunity. Your Honor heard 45 minutes and some times of vast silence when the substantial opportunity to correct the record to avoid that problem. Under Ballington, we believe that is circumstantial evidence. That alone is enough to submit this case to the jury.

The Mouzon standard, Your Honor, that's by our Supreme Court. That's 234 [sic] S.E. [sic] 655. Malice does not necessarily import ill will towards an individual who is injured but signifies, rather, than a generally malignant recklessness of the lives and safety of others or a condition of mind which shows a heart regardless of social duty and fatally bent on mischief.

We believe we've absolutely surpassed the Mouzon standard of a wicked or depraved heart, not ill will towards young child. If anything, actually a stale will towards the specific individual, but malignant recklessness of the life of the newborn child, and we

believe we have certainly carried our burden. Mouzon and its progeny established that as a recognized malice standard in South Carolina. For those reasons, Your Honor, and any other questions Your Honor needs, we believe we've carried our burden, and we'd ask to have that submitted to the jury.

THE COURT: Mr. McCollum?

MR. McCOLLUM: Your Honor, with the Court's permission, may I add something to that?

THE COURT: Of course.

MR. McCOLLUM: In looking at the malice standard in anticipation of Your Honor's jury instructions, I was looking at State versus King, which is the South Carolina Supreme Court case which came out, looks like, October 25th, 2017. Looks like an appeal from Judge Nicholson in Charleston. I had sent it to Baily. I haven't had a chance to ask her if she received it or reviewed it yet. But one of the things -- and this would apply to the jury instruction request later, too, Your Honor. One of the things that the Court does is, in affirming the Court of Appeals reversed an attempted murder charge in a shooting with a pistol where someone attempted to kill a cab driver, I think. But the Court goes through this, you know, because we had assault and battery with intent to kill and we had common law

ABHAN, and we codified it, and there was all these different jury instructions back and forth. And the Court really settles it, and they say, Considering the legislative history as a whole, we conclude that Section 16-3-29, which is the attempted murder statute, they say is not a codification of the ABIK. Okay?

We find the General Assembly expressly repealed the offense of assault and battery with intent to kill and purposefully created the new offense of attempted murder, which includes a specific intent to kill as an element. Accordingly, we agree with the Court of Appeals that the trial judge erred in charging the jury that a specific intent to kill is not an element of attempted murder. And then they go on to say that cannot be deemed harmless.

Now, it's a fairly extensive opinion, and as part of it, they go to a case out of state, and it's the case of that they cite -- it looks like it's from Nevada, Keys versus State, which is 766 P.2d 270. But in that, apparently, they -- our Supreme Court felt like that they had the same problem in Nevada and maybe in other states. So one of the things that they did here is they quote extensively from Keys, and one of the things they say is that attempted murder can be committed only when the accused acts are accompanied by

express malice, malice in fact. Then though go on in the quote to underline, One cannot attempt to kill another with implied malice because there is no such criminal offense as an attempt to achieve an unintended result, and attempt by nature is a failure to accomplish what one intended to do. Attempt means to try, means to -- an effort to bring about a desired result; thus, one cannot attempt to be negligent or attempt to have the general malignant recklessness contemplated by the legal concept implied malice.

So certainly the case that they cite really repudiates implied malice. And they go on to say, One cannot be guilty of attempted murder by implied malice because implied malice does not encompass the essential specific intent to kill. And then, briefly, it goes on and says -- talks about express malice.

So, you know, this is a quoting of the Nevada case. All right? And our case, you know, ends with a ruling, at least as to the attempted murder and malice, that basically the trial judge in that case in Charleston erred in charging the jury that a specific intent to kill is not an element of attempted murder. But I think it goes a little farther, too, and gets into this issue of implied malice. And for purposes of the motion for directed verdict, I would just add that,

in terms of the specific intent, and also it appears that the implied malice or the negligence standard would not be appropriate.

The other thing, too, is the Court talks about briefly that, while it seems odd that an attempt statute would be -- would require more -- would require more of an intent, they go on to say that, whatever the case may be, that they ruled that that's the truth, that it's actually, in some ways, there's -- the attempted murder requires more of a specific intent than a murder case which could result -- come about by other forms of implied malice. So I would add that for the Court's benefit. I don't know if Mr. Hixson has a copy of this case. I had e-mailed it to your law clerk.

THE COURT: Yeah, I was puzzled by King the day that I read it and still trying to figure out what it says other than specific intent to kill and then an attempted murder case is required. But they don't go through -- so does that mean you give an implied malice charge or not?

MR. HIXSON: My understanding of King, what I've offered from the beginning, is pretty common sense. Once our kind of common law morphed to assault and battery with intent to kill was eliminated through the

statutory construction of the lesser-included attempted murders. Then the distinction between lesser includeds is malice aforethought. And so the King opinion, the State's position is it makes sense. You know, now it's very clear. If you try to kill somebody but the person lives, it's attempted murder. But the malice element is the same. It's specific intent to kill. And we concede that -- not concede it; that's the law in South Carolina. It is what it is.

To get to that decision, the Court pontificates quite a bit with persuasive authority from other jurisdictions, and it's also clear that our Supreme Court has supported four different types of -- not different types of malice. I think the proper charge is it's not different types, it's different ways to get there. In other words, we all agree that there can be so -- some conduct that is so incredible, almost like the pre-Belcher use of deadly weapon-type situation, that it's clear that malice can be inferred by the conduct, and the conduct of putting a newborn, a helpless individual, in a trash can is an example of someone that our court, under the Mouzon theory, has established is appropriate. It's the law in the state of South Carolina that malice does not necessarily import ill will.

So it's true that they quote in the Nevada court in talking about specific intent, but it doesn't change the types of malice. Malice is still under the body of murder case law and attempted murder case law. That's the position that the State would take.

THE COURT: All right. At this point, the standard before the Court at this point is Rule 19, which is the criminal rule of procedure for directed verdict, and the evidence that's -- supposed to take the evidence in the light most favorable to the nonmoving party, which would be the State, and I am to consider the existence of the evidence and not the weight of the evidence, and at this point, I believe, based upon the testimony of the officers and the child who found the baby and the paramedic and the medical professionals and based upon her statement, that there is enough evidence, considering the existence of it and not the weight of it, for the case to go forward for a jury determination on attempted murder.

Okay. Where are y'all with putting up witnesses? Do y'all have people ready to go? Yes? No? Maybe?

MR. McCOLLUM: We really -- I guess, based on the stipulations that we have with the Solicitor, we thought the State's case would carry through today. I don't think we're in a position to put up witnesses.

We may be able to get in that position if we need to.

In terms of tomorrow, I had a discussion with Solicitor Hixson about -- because I understand the Court's schedule. You have something which I guess will take the balance of the afternoon tomorrow?

THE COURT: It's a death penalty hearing, so it will probably take a couple of hours.

MR. McCOLLUM: Okay. And Mr. Hixson and I discussed this, and we -- he posited that maybe we should start in the morning, put up our witnesses and possibly even finish the case Thursday. But we didn't get a chance to ask Your Honor.

THE COURT: Okay. None of these lay witnesses that y'all have can testify today?

MR. McCOLLUM: Well, if you want us to call some witnesses, maybe we could just take a recess and let us see what we can do.

THE COURT: I mean, it looks like a lot of these people are family members. Stepmother, sister, uncle, grandmother, father, mother. I mean, there's only one expert on your witness list.

MR. McCOLLUM: That's correct.

THE COURT: Okay. All right. Let's go ahead and advise her of her rights.

All right. Ms. Taylor, stand up for me. Okay?

And raise your right hand.

SHELBY HARPER TAYLOR, after being duly sworn, testified as follows:

THE COURT: How old are you?

THE DEFENDANT: 26.

THE COURT: And how far did you go in school?

THE DEFENDANT: I went to high school.

THE COURT: Did you graduate?

THE DEFENDANT: Yes.

THE COURT: Okay. Good. Do you have any schooling beyond that?

THE DEFENDANT: I have one year of college.

THE COURT: Okay. And where did you do that?

THE DEFENDANT: Horry Technical College.

THE COURT: All right. So you read, write, and understand the English language okay?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand me okay?

THE DEFENDANT: Yes.

THE COURT: Okay. Are you under the influence of any alcohol or drugs right now?

THE DEFENDANT: No, sir.

THE COURT: And I'm going to go over your rights with you. Okay? So at any point in time, if you don't understand something I say, you just let me know.

You're not going to bother me or offend me or upset me. The purpose of this is for you and I to have a conversation so that I can make sure that you understand what your rights are; okay?

THE DEFENDANT: Okay.

THE COURT: All right. Now, at this time, I'm going to explain some of your rights to you. If you do not understand anything that I say, just let me know. If you want me to explain anything in more detail, just let me know. Do you understand me?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Now, we've reached the stage of the trial where you may present your defense. You have the right to claim the protections that are given to you by the Fifth Amendment to the Constitution of the United States. This amendment states in part that no person shall be compelled in any criminal case to be a witness against himself.

What this means is that you cannot be required to testify in this case. You have the right to testify on your own behalf; however, no one can make you testify. This is a personal right, and no one can waive or give it up except for you. All right?

THE DEFENDANT: Yes, sir.

THE COURT: So if you decide to testify, then

you'll be subject to the same rules that govern other witnesses, and you may be examined and cross-examined on any relevant issue in this case.

Now, she has no criminal history; is that right?

MR. HIXSON: Nothing that's impeachable.

THE COURT: All right. Now, so if you decide to testify, this decision on your part must be made freely, voluntarily, and intelligently with the knowledge and protections given to you by the Fifth Amendment and the consequences of your decision to testify. So if you decide not to testify, I will tell the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. You may talk with your attorneys, your family, or anyone else, but the final decision is yours. Okay? Now, do you understand what I've explained to you so far?

THE DEFENDANT: Yes, sir. Yes, sir.

THE COURT: Okay. And prior to today, have you and your attorneys talked about this issue?

THE DEFENDANT: Yes.

THE COURT: Okay. And you don't need to tell me what those conversations are, but this isn't a new

concept that I'm explaining to you; is that right?

THE DEFENDANT: Right.

THE COURT: Okay. And do you have questions about what I've explained to you?

THE DEFENDANT: No, sir.

THE COURT: Do you understand all you've got to say is, "Judge, I didn't understand that," or, "Can you explain it a little bit more," and I'll be happy to explain it more. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And do you want me to explain anything else to you?

THE DEFENDANT: No.

THE COURT: Okay. And do you want to talk to your lawyers more at this time before answering the question?

THE DEFENDANT: No.

THE COURT: Okay. And do you wish to testify in this case?

THE DEFENDANT: Yes.

THE COURT: Okay. All right. Thank you very much.

All right. How long do y'all need -- it's 3 o'clock -- to get set up?

MR. MUREDDU: 20 minutes, Your Honor.

THE COURT: All right. I'm going to tell the jury we're going to be on a 20-minute break, and we'll start back in 20 minutes. Thank you very much.

(WHEREUPON, a brief recess was taken at 2:55 p.m.)

THE COURT: All right. Is the State ready?

(WHEREUPON, the jury came into open court at approximately 3:24 p.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. Sorry about the extended break.

Now, the State has rested its case. Now, as I told you in the beginning, the Defendant does not have to put on a case. They do not have to prove anything because they are -- she is presumed to be innocent, and the burden of proof lies with the State to prove her guilt beyond a reasonable doubt, but the Defendant may, if she chooses, present a case.

And Mr. Mureddu or Mr. McCollum, do you wish to call any witnesses?

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

THE COURT: Yes, sir.

MR. McCOLLUM: At this time, the Defense calls Shelby Taylor.

THE COURT: All right. Come on forward, Ms. Taylor.

SHELBY HARPER TAYLOR, after being duly sworn, testified as follows:

THE CLERK: Please be seated. Please state your full name and spell your last name for the Court.

THE DEFENDANT: Shelby Harper Taylor, T-A-Y-L-O-R.

DIRECT EXAMINATION

BY MR. McCOLLUM:

Q All right, Shelby. I want to ask you some questions. Okay?

A Okay.

Q And I need for you to speak into the mic and answer -- you know, try to say yes or no. Okay? Sometimes we say "uh-huh" or "yeah," stuff like that, so we -- try to remember to speak where you don't nod your head. Okay?

A Yes.

Q So, in other words, don't talk like we always talk. Just answer -- you know, use words.

A Yes, sir.

Q How old are you?

A 26.

Q And you understand that you're on trial here for attempted murder; right?

A Yes, sir.

Q And you understand that you're on trial for

attempted murder for trying to harm your newborn child; right?

A Yes.

Q Okay. And I want to go ask you a couple questions about where you're from and your family and that sort of thing. Okay?

A Yes.

Q Yes?

A Yes.

Q All right. And did you grow up in Horry County or in the Myrtle Beach area?

A Yes, I grew up in Horry County.

Q And so you were actually born here?

A Yes.

Q Born in one of the hospitals here?

A Yes, Grand Strand.

Q You were born in Grand Strand Hospital?

A Yes.

Q And what year was that?

A 1991.

Q And who are your parents?

A Angie Harper and Chris Harper.

Q Are they here today?

A Yes.

Q They're here in the audience over here with the

other friends and family of yours?
A Yes. Yes.
Q Are all those people over there, your friends and family, here to support you?
A Yes.
Q Do you know all of them by name?
A Yes.
Q Where did you go to elementary school?
A St. James Elementary.
Q And then after that where did you go? What's next, middle school?
A Yes. St. James.
Q And then what happens after that? You went to high school?
A Yes.
Q What high school did you go to?
A St. James High School.
Q And did you graduate from there?
A Yes.
Q What year did you graduate?
A 2010.
Q Okay. And how did you do in school?
A Okay.
Q All right. And do you have any brothers or sisters?

A I have a sister.
Q What is her name?
A Samantha Harper.
Q And how old is she?
A 20.
Q Is she here today?
A Yes.
Q Is she married?
A No.
Q Does she have any children?
A No.
Q As you're here today, are you married?
A Yes.
Q And what's your husband's name?
A Patrick Taylor.
Q Is Mr. Taylor -- is he in the courtroom?
A Yes.
Q Can you point him out for us?
A He's in the back.
Q On the back row in the red shirt?
A Yes.
Q Okay. When did you get married?
A October 13th, 2013.
Q Was your daughter, [redacted], already born then?
A No.

Q And you have a daughter, [redacted]; right?
A Yes.
Q How old is she?
A She's four.
Q She's four. Where does she live?
A She lives with him and his parents, I believe.
Q All right. So describe -- what kind of wedding ceremony did you have? Was it a big wedding?
A No, it was a small wedding.
Q Where was it?
A On Scipio Lane.
Q Okay. And then is Patrick's -- obviously, Patrick's mother and father and those people are your in-laws; right?
A Yes.
Q What's Patrick's mother's name?
A Sherry Taylor.
Q Sherry?
A Um-hum.
Q Is she present? Do you see her?
A I don't believe so.
Q Have you seen her here?
A No.
Q Okay. In terms of -- did you have a good marriage or not?

A It was okay.
Q It was okay. Did you feel connected to your husband and to -- did you feel connected to your husband?
A Yes.
Q In your statement, I think you said that he was a good husband; is that true?
A No.
Q All right. Were there ever things that he ever did to you to harm you?
A Yes.
Q All right. And did you report those things?
A No.
Q To your knowledge, did anybody ever find out about those things?
A Now, yes.
Q Okay. Well, prior to the date three years ago when you gave birth, was anybody -- for example, was Patrick's mother aware that there was maybe some abuse or some controlling behavior?
A No.
Q Did you take steps to cover that up?
A Yes.
Q Now, in terms of your baby girl, [redacted], how old is she now?

A She's four.
Q She's four years old. How old was she when your baby, [redacted], was born?
A 16 months old.
Q So how old was she when she got pregnant -- when you got pregnant?
A I was 21.
Q And did you try to hide your pregnancy from your family?
A No, not that one.
Q All right. I'm talking -- let's switch now with Baby [redacted]. Did you hide that pregnancy from your family?
A Yes.
Q Did you get any kind of prenatal care?
A No.
Q Did your husband have an opinion about whether or not you should have another baby?
A He didn't want us to at the time, no.
Q And do you know why?
A No.
Q What kind of mother were you to [redacted]?
A I was a good mom.
Q When you were pregnant with [redacted], did you seek medical care?

A Yes.
Q Did you have prenatal care?
A Yes.
Q Did your family know that you were pregnant?
A Yes.
Q Did you give birth to her in the hospital?
A Yes.
Q What hospital was she born at?
A Waccamaw.
Q Were you on any birth control or trying not to have a baby?
A With [redacted]?
Q Yes.
A No.
Q Were you concerned about getting pregnant?
A No. It wasn't a thought.
Q Did Patrick want to have another baby?
A I believe not at the time, no.
Q Did he say things like that he did not want to have another baby?
A Yes.
Q During the time that you were married to Patrick and you had your daughter, [redacted], were there times that you were cut off from your family?
A Yes.

Q Were there times when you didn't communicate with them?
A Yes.
Q Were there times that you avoided them?
A Yes.
Q Did they try to reach out to you?
A Yes.
Q And would you let them in, so to speak? Would you let them have contact with you?
A No.
Q And do you know why?
A No.
Q Were you trying to hide things from them?
A No.
Q Have you ever been in any type of trouble?
A No.
Q On the night that -- and you gave birth to [redacted] in your apartment; right?
A Yes.
Q And was that at Island Green?
A Yes.
Q Did you know you were going to give birth that night?
A No.
Q When you went to bed that night, did you have a

thought that you were going to have a baby at home?
A No.
Q On that particular evening -- in terms of the apartment, how many bedrooms are in the apartment?
A It was just the one bedroom.
Q A one-bedroom apartment. And who lived in the one-bedroom apartment?
A Just me, [redacted], and Patrick.
Q You and [redacted]?
A And my husband.
Q And where -- describe your bed. Did you sleep in the same bed with Patrick?
A Yes.
Q What size bed was it?
A It was a full, I believe.
Q And where did [redacted] normally sleep?
A In her crib, in our room.
Q So she was in her crib?
A Um-hum.
Q In the bedroom?
A Um-hum.
Q And how many bathrooms are in your apartment?
A Just one.
Q Where is the bathroom door? Does it open into your bedroom or does it open into another room in the

apartment?
A It just opens up into our hallway.
Q And how far is the bathroom door from the bedroom door?
A Not far at all.
Q At some point during the night, did you get up to go to the bathroom?
A Yes.
Q And why was that?
A Because I was having some pain in my stomach, so I kept getting up.
Q How many times do you think you got up?
A 50-plus.
Q Over and over?
A Yeah.
Q Was [redacted] awake?
A No.
Q Was your husband, Patrick, awake?
A No.
Q Did you ever attempt to wake your husband, Patrick?
A A little bit, yes.
Q And is he a heavy sleeper?
A It depends.
Q At any time during the night -- well, when you

would get up, would you turn a light on?
A I had a light on in the bathroom.
Q And you kept that light on continuously?
A Yes.
Q Was that normal?
A No.
Q Did you sleep on the side of the bed that [redacted] was on?
A Yes.
Q And is that closer or further from the door from where Patrick was sleeping?
A It's further from the door.
Q What time did you go to bed that night, if you can remember?
A I believe 10 o'clock.
Q Did Patrick go to bed at the same time?
A No. He went to bed earlier.
Q Earlier. At what time did you start getting up to go to the bathroom?
A I believe it was like maybe 2:00.
Q 2:00 a.m.?
A Yes.
Q And what were you experiencing when you would go into the bathroom at 2:00 a.m.?
A Just pain.

Q Where was the pain?
A In my lower stomach.
Q Did you know that you were having a baby?
A No.
Q How could you not know that?
A Because with [redacted], I mean, they broke my water and everything, and I didn't really experience that kind of pain.
Q So the pain was more intense this time?
A Yes.
Q And why didn't you wake up your husband and tell him that you were in severe pain?
A Because I was scared.
Q What were you scared of?
A Him.
Q I'm sorry?
A Scared of him.
Q You were scared of him. Now, you had a phone; right?
A Yes.
Q And you had friends' and family's number. You could have called somebody; right?
A Yes.
Q If you thought you were in pain, you could have called 9-1-1; right?

A Yes.
Q At some point, did your water break in terms of being pregnant?
A Yes.
Q Where were you when that happened?
A On the bed.
Q In the bedroom -- in the bed with your husband?
A On the bed in the bedroom.
Q And what did you do after that happened?
A I went to the bathroom.
Q About what time was that, if you can remember?
A I think it was 4:00 maybe.
Q Were you in pain?
A Yes.
Q Did you take any medication?
A No.
Q Did you have any painkillers or anything to help you?
A No.
Q Were you making noise? Were you screaming or were you quiet?
A I was kind of quiet.
Q Were you being quiet intentionally?
A No.
Q Was that difficult to go through?

A Yes.
Q How long did this continue?
A Like two hours.
Q Eventually, did you give birth?
A Yes.
Q Was there a lot of bleeding?
A Yes.
Q Did you get -- was there blood in the bathroom?
A Yes.
Q Was there blood on the bath mat?
A Yes.
Q Was there blood all over you and all over the toilet?
A Yes.
Q At some point -- now, you know at that point, you know you had a baby; right?
A Yes.
Q You've had -- this is your second child. What did you do? Did you wake your husband up?
A No.
Q Did you call anybody?
A No.
Q What were you thinking?
A I honestly wasn't -- nothing.
Q Did you think you were in some type of trouble?

A No.
Q Did you take the baby -- what about the umbilical cord? Was the umbilical cord attached to the baby?
A Yes.
Q What about the placenta and the afterbirth? Did it come out?
A Yes.
Q Did you have any clothes on? What were you wearing?
A I think I was wearing a nightgown.
Q And then did you go and wake up Patrick?
A No.
Q Was he still asleep?
A Yes.
Q Did you take the baby and put it in a bag and take it and discard it in the dumpster?
A Yes.
Q What floor is your apartment on?
A The second.
Q The second floor?
A Um-hum.
Q So did you go outside the door of your apartment?
A Yes.
Q You're wearing your gown?
A I believe so, yes.

Q And you walked down the stairs?
A Yes.
Q And you placed your baby in the dumpster?
A Yes.
Q And were you tired?
A Yes.
Q Were you exhausted?
A Yes.
Q Were you able to walk and do that under your own power?
A Uh-hum.
Q Did you have any difficulty walking back up the stairs to go back to your apartment?
A Yes.
Q When you went back in the apartment, what did you do?
A [redacted] was waking up and then he had to get up.
Q So when you went back in, your 16-month-old daughter was waking up?
A Yes.
Q And did you get her up?
A Yes.
Q Did you feed her?
A Not at the time, no.
Q What did Patrick do?

A He got up and got ready to go to work.
Q At some point before he got up, did you take efforts to clean up the bathroom?
A A little bit, yeah.
Q Put stuff in the laundry? Put the towels and stuff in the washer?
A Yes.
Q Yes?
A (Nodding.)
Q Did you take the bath mat, put it in the washing machine?
A I believe so, yes.
Q So was that stuff cleaned up before Patrick went in the bathroom?
A Yes.
Q Were you trying to hide that from him?
A A little bit, yes.
Q What about the bed? Was there amniotic fluid in the bed?
A I believe so.
Q And blood? Was there blood on the sheets?
A Yes.
Q Did you and Patrick have any discussion about that?
A No.

Q On that day, at some point, did you -- did [redacted] have a doctor's appointment?
A Yes.
Q Did you take [redacted] to the doctor?
A Yes.
Q And where was the doctor's office?
A On Glenns Bay.
Q And did you drive your car to take your daughter to the doctor's office?
A Yes.
Q And what was the purpose of going to the doctor? Was she sick?
A She just had a regular check-up.
Q So, after all of this, you took your 16-month-old to her well baby check-up?
A Yes.
Q And you had done that continuously since she was born?
A Yes.
Q And that she -- was she okay?
A Yes.
Q Was she fine?
A Yes.
Q Did you do anything else that day?
A I went to my mother's house.

Q Did you talk to your mother?
A No. She wasn't home.
Q Was anyone there?
A No.
Q At some point, did you see yourself on the news?
A Yes.
Q Or did someone tell you that you were on the news?
A My grandma called my mom, and my mom called me.
Q That day, after giving birth, doing the things that you did, did you get any rest?
A I believe that morning I did.
Q And you continued to care for your 16-month-old daughter?
A Yes.
Q And, at some point, you went to the police station; right?
A Yes.
Q And you went and went to talk to the police; right?
A Yes.
Q And did you deny that you had done this?
A Yes.
Q And why was that?
A Because I was in denial.
Q When you went to the police department, had you

had any medical care?
A No.
Q And you had been up -- had you been up all night?
A Yes.
Q And when the police -- at some point, the police arrested you; right?
A Yes.
Q And did they handcuff you?
A Yes.
Q And did they put you in a patrol car?
A Yes.
Q And where did they take you?
A Conway Hospital.
Q They took you from Socastee, Holmestown Road, down there near -- on Scipio Lane and they drove you to Conway Hospital; right?
A Yes.
Q And you were admitted to Conway Hospital?
A Yes.
Q And you had a medical exam there; yes?
A Yes.
Q And were you in the hospital for two days?
A I believe so, yes.
Q When you went to the police station, where was [redacted]?

A [redacted], I believe, was actually with my stepmom.
Q When you were at the -- I want to go back to the hospital for a minute. When you were at the hospital, were you handcuffed while you were in the hospital?
A No. Not in my room, no.
Q You weren't handcuffed to the bed?
A No.
Q Was there a police officer outside your door?
A Yes.
Q And when you were released from the hospital, did you leave the hospital or were you handcuffed and led out of the hospital?
A I was handcuffed and led out the door.
Q And taken to jail?
A Right.
Q Have you seen [redacted], your daughter, since this happened?
A No.
Q Are you able to see her?
A No.
Q Are you court-ordered not to see her?
A Yes.
Q Have you seen the baby, [redacted], since this happened?
A No.

Q Are you able to see her?
A No.
Q At some point, did you start seeking -- well, during the pregnancy, did you ever seek any kind of medical treatment?
A No.
Q Did you ever seek any kind of medication or mood stabilizers or anything?
A No.
Q Get any kind of hormonal therapy?
A No.
Q Since this happened and since you got out of jail, have you started seeing a counselor?
A Yes.
Q What is her name?
A Diane Winchester.
Q And when you first started seeing her, did you see her biweekly?
A Yes.
Q And how often do you see her now?
A I see her once a month.
Q And why do you not see her as frequently?
A Well, I don't have insurance and it's really expensive.
Q How much -- why do you not have insurance?

A Because I turned 26.
Q So your insurance expired?
A Right.
Q And do you know how much Ms. Winchester charges for a session?
A $100.
Q In addition to going -- so you've been going to counseling for three years just about?
A Yes.
Q Do you think that that's helped you understand this better?
A Yes.
Q In addition to seeing your counselor, Diane Winchester, did you also go to be examined by Dr. Robert McCarthy?
A Yes.
Q And how often did you see Dr. McCarthy?
A I think it was over a period of three weeks.
Q So you went repeatedly?
A Yes.
Q And did he conduct a diagnosis of you?
A Yes.
Q Shelby, would you consider this a planned pregnancy?
A It was unplanned.

Q Did you feel any pressure from other people or negative comments regarding the pregnancy or possibly being pregnant or getting pregnant?
A Yes.
Q Did you feel that you were responsible and able to care for an infant or did you feel overwhelmed?
A I felt responsible to care for one.
Q For whatever reason, did you think that you lacked family support?
A Yes.
Q Is that true?
A Not now, no.
Q But you thought that?
A I thought that at the time, yeah.
Q Did you have any financial struggles?
A Yes.
Q Did you and Patrick believe that you were not financially secure enough to have another child?
A Yes.
Q Did you ever think that, if you became pregnant, that your husband might leave you?
A Yes and no.
Q In terms of what you think now, are you sorry for what you did?
A Very.

Q Do you regret it?
A Yes.
Q Do you understand why you did it?
A No.
Q If you had a chance to go back in time, would you seek medical help and seek your family's help?
A Yes.
Q Did you ever think something like this would happen to you?
A No.
Q Did you ever -- are you scared?
A Very.
Q Are you concerned that you'll never see your children again?
A Yes.
Q Is that hard to live with?
A Yes.
Q Do you think that you've inflicted pain on other people?
A Yes.

MR. HIXSON: Your Honor, I object. A little indulgent, but we have to deal with issues at trial. I understand it's a lot of victim impact testimony, but the witness's personal feelings aren't an issue in the trial. I've let a lot go in, but we're starting to

talk about future, dangerous, and a lot of stuff.

THE COURT: Okay.

MR. HIXSON: I certainly would object to how somebody feels.

MR. McCOLLUM: I'm wrapping it up, Your Honor.

THE COURT: Okay.

Q Did you ever see yourself in here in this kind of situation?

A No.

Q All right, Shelby. Those are all the questions that I have. Okay? Please answer any questions the prosecutor may have. Okay? Thank you.

THE COURT: Cross?

Do you need some water, ma'am?

THE WITNESS: I'm okay.

MR. HIXSON: Do you want to get a drink of water, take a breath for a second?

THE COURT: Is there a cup up there?

MR. HIXSON: Yeah, I'll get you some.

THE COURT: Okay.

MR. HIXSON: Here you go.

THE WITNESS: Thank you.

MR. HIXSON: You're welcome. Just take a breath for a second. You all right?

THE WITNESS: Yeah.

CROSS-EXAMINATION

BY MR. HIXSON:

Q Ms. Taylor, we hadn't met before, but it's great to see that you do have tremendous family support. It's really nice to see somebody with you to the end. Is that safe to say?

A Yes.

Q So let's just talk a little bit about some of the changes that have occurred during the course of this, on the run up to a pregnancy until your discussions with law enforcement until leading into what now is a trial on the merits of your case. Okay?

A Okay.

Q And, specifically, I guess, your testimony today about Patrick being an abuser. Okay? Because the jury just got an opportunity, during the course of you saying that you weren't pregnant and that you didn't have a child, got to hear you say, I'd tell Patrick if I was pregnant; Patrick's a good guy. Isn't that true you said that?

A Yes.

Q Okay. As a matter of fact, I think you were present at the time that Nurse Chickering -- she's a social worker -- after the reports came forward and the officers interviewed Patrick and said, Oh, my

goodness -- and, as a matter of fact, as you indicated, Patrick is here in the courtroom today. And you told those nurses there was no abuse at home. Isn't it true that this is not an abusive situation? Isn't that what you told Weslyn Chickering, as well as the folks that were diagnosing you at the time of trial --

A Yes.

Q -- to try to help you?

As a matter of fact, isn't it true that you told Dr. Oduwole during the course of your psychiatric evaluation at the hospital, to make sure that you were safe, "There's no abuse. I have great family support. Patrick's not abusive." Isn't that true?

A Yes.

Q Let's get into a little more detail about that. Okay? I just want to ask you to make sure that you confirm some of the statements that you had given, and let's just kind of be clear. After you were medically examined to make sure that you're healthy that you're okay, that you're not going to have any problems because of the child, kind of the medical part of stuff, and then, actually, you talked to Social Worker Chickering to make sure that, if you were discharged, you're going to be safe; isn't that true?

A Yes.

Q And then you talked to -- it's a mouthful -- Adedapo Oduwole. He was a psychiatrist at the hospital to talk to you to see how you're doing, since it's an odd fact pattern about putting your baby in a trash can. That doesn't happen everyday; safe to say?
A Yes.
Q Okay. And do you recall telling him that the patient is married, that this husband didn't even know that the patient had any conception, and that the patient had been hiding the pregnancy from the husband and other family members? Isn't that true, you talked with Dr. Oduwole about that?
A Yes.
Q For the past nine months -- so for nine months, you had not told your husband or your family members about that; is that true?
A Yes.
THE COURT: Yes, sir?
Okay, go ahead.
MR. HIXSON: Okay?
THE COURT: Yeah.
Q Okay. Specifically, when Dr. Oduwole is talking to you at that time, which would have been April 10th of 2015, "The patient has no significant history of psychiatric illness." Isn't that true?

MR. McCOLLUM: Your Honor, I object. I don't think this is a question. I think he's reading the psychiatrist's report.

THE COURT: Okay.

MR. McCOLLUM: I think he's reading the doctor's observations of the patient.

THE COURT: I think your line of questioning is permissible, but I think you need to rephrase the way you're asking the questions as opposed to reading from the report.

MR. HIXSON: Yes, sir. I will make sure that I'm quoting her statement she made to Dr. Oduwole, not his observations. I agree with you.

THE COURT: Okay.

Q Okay. Isn't it true that you disclosed to Dr. Oduwole that you didn't have any past history of physical or mental illness?

A Yes.

Q Okay. I'll save that for later. Okay. And so that interview, that discussion with a psychiatrist at the hospital was on April 10th of 2015; is that right?

A Yes.

Q Okay. And so I know that you had just testified to the jury that you had been undergoing psychiatric treatment and help for this from the time of

Dr. Oduwole's assessment up until -- I guess your testimony was you are currently under -- receiving some help; isn't that right?

A Yes.

Q Okay. I'd like to bring your attention to May 16th of 2016, so almost a year after you had that conversation with Dr. Oduwole. Okay? By that time, the charges had been pending against you for a little over a year and a half; isn't that right?

A Yes.

Q Okay. And then isn't it true that the recommendation, or at the request of your defense counsel, you went to seek an assessment by McCarthy and Associates, a psychiatrist here in Myrtle Beach; isn't that right?

A Yes.

Q So more than a year had gone by, and in preparation for a day before a jury, there was a clinical assessment for you concerning a baby dumping syndrome; is that safe to say?

A Yes.

Q And I'd like to specifically ask you, is it true -- specifically referring to page 4, I guess -- I guess I'll ask the question first -- that you did go to counseling for one month after your arrest but then

discontinued at your own -- on our own behalf; that you got some treatment, but then you, on your own, isn't it true that you stopped going on your own, that you terminated the treatment prematurely because you weren't working? Isn't it true that you couldn't afford it and you stopped treating -- you stopped receiving treatment one month after arrest, which would have been May of 2015, and then a year later, you come back and you tell your forensic psychiatrist that puts in a report, that's what you told him; isn't that true?

A I don't remember that.

Q Okay. Did you discontinue treatment one month after your arrest?

A Of seeing him or seeing --

Q Seeing your -- I don't know who you were seeing, but you told your psychiatrist, one year later, that you stopped seeking treatment a month later -- a month after you were arrested.

A I don't remember ever saying that.

Q I'll cross him on that. Okay. But there's no question you just testified that you've been receiving treatment this entire time?

A Yes. Yes.

Q Okay. All right. Let's talk about specific things that you're referring to. As it relates to any

substantive abuse, have you ever called the police or anybody or said that, "Patrick is beating me," or there's a problem and come ask for help? Have you ever called the police?

A No.

Q Okay. And I think that's what you testified to, there was no outcry for it.

A Right.

Q Okay. But you did tell the police that Patrick was a good guy?

A Yes.

Q Okay. Okay. Let's talk for a second about whether or not there was any plan involved in this. Okay? You had a previous child; that's true?

A Yes.

Q [redacted]; is that what you call her?

A Yes.

Q So, at some point in time during the gestation period with this child, you had to come to know that you were pregnant at some point in time?

A Yes.

Q Okay. Did you -- I understand and I'm treading lightly. Okay? I think you testified earlier that the first child wasn't planned with Patrick. As a matter of fact, you and Patrick weren't married at the time;

isn't that true?
A Yes.
Q And then you, ultimately, I think it was on your statement, chose to get married and provide a family for the first child; is that true?
A Yes.
Q Isn't it true that you told Dr. McCarthy that you received a fair amount of pressure and friction from your family and criticism, I guess, about having the first child out of wedlock?
A Yes.
Q Is that safe to say? And, specifically, isn't it true that you told Dr. McCarthy, "I got lectured on the first child, and I'm going to get one more," referring to the second child, "if they found out"?
A Yes.
Q That you're going to get a lecturing the second time. And that, specifically, isn't it true that you told Dr. McCarthy that your plan was to finish your degree and get your babies back and move on; that's what your goal through the treatment was, that your goal was to get your babies back?
A Yeah.
Q Okay. Let me point out a question to you that you answered and ask if you recall your answer to this that

you gave Dr. McCarthy. And he specifically -- isn't it true that you answered -- that you told Dr. McCarthy during your forensic analysis that you knew that there is a law in the state of South Carolina that provides that mothers that don't want their infants can drop them off, that you acknowledged that you knew that, that you could take them to a hospital without penalty or consequences; isn't that true?

A I knew that after. I was told that in the interview.

Q So at the time of this interview, you say that you didn't know it at the time of birth but you know it now?

A I know it now, yes.

Q Okay. Let me ask a couple other questions for a little bit. So during the course of this gestation period, on the run up to it, every time you realized that you were pregnant, isn't it true that you made a conscious decision to not tell your husband or your family?

A I was in denial that I was pregnant.

Q Oh, I understand that. But you actively did not tell all the family support that you have and your husband that you weren't pregnant?

A Right.

Q Isn't that true?
A Yes.
Q And so at the time that you have a child on April 9th of 2015 -- and I think it's remarkably brave to be able to be quiet, but the being quiet is part of a plan for nine months; isn't that true? For nine months of silence, to remain silent for a few more hours, you were able to do that, weren't you?
A I don't know.
Q Okay. I'll calm down here in a second. Let me ask you a couple more questions. Okay? You heard your recorded statement, and in that statement, you maintain for about 45 minutes that you never had a child. But you also said, "I would love to adopt that child" -- "If I could, I would adopt it." Isn't that true?
A Yes.
Q And you also expressed concern, isn't it true, about the financial situation in your family, that it is a hardship? Isn't that true that Patrick goes to work at 6 o'clock in the morning six days a week and comes back about 6:00 at night, and it's a financial difficulty, it's a struggle; isn't that true?
A Yes.
Q Do you recall talking to Dr. McCarthy and specifically telling him that Patrick wanted -- that

you told him that you wanted to remain a stay-at-home mom but Patrick continues to insist that you go back to work?

A Yes.

Q And, in fact, I think you said -- isn't it true that you told him that, "Daycare is so expensive, I'd be working for nothing, so what's the point?"

A Yes.

Q And, in fact, I think you mentioned that your intention was to have another child maybe in five years and that it be a boy; isn't that true?

A Hopefully, yeah.

MR. HIXSON: Beg the Court's indulgence just for a moment.

THE COURT: Sure.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right. Redirect?

MR. McCOLLUM: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. McCOLLUM:

Q Shelby, in terms of having a plan, did you have any way of knowing when the child would be born?

A No.

Q So you could have been -- you could have been

anywhere when you went into labor; right?
A Right.
Q Is this something that you planned to do?
A No.
Q You gave the statement to the police; right?
A Yes.
Q And were you truthful with the police?
A Not at the time, no.
Q When the psychiatrist talked to you about possible feelings of abuse or neglect or being controlled, were you truthful with the psychiatrist?
A Yes.
Q You were?
A Yes.
Q Okay. The doctor that examined you at the hospital --
A Oh, no, I was not. Sorry.
Q The doctor that examined you at the hospital, how much time did he spend with you?
A The one at the hospital?
Q Yeah.
A Not long.
Q Was it an hour?
A Maybe. Yeah, maybe even less than that.
Q Had you ever known him before?

A No.
Q Did he tell you that he was there to help you?
A Yes.
Q Did he tell you that he was a psychiatrist?
A Yes.
Q And did he talk to you about abuse and how that affects people?
A Yes.
Q All right. Is there any reason why you just held that back or didn't disclose that?
A I was protecting my husband at the time.
MR. McCOLLUM: Thank you. That's all I have, Your Honor.
MR. HIXSON: Can I recross on one issue?
THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. HIXSON:
Q All right, Miss. You can't have it both ways now. You were interviewed by two psychiatrists and law enforcement, and for a year you deny any abuse; isn't that true? For a year you deny any abuse to Cauble, to the hospital folks; you deny it to a psychiatrist the day after you dump that baby; isn't that true?
A Yes.
Q All right. And so a year after that, you go to a

hired psychiatrist, and you tell him the truth in preparation for trial; isn't that true? Is that not what you just testified to?

A Yes.

MR. HIXSON: No further questions.

THE COURT: All right. Thank you, ma'am. You may step down.

(Witness excused.)

THE COURT: Do you have somebody else you want to do this afternoon?

MR. MUREDDU: Yes, Judge.

THE COURT: Okay. And y'all approach real quick. Sorry. Give me one second.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

(Discussion off the record.)

MR. MUREDDU: Your Honor, we would call Angie Harper to the stand, Shelby's mom.

THE COURT: All right. Come on up, ma'am, and please be sworn.

ANGIE HARPER, after being duly sworn, testified as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: It's Angelea Harper, H-A-R-P-E-R.

DIRECT EXAMINATION

BY MR. MUREDDU:

Q Angie, tell the jury -- I think it's obvious, but what's your relationship to Shelby?

A She's my oldest daughter.

Q Now, how old was Shelby when she and Patrick first got together?

A She had dated him off and on, but it was probably 19, 20.

Q Okay. All right. Now, about how long were they together before she got pregnant with [redacted]?

A Solidly together maybe six, eight months.

Q Okay. Now, was her pregnancy with [redacted], was that planned?

A No.

Q Okay. Were they married at the time?

A No.

Q When did they get married? Shortly after?

A October, yes. She was...

Q Shortly after they discovered the pregnancy?

A Yes, sir.

Q Now, how old was Shelby when [redacted] was born?

A 21.

Q Okay. And, obviously, [redacted] is a girl?

A Yes.
Q Okay. Now, let's talk about the pregnancy with [redacted]. Okay? Now, how did that unplanned pregnancy affect yours and Shelby's relationship, the one with [redacted]? How did you react?
A I wasn't happy because I wasn't pleased with her relationship with Patrick to begin with. So, as a mother, everything flashed in front of me about the fact that she had quit school. You know, they were living with other people. You know, they couldn't afford to even have their own place, and here they're going to bring a baby in this world, you know, that without everything that they -- you know, not set up the way that -- you know, nothing ever goes right, but it just wasn't -- they weren't ready for that kind of thing. And I wasn't pleased with the way Patrick treated my daughter.
Q Okay. So it would be fair to say, then, based on what you're saying, is you were disappointed with her and the choices that she had made?
A Yes.
Q All right. That's fair. Okay. Now, did you make it known to her or was it obvious to her?
A I did. I mean, yeah. I mean, as her mother, I've always, you know, told her how I felt. Of course, I

like to feel down in my heart that she knows how much I support her and that we would be there anyway, but I mean, yes, immediately, it was complete disappointment because I'm seeing her whole future and what I knew she -- it was, Oh, I'll go back to school. And I thought, No, you won't. I just -- she's my daughter, and I just knew her. You know, she wouldn't do the things that I had wanted for her life at that point with someone that --

Q But you expressed those feelings?

A Yes, I did. I did. But it was with love, and she -- you know, with the feeling that she would always know that we were there for her.

Q But were they negative comments?

A Yes, they were. Yes. And that is from me and her father and you know...

Q So --

A Yes.

Q She knew how you felt?

A Yes, sir.

Q You mention her father. Were others in the family --

A Yes.

Q -- also, did they feel the way that you feel today?

A Yes, sir.
Q Did they make the same expressions?
A Yes.
Q Was it obvious to her that -- how the family felt? Was the family saying things to make it obvious?
A Yes, sir.
Q Now, let's talk a little bit about her relationship specifically with Patrick. How would you describe their relationship, Patrick's and Shelby's?
MR. HIXSON: Your Honor, I would object to that.
THE COURT: I'm sorry?
MR. HIXSON: I'm just objecting to --
THE COURT: I missed the question. What's the question?
MR. MUREDDU: I asked her how she would describe the relationship between Shelby and Patrick.
THE COURT: Okay. The objection is what?
MR. HIXSON: Just concerning about opinion testimony versus what she perceives or doesn't perceive, rather than opinion testimony on volatile or whatever or loving or whatever it might be.
THE COURT: She can't speculate. She's got to testify to something that she knows.
Q What you actually witnessed -- I'm sorry. Were you around? Did you spend some time around her? Was

she and Patrick together in your presence?
A Yes.
Q I mean, holidays?
A Occasionally, yes.
Q Okay. All right. So let's talk about what you witnessed. Was it good? Was it bad? What did you see?
A It was bad. She -- I think she told me sometime in April that she was pregnant, and it was about a month later that they had got in a huge argument and she moved home with me. And --
Q They split up?
A Yes. They -- yes. And he continually called, and at that point I was more concerned about an unborn baby. She wasn't eating, she was upset, and my concern was with that. But him and her were just going back and forth, and he was just cussing her. And I could hear it, and I'd say, "Please just hang up the phone." You know, just -- you can't do this.
Q You witnessed all this?
A I witnessed all this, and I heard him saying, "Tell your mother to shut the F up. This is none of her business," that type of thing. And so I just -- and she's just very easygoing, and she was so -- she loved him so much that she just excused, you know, the

way he acted. And she stayed for a couple more weeks -- well, no, actually, he had come to my house wanting his ring back. And I walked out to the end of my driveway, because I was in fear of her being alone with him. And he about took the door off the car of the person he was with, slammed it really hard, and got right here, and he goes, "Why the hell are you out here?"

MR. HIXSON: Your Honor, I'm happy to hear this, but object. This is relating to hearsay information from the witness.

MR. MUREDDU: Judge, this is personal knowledge.

MR. HIXSON: It's hearsay.

Q Without saying what -- without repeating word for word what he said --

THE COURT: Objection sustained. You're not allowed to say what he said, ma'am.

THE WITNESS: Okay.

Q I think you're describing a very heated confrontation.

A Right. I was only out there for --

Q Profanity was used --

A Yes, profanity --

Q -- by him?

A Yes. And I was just worried because he's a very

big guy and he's a very -- I mean, even as an adult woman, I was a bit feared myself, but I was protecting my daughter.

Q Okay. All right. All right. Now, was -- as a husband, was he a good provider to the family? Were they --

A Well, I mean, he certainly went to work every day. He works with his father, to my knowledge, in construction, and he did go to work every day. As far as a provider, yes, he did provide. She didn't work. But, you know, Shelby didn't have much of an education besides, you know, high school. So we knew whatever job she was, wasn't going to, you know, give a whole lot, so she didn't work in the beginning because babies are expensive --

MR. HIXSON: Your Honor, I'd object. Is this victim impact testimony? It's just narrative, almost expert testimony on the foundation of an opinion. These are broad themes, and they're not the element of the crime charged.

THE COURT: All right. Ladies and gentlemen, step back to your jury room. Do not discuss the case. We'll be back with you in just a moment.

(WHEREUPON, the jury exited the courtroom at 4:20 p.m.)

THE COURT: All right. What's the objection?

MR. HIXSON: It's 402 relevance, Your Honor.

THE COURT: Yeah. What's this got to do with --

MR. MUREDDU: Judge, I gave you a copy of the report as --

THE COURT: Okay. The report's not in evidence.

MR. MUREDDU: I understand that.

THE COURT: And the doctor hasn't testified.

MR. MUREDDU: May I be heard?

THE COURT: Sure.

MR. MUREDDU: Okay. What I want to do is lay a foundation for what was going on in her life, a history, known scientific risk factors leading to transient peripartum psychosis, abuse and possible abandonment by the spouse, rejection, lack of support by the family, financial struggle, et cetera.

I'm getting into -- she knows -- she has personal knowledge about this person's life, that marriage, whether or not they were financially secure or not, which is one of these things. I mean, we can get into the doctor, but what I'd rather not have is, you know, the Solicitor saying, well, you're just relying on Shelby's word for these things being true; whereas, we have objective evidence that all of these things that existed in that marriage were true. I'm laying the

foundation for that.

THE COURT: Okay. But she's up here on a soapbox going three miles off the train in response to your questions.

MR. MUREDDU: Well, I'd be happy if you'll let me lead her.

THE COURT: You've led her enough. The leading -- he hasn't been objecting to the leading. There's plenty of leading going on, but she's not answering the questions directly. She's answering the question and then going off on her own personal opinions as to -- you know, I don't know. She needs to answer the questions directly, not take an answer and use it as her opportunity to say whatever she thinks or feels about the situation. She needs to testify as to what she saw or what she heard, not her guessing as to whether or not they are -- I don't know how she can testify as to whether or not they're financially stable. She doesn't live with them. She wasn't living with them. She has no knowledge as to how much money he makes. She was -- the daughter wasn't even working, and they had a small child. I mean, how can she testify as to whether -- I mean, that's like asking my parents am I financially stable but they don't live with me and they don't live in the same house as me.

MR. MUREDDU: But, Judge, I think she just testified that he worked for, I think, her husband.

THE COURT: I know.

MR. MUREDDU: May I continue my examination, Your Honor?

MR. HIXSON: My concern additionally is, the foundational information under 702 is subject to cross-examination. The interviews with ma'am are in the doctor's report.

THE COURT: Yeah, I know.

MR. HIXSON: The doctor's report can testify to the foundation as a basis of his opinion, but this is uncross-examinationable, if that's even a word -- sorry for that -- to allow opinion testimony concerning -- that they thought they were stressed out, when the reading off the narrative of what the doctor is going to testify to, to make sure they hit every element, when it's in the report itself. That's the basis for my objection is 402 relevance. The doctor can testify to that. She can testify to what she saw.

THE COURT: Yeah, she doesn't need to -- she's up here giving us her opinion, which she can't do.

MR. MUREDDU: If I asked her -- I apologize.

THE COURT: Now, listen, Mr. Mureddu, I've got a lot of patience. Okay?

MR. MUREDDU: Yes, sir.

THE COURT: What I'm not going to allow is you to back-talk me. Okay? You understand?

MR. MUREDDU: Yes, sir.

THE COURT: Okay. Now, I sent the jury out of the room so we can deal with this issue, and I -- I mean, it takes a lot for me to lose my temper, but I'm not going to allow you to back-talk me. Okay?

Now, what is the questions that you want to ask her?

MR. MUREDDU: If I were to ask her a question, did they ever have to borrow money, would that be relevant, Your Honor?

THE COURT: Yes, that would be relevant. What she can't do is she can't give her opinion about their relationship. She's not -- opinion testimony is not allowed. She can testify as to what she knows. If she had to loan Shelby money, that's perfectly -- that's evidence of them having -- that may be evidence of them having financial issues, that may be evidence of -- I know plenty of people who are lawyers who borrow money from their parents because they want to have the right kind of purse and the right kind of shoes and the right kind of watch. So, I mean, that's not direct evidence of a financial struggle.

But, yeah, I mean, the problem is she's not sticking to the question. I'm going to allow you to ask your questions. I understand why you're going where you're going with her, but she doesn't need to be giving her opinion. You with me?

MR. MUREDDU: Yes, sir.

THE COURT: Okay. All right. Bring them back in.

You understand what I'm saying, Ms. Harper?

THE WITNESS: Yes, sir.

THE COURT: I'm not fussing at you. You've never been in court before. You don't know these things. I'm just -- there's rules on how all these things work, and we're trying to keep things within those parameters. Okay?

THE WITNESS: Yes, sir.

THE COURT: Okay. Thank you.

(WHEREUPON, the jury came into open court at approximately 4:26 p.m.)

THE COURT: All right. Welcome back, ladies and gentlemen.

Mr. Mureddu, you may continue.

MR. MUREDDU: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

BY MR. MUREDDU:

Q Did you ever witness anything with Patrick regarding drugs or alcohol abuse on his behalf?
A Well, yes and no.
Q Can you explain that, please.
A Well, when we got my daughter's car back after everything happened, we -- they only had one car, which was my daughter's car, and he took her car. He had her car for about two weeks. And when we got it back, my brother -- it wasn't ever in good shape, and she wasn't going to be driving too much, so my brother had -- excuse me, my brother -- we were taking it to my brother to repair, and then we were going to try to sell it, and we found -- I found -- we found many pills in the car and also some crushed pill up on the dashboard.
Q Crushed-up pills?
A Um-hum.
Q Was Shelby ever involved in drugs?
A Absolutely not.
Q Patrick had the car?
A Yes.
Q Now, do you have any personal knowledge about whether or not he was ever involved with a female other than Shelby?
MR. HIXSON: Your Honor, objection on relevance on

Patrick. I don't understand the relevance. 402 relevance, Your Honor.

THE COURT: All right. Sustained.

Q As far as [redacted], Shelby's daughter, did you witness Shelby mothering the child, caring for the child?

A Yes.

Q All right. Do you think she provided proper care? Do you think she was a good mother?

A Oh, definitely.

Q Did you ever witness her abuse or neglect the child?

A No, sir.

Q Did you have any knowledge of the child being abused or neglected by the mom?

A No.

Q I think Shelby testified to this, but what, if any does she have, involvement in [redacted] now in her life?

A None at all.

Q Is that because of court order?

A Yes, sir.

Q Do you get to see [redacted]?

A Yes, we do.

Q We -- who is "we"?

A Any of the rest of your family. I mean, my --

Chris, her father, and I are able to see them with proper -- I mean, we call or text and ask to see them.
Q Okay. But you have involvement?
A Yes, definitely.
Q Now, when Shelby got arrested surrounding this case, what happened to the relationship -- is she still with Patrick? What happened between that relationship? Where is she now? What's going on there?
A She spoke to him a few times right after that, but no, she immediately won't -- when we went to the courthouse, you know, when she was arraigned, she's been at my house ever since.
Q So they're not together as a couple?
A No, not at all.
Q She lives with you?
A She does.
Q Okay. Before this happened, had Shelby ever been in any legal trouble?
A Oh, god, no.
Q Have you ever seen her to be abusive to family members?
A No.
Q Friends?
A No.
Q Children?

A No.
Q Any cruelty to animals? Anything of that nature?
A Not at all.
Q Before this, have you ever witnessed her harm anyone in any way?
A No.
MR. MUREDDU: Thank you, Angie. I have no further questions.
THE COURT: Cross?
MR. HIXSON: Yes, sir.

CROSS-EXAMINATION

BY MR. HIXSON:
Q Hi, ma'am. You all right?
A Hi.
Q Just a couple of questions a little bit as it related to, I guess, your knowledge of the goings-on between Patrick and Shelby.
A Okay.
Q And, specifically, I think it became pretty obvious in your earlier discussion that you didn't approve of Patrick.
A Right.
Q And you were disappointed in an out-of-wedlock birth with [redacted]; isn't that safe to say?
A Yes.

Q You made that apparently pretty well known. And so the point -- isn't it safe to say that at the point that there was an argument on the phone between you and Patrick, and he's basically saying, "Let me talk to my wife," isn't it reasonable to believe that he's probably not that big of a fan of you either, if you feel that aggressively badly against Patrick; isn't that safe to say?

A Well, if I could clarify, he was talking to my daughter on the phone, and I'm in the background going "Please get off the phone, you're stressed, you have a baby in your stomach, I'd like you to get off," and I could hear him screaming.

Q Baby in her stomach? When is that: The first or second one?

A The first one.

Q Okay. And then, specifically, I guess, the question I have relating to -- even through all of that, even throughout all the abuse that Patrick Taylor is inflicting on Shelby, you just testified that the mama loved him.

A That what? I'm sorry. I didn't hear you.

Q That she said during the fight that she still loves him.

A Oh, sure. Well, not now. I mean, you know, at

that time, yes, she was, very much.
Q Just what you testified to is all I'm asking.
A Right.
Q And then kind of -- I understand -- let me back up. And you're here in support of your daughter?
A Absolutely.
Q And you love her to death?
A Absolutely.
Q Do you recall meeting with Dr. McCarthy in preparation for her evaluation for testimony at trial? Do you recall --
A Do I remember going there?
Q And you specifically being interviewed by Dr. McCarthy.
A Yes, I do.
Q Okay. And do you recall, just answering questions from Mr. Mureddu, was Shelby a good mom for [redacted] and your answer was "definitely"?
A Um-hum.
Q Do you recall talking to Dr. McCarthy and telling him something different than that?
A No.
Q Okay. And I'll specifically bring to your attention -- isn't it true that you told this psychiatrist that, you told him that your daughter told

you she was only three months' pregnant right up until the time she gave birth to the first child, and that you told the doctor that [redacted] had absolutely no relationship --

MR. MUREDDU: Your Honor, can he only ask one question?

THE COURT: All right. Rephrase your question.

Q Isn't true that you told the psychiatrist, in preparation for this litigation document, that, "Shelby told me she was three months' pregnant with the first child all the way up until the time she was born." And that's the first child, [redacted]. That's what you told the doctor?

A I'm really confused at what you're asking me. Really, I'm just trying to understand what you're saying.

Q Okay. I'll start -- I apologize.

A Okay.

Q I'm really not trying to trip you up.

A Okay.

Q I promise. It's about getting to the truth. I'm setting up the question. On direct examination, you answered Dean Mureddu's question.

A Uh-hum.

Q And Dean asked you, "Is Shelby a good mom?"

A Right.
Q And you said, "Definitely." "Definitely." But on May 16th, or a little prior to that, 2016, do you recall being interviewed by the psychiatrist, Dr. McCarthy?
A Yes.
Q Okay. Do you recall having a background interview with him in which you told him a lot of background about Shelby and Patrick?
A Right.
Q Okay. And during the course of that interview, isn't true that when asked, was she a good mother, in that setting, you told him, that, quote, "Shelby had absolutely no relationship with her first daughter." And, in fact, she told you she was three months' pregnant up until the point she was nine months' pregnant and had the baby. Isn't that true that's what you told Dr. McCarthy?
A No, I did not.
Q So this report is incorrect?
A There was some things that I pointed out to my lawyers early on that that -- that Dr. McCarthy had worded wrong or something. And I did bring that to their attention, that there were some things that weren't -- that he didn't hear me clearly on. But I

don't even remember seeing that part. I knew at four months that my daughter was pregnant with her daughter.

Q So you didn't -- so this report has mistakes in it?

A That -- yes, that part does, yes, it does.

MR. HIXSON: I have no other questions.

THE COURT: All right. Redirect?

REDIRECT EXAMINATION

BY MR. MUREDDU:

Q Is it not true that after this -- you saw Dr. McCarthy after the arrest, sometime after the arrest; right?

A Yes.

Q And from the moment of the arrest, Shelby had absolutely no relationship with [redacted] from the moment of arrest?

A From the moment of arrest, yes, sir.

Q Right. Okay. And you're telling the doctor that she's got absolutely no relationship with [redacted]?

A Okay, yes. Definitely. I'm sorry.

Q Is that what you meant --

A Yes.

Q -- when you told the doctor --

A Yes. I just -- I honestly -- it's been so long since I've seen that report, I had no idea what he was

even meaning. I had known about her pregnancy from three months on with [redacted], the whole time. I knew when she was due. We knew everything.

Q Okay. But would it be fair to say that the reason -- well, I mean, she hasn't been able to see her since the arrest?

A Sure.

Q And you saw the doctor -- this doctor --

A Right.

Q Is that what you meant?

A Yes.

Q Okay. Now, the prosecutor has vehemently challenged the abuse of Patrick. Let me ask you this: Did you ever see Shelby with injuries about her body?

A Yes.

Q What did you see --

A She had a black eye.

Q -- while they were together?

A She had a black eye.

Q All right. Do you know how she got that black eye?

A She told me --

Q Without -- you can't say that. So you don't know how she got the black eye?

A No.

Q Okay. All right. Did you ask her about the black eye?
A Yes.
Q Okay.
MR. MUREDDU: No further questions.
MR. HIXSON: Just briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. HIXSON:
Q And you can't answer that question because that's a statement of a party opponent. That's a hearsay exception. So you can say anything that she said; you can't just say anything that the non-defendant said.
So at the time that you saw a black eye, concerning -- did she tell you where it came from at the time that you saw the black eye?
A At the time that I saw it, yes.
Q And what did she tell you, then, it came from?
A She said that her nine-month-old daughter threw a toy at her --
Q Okay.
A -- and it made that big of a black eye.
Q That big of a black eye?
A Um-hum.
Q Because it's discussed in this report as well. And so you stand by the fact that, besides that, that

you told counsel that there are mistakes in this report and brought it to counsel's attention prior to trial; isn't that correct, what you just testified to?

A Yes, but it was things about my husband and I, not about her.

Q Okay.

MR. HIXSON: No further questions.

THE COURT: Okay. You can step down.

THE WITNESS: Thank you.

THE COURT: Thank you.

(Witness excused.)

THE COURT: All right. Ladies and gentlemen, we're going to go ahead and stop there for the evening. We've been going all day, and y'all have done a good job of staying with us and staying awake and paying attention. So we're about to take a break for the evening. At this point in time, I want to remind you of your promise to me, your promise to the parties, your promise to the lawyers, your promise to each other, and your promise to yourself that you will not discuss this case with anyone in any way, shape, or form; you will not do any research about this case in any way, shape, or form; you will not watch, read, listen to, or follow any type of news reports about this case in any way, shape, or form.

We're going to start tomorrow morning at 9:30, and we'll be ready to go at that time. If you want to come a few minutes early, Ms. Danna may have something for you to snack on. I do have -- for scheduling purposes, I do have another hearing completely and totally unrelated to this case tomorrow afternoon, so depending on where we are in the case, we may or may not have tomorrow afternoon off. I'll be able to give you some more instructions about that as the morning progresses. Okay? So thank you very much. I appreciate your service.

Everyone else remain seated while they are released for the evening.

(WHEREUPON, the jury exited the courtroom at 4:40 p.m.)

THE COURT: Anything from the State before we break?

MR. HIXSON: No, sir.

THE COURT: From the Defense?

MR. MUREDDU: Nothing, Your Honor.

THE COURT: All right. Thank you very much. 9:30 mañana.

MR. MUREDDU: And Shelby actually reminded me, do we have --

THE COURT: Oh, yeah, okay. Very good. Thank you

very much. I'm going to let the -- does the State want to take an official position on her staying out?

MR. HIXSON: We concur with everything you've said. There's no indication that she's --

THE COURT: All right. Ms. Taylor, your behavior during this trial has been exemplary. Your case has been pending for almost three years. You've had absolutely no issues on bond. Your bondsman agreed to stay on your bond. Your behavior here in court and throughout this trial has been exemplary. I've dealt with defendants who do all kinds of crazy things in court, things that most people can't even imagine.

So I'm going to allow you to remain out on bond and go home tonight. Once we get to the point where closing arguments are over and the jury begins deliberating, you know, I'll let you stay in the courtroom, but if that ends up going overnight, I will take you into custody at that point because the bondsman stated that that was as long that he would stay on the bond.

But your behavior has been fine. You've been here, you've been on time, you've been appropriate. Your behavior's been appropriate. Your family's behavior has been appropriate. And so I believe, based upon all those circumstances and the fact that your

case has been pending for almost three years and you've attended all your court appearances and you have retained lawyers, you have an expert coming in the morning, y'all have a lot invested in this case, so I will allow you to stay out on bond tonight.

Again, if you don't show up tomorrow, you know, the case will go forward without you, but I believe that you're kind of in a unique situation, and I normally don't do that, but I will let you do that under these circumstances.

THE DEFENDANT: Thank you.

THE COURT: Okay? All right.

MR. MUREDDU: Thank you, Your Honor.

THE COURT: Thank you very much. Thank you-all for reminding me of that. I appreciate it. I had a note -- and I don't know where it's gone -- to remind myself of that. Thank you for reminding me.

(The hearing adjourned at approximately 4:43 p.m.)

(The hearing resumed on Wednesday, February 7, 2018, at approximately 9:36 a.m.)

THE COURT: Okay. Thank you very much. Good morning. Take your seats.

All right. State ready to go?

MR. HIXSON: We are, Your Honor. We have a couple matters before the jury comes out.

THE COURT: Okay. Go ahead.

MR. HIXSON: I just want -- at this point in time, my understanding, and correct me if I'm wrong, I think we're probably moving into the point where we receive testimony from defense counsel's expert, probably getting close to be called next.

MR. MUREDDU: Close.

MR. HIXSON: Nonetheless, I just wanted to renew my objection, I would say, or my motion that I filed pretrial. Maybe renewing it is not quite the way of saying it. Bring it to the Court's attention that it was the State's understanding that we were not trying to exclude, pursuant to Santiago, the testimony of the expert because there was another basis for the testimony, something other concerning voluntariness or something else. But if it gets into the point that we're once again talking about diminished capacity and we're specifically asking ultimate questions, and that is, what is the mental state of this Defendant, we -- that is violative of state law, we object to that. It's similar in a DUI trial for someone to change the blood alcohol content and the Defense arguing, in South Carolina, the blood alcohol content is .18, and that's absolutely not the law of the State of South Carolina. It's intentionally misleading to the jury, and it's

violative of four point -- 402 and 403.

I want Defense to put their case up, but as the prosecutor of the State of South Carolina, I really can't let a falsity go on that the law is not what the law is, and I have to object to that. I just wanted to bring it up to the attention of the Court. I usually try not to object much, but I will be compelled to object if we get into diminished capacity, which is not recognized in South Carolina.

THE COURT: All right, Mr. Mureddu.

MR. MUREDDU: Judge, one of the things that I'm going to attempt to do today is to be very careful when we get to the doctor's ultimate diagnosis and opinion as to her actions. I can tell you this: Basically, my plan is to qualify him as an expert, to go through what he actually did in his examination of her, all the psychological testing, brain scans, et cetera.

THE COURT: Okay.

MR. MUREDDU: I'm then going to cover what is -- what is postpartum depression, what is peripartum depression, what is transient peripartum psychosis, what the symptoms are. Now, again, I'm just in general now.

THE COURT: I'm with you.

MR. MUREDDU: Okay. And then what are the life

factors, circumstances which can lead to this disorder. Okay?

THE COURT: Okay.

MR. MUREDDU: And then, lastly, then, I will go into, okay, you examined her. You know, what are your opinions/conclusions as far as, you know -- well, I'm going to try to limit it to, Judge, you know, it's like, for instance, it's like they've made, you know, how she was behaving: Calmly versus erratic -- you know --

THE COURT: Emotional.

MR. MUREDDU: Emotional. Those --

THE COURT: At least that's an example, right.

MR. MUREDDU: Those type of bearings. It's like, you know, is that -- those type of state of minds. Are those how those factors affected, that's state of mind of her. And, I guess, again, when we get into what his ultimate diagnosis is, he's going to say that in his expert medical opinion, that she was experiencing the syndrome, the transient peripartum psychosis.

Now, as to elements of crime, I'm going to try to stay away from those, and from what I understand, that would be when the objections, I imagine, will come raining in --

THE COURT: Okay.

MR. MUREDDU: -- if he believes or if the Court believes I've crossed the line.

THE COURT: All right.

MR. HIXSON: That's correct. And just to preview a little bit, we will challenge the doctor's qualifications. We understand he's only a licensed counselor, not a Ph.D. in psychiatry.

THE COURT: I'll let you voir dire him and all that good stuff, yes. We'll go forth in its normal course of business.

MR. MUREDDU: But, Judge, I don't think that we're going to start --

THE COURT: I think your logic of how you're progressing through makes sense, and that general outline helps me follow so I can -- and I know it's hard to believe that judges are always paying attention, but I really am always paying attention. And so that will help me track through it as to, okay, this is kind of where he is now; this is where he's going next. And so -- and I'll have my radar up. But, I mean, if you need to object, you know, just stand up and object. And even if it's something we need to stop and send the jury out, you know, we can stop and send the jury out without it being a big production, and we can handle it and take care of it and proffer what we

need to proffer and come back and do those things.

MR. MUREDDU: Okay.

THE COURT: Okay?

MR. MUREDDU: There is one other matter, Judge. Counsel is aware. I've got two visual aids --

THE COURT: Okay.

MR. MUREDDU: -- which cover the definition of transient peripartum psychosis and known clinical risk factors that lead to that. He's seen them.

THE COURT: Okay.

MR. MUREDDU: I intend to use them, like, on the podium.

THE COURT: Okay.

MR. MUREDDU: I'm old school. I don't do PowerPoint.

THE COURT: That's fine with me.

MR. MUREDDU: And the State has reviewed those.

THE COURT: Okay. And are we doing another witness before the doctor?

MR. MUREDDU: I believe that we are, Judge.

THE COURT: Okay.

MR. McCOLLUM: I was going to recall one witness.

THE COURT: Okay. Who is that?

MR. McCOLLUM: Angie Harper.

THE COURT: Okay. What's the State position on

that?

MR. HIXSON: I'll defer to the Court. If it's some other matter that we haven't --

THE COURT: I mean, is it going to be some other matter?

MR. HIXSON: -- question her on the basis for the --

MR. McCOLLUM: No. It has to do with the allegation that was made that she, Shelby, had no relationship with her daughter, [redacted]. And it's just basically a question of the pronoun "she." If the doctor's report had written and put a name in there, it would have been clear. So it won't take long. I just want to go through that as to what happened.

MR. HIXSON: All I would say about that is the witness denied that. I didn't follow up with questions on it and said she was a good mom, and I don't intend to cross the doctor as it relates to [redacted] relationship with her mother. I accepted that answer as correct, and to the point the witness, I thought, was pretty adamant about there are mistakes in this, and that's not true. And I can't attack her collaterally with any other collateral matters, so I think the answer -- it's not materially misleading to the jury. The witness specifically said she has a good

relationship, she's a good mother, and that is not true what's in that report.

MR. MUREDDU: Judge -- I'm sorry.

MR. HIXSON: Go ahead.

MR. MUREDDU: As the Court is aware, I tend to get spirited. I'm struggling with being relaxed. I didn't know Mr. McCollum was going to do that, but there was one thing I was going to bring to the Court's attention, and this is the reason why I think we need to recall that witness.

Basically, Judge, the Solicitor used the doctor's report when he was cross-examining Shelby --

THE COURT: Right.

MR. MUREDDU: -- and Angie. Okay? And he misstated, made material misstatements about what was contained in the report. Now -- and with that specifically, I want to find it first and then I'll --

MR. HIXSON: I got it right here, Dean. You can read it.

THE COURT: What page do you want me to go to?

MR. HIXSON: It's page 6. And I'll read word for word. And it is a confusing sentence, and let the Court hear it word for word. It says, quote, "During the first" --

THE COURT: Hold on.

MR. HIXSON: I apologize, Your Honor.

THE COURT: I mean, I've read this entire report. It took me probably over an hour of my life. But there is a lot words on page 6, so what paragraph?

MR. MUREDDU: Judge, I would rather read it, if that's okay, just so --

MR. HIXSON: That's fine. Page 6, the third paragraph up from the bottom, Judge.

MR. MUREDDU: Okay. Here's what is written. "During the first pregnancy." Now, what we're talking about is the pregnancy with [redacted]. "Patient's mother," who is Angie, "said her daughter claims she was just three months' pregnant right up until [redacted] was born and that she had absolutely no relationship with her daughter during this time."

Now, the "she" is -- "she" is Angie, had absolutely no relationship with her daughter. Her daughter is Shelby. So, basically, what Angie told the doctor was, Look, when she was pregnant with her first child, I didn't have any relationship with her.

Now, what the Solicitor said on the record was he said, "Didn't you tell the doctor that Shelby had no relationship with her daughter"? That's the alle- -- that's what he was saying the report says, and it doesn't say that.

MR. HIXSON: That is what I questioned her about. That is what I questioned her about because I misread the statement, too. And what I first said, "Isn't it true that Shelby kept telling you," Mom, "that she was only three months' pregnant?" And she kept saying that right up until the time the first baby was born, is what my first question was.

MR. MUREDDU: That's fair.

THE COURT: That's a fair question.

MR. HIXSON: And the second was, "And that she didn't have any relationship with the daughter." I did misread the "she," meaning Shelby, not Mom to Daughter, but Shelby to the -- I did misread that because it's an awkwardly written sentence. But having said that, if the Court wants to recall to clarify that, that's fine. But Mom did deny and said, No, that's not true; she was a good mom. I don't how she knows that when she's not reconciled with it, but maybe after the fact they reconciled and everything is okay then. But during the course of the pregnancy, she said she didn't have contact. That's true. I did misread it and asked thinking that Mom didn't have contact -- that Shelby didn't have contact with [redacted] when Mom didn't have contact with Shelby, apparently, according to the doctor's report. That is true.

So if the Court's wants to recall the witness and have Mom say --

THE COURT: I mean, I thought she cleared it all up.

MR. MUREDDU: Well, Judge -- and again, if I may --

THE COURT: I mean, I think the story from the mom at this point to the jury is they weren't happy with Patrick, they weren't happy with how they treated Patrick. He went to work every day. Found pills in the car. Shelby is not involved in drugs. She saw Shelby parent [redacted], and Shelby did a good job. Never saw her harm [redacted]. The parents get to see [redacted] now. Shelby lives with her now. Shelby has no history of violence. The mom didn't approve of Patrick. The mom was not happy about pregnancy number one. And there are some incorrect statements in Dr. McCarthy's report. And they knew everything about [redacted] even her due date, and were involved in her life.

So what is she going to add this morning?

MR. MUREDDU: Well, Judge --

THE COURT: Whoever wants to. I don't care. Whoever wants to talk is no matter to me.

MR. MUREDDU: What the Solicitor said to Angie is, "You told the doctor that Shelby didn't have anything

to do with her daughter."

THE COURT: Right. And she denied that.

MR. MUREDDU: All right. But I would be satisfied with a curative instruction that, when the Solicitor indicated -- said the report said that Angie told the doctor that Shelby didn't have anything to do with the daughter, that that was a misstatement of the report. That's the point that I want to make. That's a complete misstatement of the report.

He's going to be challenging today the truth of this report, and he's already, wrongly so, created in the jury's mind, Look, this report is not right. Well, the report is right; he just misstated what the report said. He said the report says --

THE COURT: Whoa, Whoa, Whoa. That's a broad generalization. I will allow her to be called for the purpose of the fact that -- I mean, it's so -- we're talking about this weirdly shaped issue.

So she's going to come up here and say that the time period in question in the paragraph -- paragraph 6 is during Shelby's first pregnancy, while she was pregnant with Sophia. During this time, according to the doctor, the mother said Angie had no relationship with Shelby and that they didn't reconcile until [redacted] was born. I mean, I don't know how you can have a

relationship with a child, meaning Shelby and [redacted], that isn't even conceived yet. I mean, the idea is even kind of a foreign concept.

I'll allow her to be recalled, but I'm going to allow her to be cross-examined again, of course.

MR. HIXSON: I don't mind necessarily entering into a stipulation because the truth is the truth. I thought it was intentional because --

THE COURT: Well, I mean, the problem with that statement, Mr. Hixson, is Angie Harper has testified opposite from what's in the report.

MR. HIXSON: I understand.

THE COURT: She's directly contradicted the report. So the truth is the truth. At this point, I don't know what the truth is. Apparently, she told Dr. McCarthy she had no relationship with Shelby. She sat up here on the witness stand and said they knew everything about the baby. They knew when the baby was born, and they were actively involved in her life, which is different than what the report says. So let's just put her back on the witness stand and whatever she says, she says. I mean, I don't know how to, you know, deal with it other than that. I usually don't allow people to recall, but in this instance, I'll allow her to be recalled for a very limited purpose.

We're not going to rehash all of her testimony, but she can explain -- I mean, I don't know how, in this paragraph -- I mean, the record is clear or the -- Angie Harper was clear that Shelby was a good mom to Sophia. I mean, she said it multiple times. She said she parented her well. She watched her parent her well. She saw her. She never saw her do any harm to her or never saw any type of negative behavior or actions or neglect or abuse, neglect, anything in regards to the way Shelby treated [redacted]. I mean, you can recall her, I guess, to get her to say that one more time, but...

MR. HIXSON: Your Honor, just as a clarification for an intentional misrepresentation --

THE COURT: I don't think anybody intentionally misrepresented anything. I've read this report enough to where -- I mean, the use of pronouns and the use of words and the use of "he" and "she" throughout this thing, I mean, I can see how the -- I don't think anybody with the intentional purpose of -- I mean, the sentence is confusing. It just is. And you got to -- I mean, you got to read around it to figure out exactly what they meant. But -- so I don't think anybody intentionally did anything. But I'll allow her to be recalled so y'all can clarify that issue. That's fine.

MR. MUREDDU: Okay. I agree, Judge. Just one thing -- and, again, I'm not saying it was intentional, but one of the -- when we get to the doctor, he's going to be using the report, and there may be times when I'm going to object. And if that objection is he's -- he is misstating what's in the report, I don't want to draw the Court's ire, if I make an objection like that.

THE COURT: Well, I mean --

MR. MUREDDU: That's what I should have done yesterday.

THE COURT: Right. And dealing with Angie Harper is one thing because she didn't write the report.

MR. MUREDDU: Yes, sir.

THE COURT: So, you know, your -- and I understand why Mr. Hixson cross-examined her on it. I would have cross-examined her on it, too. She gives a statement to the doctor that, at this point, is partially inconsistent with the testimony that she gave in here in court. So, I mean, I would have crossed -- but with the doctor, it's a different thing.

I mean, he's going to have his report with him. So if Mr. Hixson misquotes the report, then the doctor needs to say, That's not what the report says, or that's not accurate. I don't know that we need an objection every time. That's what redirect is for, and

that's why you have an expert.

MR. MUREDDU: Okay. Again, I just --

THE COURT: Yeah. I mean, there's a difference in Angie Harper because she doesn't have the report. She doesn't know what the doc- -- I mean, she may have read it, she may have seen it, but she hadn't sit there and studied it and memorized it and created it and all those different things.

And, I mean, we all remember the childhood game where you told somebody something and told somebody something else, and by the time it makes it back around, it's something different. But, you know, with the doctor, I mean, he needs -- I mean, if you're quoting from the report, just tell him where he is and so he can look at it and see, just like we would if we were in a deposition almost. You know, we would refer somebody to this page and this paragraph and look at this and read along with me and that kind of thing. But, I mean, I expect you to cross-examine him on the report.

MR. HIXSON: Additionally, Your Honor, also for clarification, what I thought that Defense Counsel was trying to do is, if there's an existence of peripartum depression in the first child, the likelihood in a second child is much higher. And so I thought they

were trying to establish that she wasn't a good mom the first time, and that makes this one more likely. And, actually, the inverse was what Counsel was trying to do and to say she -- there is no peripartum depression with the first one, and that means it's much less likely in the second one. So I wasn't -- I thought I was keeping up to speed with that, but, apparently, that was not Counsel's strategy.

THE COURT: All right. I'll allow her to be recalled, but we're not going to rehash all of her testimony. We're going to narrow in on the point we need to narrow in on, and then we can move on from there.

MR. McCOLLUM: The way I was going to do that, Judge, is that, you know, she discovered her daughter was pregnant, I think, in April --

THE COURT: Now, which time?

MR. McCOLLUM: When she had her first child.

THE COURT: With [redacted]. Okay.

What she said yesterday is they knew in about three months.

MR. McCOLLUM: Yeah.

THE COURT: Right? Okay. Which, you know, when I hear that, I think that's perfectly normal. I mean, the first time I had a child, we waited until about two

or three months. I mean, you may have told your mama a little bit sooner than you told the whole world, but, you know, those first two or three months are complicated and they're complex and things can happen, and it's normal to, you know, kind of release that information about that time, especially to loved ones.

When I heard that, I didn't read any negative into that at all. You know, I thought, you know, well, that's perfectly normal. They let the mama know, and Mama said I knew when [redacted] due date was, and that's the type of normal information you share. So, you know, I'm going to let you go back into it.

MR. McCOLLUM: And I was going to go into, you know, Shelby moved back in with her parents.

THE COURT: Right.

MR. McCOLLUM: That's when the phone calls and the arguments -- that's when she decided, after a couple of weeks, to move back in with her husband.

THE COURT: Right.

MR. McCOLLUM: And that's when she had no contact with her parents again. That's when Shelby. And then they learned of her wedding on Facebook. She got married in October.

THE COURT: Okay.

MR. McCOLLUM: They were still estranged until the

baby, [redacted], was born in December.

THE COURT: Okay.

MR. McCOLLUM: And that's when they reconciled.

THE COURT: All right. I'll let you flesh all that out.

MR. McCOLLUM: Thank you.

THE COURT: All right. Let's bring them in.

(WHEREUPON, the jury came into open court at approximately 9:57 a.m.)

THE COURT: All right. Welcome back, ladies and gentlemen. We had some issues we had to take up this morning outside your presence, so I do apologize for the delay. I take full responsibility for that.

And, Mr. McCollum, would you like to call your next witness?

MR. McCOLLUM: May it please the Court.

THE COURT: Yes, sir.

MR. McCOLLUM: Your Honor, at this time, the Defense recalls Angie Harper.

THE COURT: All right. Come on back up, Ms. Harper.

And we're going to swear you in again. Okay?

ANGIE HARPER, after being duly sworn, testified as follows:

THE CLERK: Please be seated.

RECALLED DIRECT EXAMINATION

BY MR. MUREDDU:

Q Go ahead and state your name again.

THE COURT: Say your name again, ma'am.

THE WITNESS: It's Angelea Harper, H-A-R-P-E-R.

THE COURT: Thank you very much, Ms. Harper.

Q Ms. Harper, you testified yesterday; correct?

A Yes.

Q And there was some question about something that was in Dr. McCarthy's report. Remember that?

A Yes.

Q Okay. So I just want to ask you some questions. Just listen to my question, and just if you could just answer the question, that's what I want you to do.

A Okay.

Q Okay? When did you learn that Shelby was pregnant with her first daughter, [redacted]?

A She called me sometime in the middle of April of 2013.

Q And then you learned that she was pregnant?

A Yes.

Q And at the time that you learned that she was pregnant, was she living with you?

A No.

Q Was she living with Patrick?

A Yes.
Q And where was she living with Patrick?
A They were living in a trailer with, I think, a single guy.
Q At some point, did Shelby move back home with you?
A Yes, she did. Sometime around May.
Q And did she live with you for some period of time?
A That's when they were arguing a lot. It was anywhere from two weeks to a month.
Q And when Shelby had moved back in with you at your home, was Patrick living in the home as well?
A No.
Q And did Patrick call her?
A Yes.
Q And were there occasions when he called when you were home?
A Yes.
Q And how would you describe the conversations that they had?
A That is when they had split up and he had come and got her ring and all that stuff, and it so volatile, and I was more concerned about her pregnancy and her eating and, you know, she was upset all the time.
Q At some time, at some point, did Shelby make a decision to move back in with Patrick?

A She did.
Q And where did they live when they moved back in together?
A Then they moved in with his parents.
Q With Patrick's --
A Patrick's parents; I'm sorry.
Q -- mother and father?
A Yes, sir.
Q When Shelby moved back in with her mother -- excuse me. When Shelby moved back in with Patrick's mother, did you and Shelby have a normal relationship where you communicated with each other?
A Not really.
Q Okay.
A Not really. She -- I mean, I would talk to her occasionally, but at that point, she had kind of chosen -- you know, I had had my say.
Q Would it be safe -- would you describe that you were estranged from her at that time?
A Yes.
Q At some point -- well, at that time, prior to October, were Shelby and Patrick married?
A They were married in October of that same year.
Q And did you go to the wedding?
A No. We weren't invited.

Q And when did you learn of the wedding?
A We had heard -- I think it might have been on Facebook, too, but we had other people -- none of my family members but friends of -- a friend of Shelby's had called and had gotten an invitation.
Q And what month was [redacted] born?
A December.
Q Did you have a normal relationship with Shelby from the time that she got married until [redacted] was born in December?
A No, not then.
Q At some point, did you reconcile with Shelby?
A The day [redacted] was born, we had seen it on Facebook, and my husband and my ex-husband at the time and my daughter, Samantha, and I, we all went to the hospital.
Q So in regard to Dr. McCarthy's report, the statement that, "She had no relationship with her daughter," the "She had no relationship with her daughter," that's you, Angie, had no relationship? Answer out --
A Yes.
Q With Shelby?
A Right.
Q That's what that was --

A Right. During that period, yes.
Q Okay. Thank you.
A And I truly misunderstood what you asked me yesterday. I just --
Q Just talk to me, not him.
A I'm sorry.
Q Okay. Thank you. Thank you for clearing that up.
MR. MUREDDU: Your Honor, I don't have any more questions for this witness.
THE COURT: Okay. All right.
MR. MUREDDU: Please answer any questions the Solicitor may have.
MR. HIXSON: I have no questions, ma'am.
THE COURT: Okay. Thank you very much, Ms. Harper.
THE WITNESS: Thank you.
THE COURT: You may step down.
(Witness excused.)
THE COURT: All right. You may call your next witness.
MR. MUREDDU: Your Honor, at this time, we would call Dr. Robert McCarthy.
THE COURT: All right. Come on up, Mr. McCarthy.
DR. ROBERT McCARTHY, after being duly sworn, testified as follows:

THE CLERK: Please be seated. Please state your full name and spell your last name for the Court.

THE WITNESS: Pardon?

THE CLERK: State your full name and spell your last name for the Court.

THE WITNESS: Okay. My name is Dr. Robert McCarthy.

DIRECT EXAMINATION

BY MR. MUREDDU:

Q Dr. McCarthy, where do you currently work and at what occupation is it?

A Pardon?

Q What do you do for a living?

A Oh, okay. I'm the executive clinical director of private practice in Myrtle Beach, South Carolina.

Q Is that work in the mental health field?

A Yes.

Q Okay. Now, was Shelby, at some point in time, one of your patients?

A Yes.

Q Okay. What exactly -- how did Shelby become one of your patients? What exactly did you do in your treatment of Shelby? Tell the jury, please.

THE WITNESS: Your Honor, as a licensed mental health clinician, I'm bound by the laws of

confidentiality unless otherwise ordered.

THE COURT: All right.

MR. MUREDDU: Your Honor, he has concerns that confidentiality -- he is of the opinion you have to order -- to say that it's okay for him to talk.

THE COURT: All right. Ms. Taylor, do you waive your confidentiality agreement with Dr. McCarthy?

THE DEFENDANT: Yes.

THE COURT: Okay. All right. You may answer the questions, Dr. McCarthy.

Thank you, Ms. Taylor.

Q You did a review of Shelby's case?

A Yes.

Q Okay. What would you call that? Just briefly, not the details. What did you actually do?

A A comprehensive forensic evaluation.

Q Okay. All right. Now, let's talk about why you would be qualified to give an opinion to this jury here today. Tell the jury what professional degrees that you have, collegiate or otherwise.

A I have a bachelor's degree in psychology, a Master of Arts degree in clinical psychology, a Ph.D. in psychology, and I have done numerous training on a postgraduate level.

Q Okay. So, basically, bachelor's, master's, and

Ph.D. in psychology?
A Yes.
Q Okay. Let's talk about -- and I may be strolling you down memory lane, but have you ever worked or discussed your work at hospitals, behavioral institutions, or anything of that nature? Let's go back to your work in the field as, let's say, a staff psychologist.
A Yes, I have.
Q When is the first time you did that?
A 1974 to 1977, I was a staff psychologist at the Orange County Community Mental Health Center.
Q Okay. Let me back you up.
Did you work as a staff psychologist at Letchworth Development Center before that?
A Yes. Prior to that, um-hum.
Q About what year was that when you were working at Letchworth as a staff psychologist?
A That's correct.
Q About what year was that?
A It was 1972 to 1973.
Q Okay.
A And then from 1973 to 1974 I worked at Barnett Memorial Hospital Center.
Q As?

A A staff psychologist.
Q Okay. I think, then, you mentioned Orange County. Can you go back through that again. Were you a staff psychologist there?
A Yes. And from 1976 to 1977, I was the director of a behavioral modification unit in a psychiatric center.
Q Okay. Let me stop you right there. So, basically, in the early '70s, you worked as a staff psychologist at Letchworth Development Center, at Barnett Memorial Hospital, and at Orange County Community Health Center. All three of those, you were a staff psychologist then?
A That's correct.
Q Okay. Now, I think you were going into where you went from being a staff psychologist to more of a supervisory role. Describe that. Once your career as a staff psychologist began to progress, if you would go through that, please.
A From 1977 to 1984, I was a supervising psychologist at the Goshen Secure Center, which is a forensic facility for maximum security.
Q Okay. Let me stop you right there. Okay. So you said a supervising psychologist. So were there other psychologists that you were working above and supervising?

A Yes.
Q So a team; would that be fair to say?
A Yes.
Q And this is where, again, as a supervisor?
A At the Goshen Secure Center in Goshen, New York.
Q Okay. Have you worked as a supervising psychologist at any other hospitals, clinics, or anything of that beyond Goshen? What did you do after Goshen, I guess is what I'm trying to say.
A Yes. From 1984 to 1988, I was a supervising psychologist at another forensic facility called Tryon Secure Center in Johnstown, New York.
Q Okay. What was your next position in the field of mental health or psychology after that?
A After that, I was the program coordinator and supervisor from 1988 to 1990 of the Mobile Mental Health Team, and the function of that team was to do forensic consultation with all of the courts in the ten-county area surrounding Albany, New York.
Q So you're talking about court. So this ten-county forensic evaluation team, that had something to do with the criminal justice system?
A Yeah.
Q Can you explain that?
A Totally with the criminal justice system.

Q What types of work or what were you doing in that field?
A At that point, we were doing mostly consultation for the court and prosecutors as part of the New York State legal system.
Q Okay. Were you doing forensic reviews of cases, treating patients?
A Yes. Forensics and mental health evaluations.
Q All right.
A And, also, we specialized in sex offender evaluation.
Q Now, let's go into -- again, I'm continuing with your expertise in the field. Have you published scholarly articles, peer-review articles during the course of your career in the mental health field?
A Yes, I have.
Q All right. Could you put a number on how many peer-review scholarly articles that you've published in your career for the field of mental health?
A Numerous. I have the --
Q More than 20?
A 20, 30.
Q Okay. Did any of these scholarly articles and this training deal with areas in depression or things of those nature?

A Yes, as well as forensic evaluation.
Q Okay. Do you hold any professional licenses or board certifications in the field of mental health or forensics or anything of that nature?
A Yes, I do.
Q And if you do, could you go through them, please.
A And I'm a licensed professional counselor in the state of South Carolina.
Q That's right now; right?
A Pardon?
Q Right now?
A Yes.
Q Okay.
A Yes. And I'm board certified, certified clinical mental health counselor, which is the expert credential in mental health in the field of counseling and the standard for being in private practice.

When I did this evaluation, I was a board-certified fellow of the American College of Forensics Examiners, a master therapist with the American Psychotherapy Association, and emeritus of the American Board of Medical Psychotherapy and Psychodiagnosticians, a board-certified PTSD clinician with the American Psychotherapy Association. I'm a fellow in PTSD with the American Academy of Experts in

Traumatic Stress. I'm also credentialed as a master addiction counselor by the National Board for Certified Counselors. I'm a certified clinical mental health counselor with the National Board for Certified Counselors, a board-certified fellow of the American Association of Integrated medicine, a board-certified fellow in neurofeedback with the Biofeedback Certification International Alliance. I'm board certified in biofeedback with the Biofeedback Certification International Alliance. I'm also a QEG tech of the Quantitative Electrocochleography Board and a National Certified Custody Evaluator with the Professional Academy of Custody Evaluators.

Q Okay. I want to briefly go back. Well, have you ever been qualified to testify as an expert in the mental health field in court before?

A Yes, I have.

Q Once? Dozens? Hundreds?

A No. Probably, in the course of my career, well over a hundred times.

Q Okay. Have you ever actually given expert testimony for the prosecution in cases?

A Yes. I've testified for both prosecution and defense attorneys.

Q Okay.

MR. MUREDDU: Your Honor, at this time, I would move to have Dr. McCarthy qualified as an expert in the field of mental health.

THE COURT: Mental health in general?

MR. MUREDDU: Yes, sir.

THE COURT: All right. Voir dire?

MR. HIXSON: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. HIXSON:

Q Good morning, Doctor. How are you?

A Good. Thank you.

Q I think it's pretty apparent that you clearly have qualifications related to be a mental health counselor and working in a counselor environment. So what I'm going to focus on is your education as it relates to being whether or not you're a psychiatrist, and specifically a forensic psychiatrist, enough to specifically make medical psychotic diagnoses for this purpose. So that's the focus of my questions.

So let's talk about your education again for a second. I think, if I got it right -- and my understanding is that you have a bachelor's degree in the mental health field, and you have a Master of Arts in psychology, not psychiatry; is that correct?

A That's correct.

Q And then you have a Ph.D. and that your Ph.D. is in psychology as well; is that correct?
A Yes, that's correct.
Q Okay. And looking at your --
A With a specialization in clinical inquiry.
Q Okay. Don't have a degree in it but a specialization in it; that's safe to say?
A Yes. Some graduate schools grant the degree in the specialization; others give it as a historical tradition in psychology with a major in whatever you specialize in.
Q Okay. Very good. And I have no question that you have a significant record in counseling and you've gone a lot of great work, and there's no question about that. The question is, I'm basically challenging your qualification to give a forensic diagnosis. Are you familiar with the cautionary page in DSM-5 about the use of a diagnostic tool -- forensic diagnostic tool for nonqualified clinicians or counselors; that it is a medical personnel document, not a clinician or a counseling document? Are you familiar with the cautionary page?
A I'm not sure I know what you're referring to.
Q Let me see if I can refresh your recollection. Are you familiar with DSM-5?

A Yes.
Q I know that your report talked about it quite a bit. And let me bring your attention to page 25. And I'm sure, under your opinion, that you offered -- has some substantial discussion. See if you recognize that. And I can --
MR. HIXSON: Your Honor, I'm pointing the witness to a learned treatise, that's DSM-5. It's a learned treatise exception. And, specifically, I'm referring the witness to the cautionary statement for forensic use of Diagnostic Statistical Manual, Edition 5.
Q And see if you can refresh your recollection on that, and I'll ask you a couple questions.
A I'm not sure -- what are you referring to on this page?
Q Do you know what the purpose of that warning page in that manual is?
A Oh, yes, yes.
Q Okay. And what is the purpose of that warning page?
A Yeah. Well, that's to make sure people have the background to do what they're doing.
Q Right. And on the bottom paragraph, doesn't that, in fact, tell you, if you're not qualified, if you're not a psychiatrist or if you're not an M.D., don't be

using this for diagnosing psychotic disorders; that's left up to someone with an M.D., not a counselor?
A No. If you look at this last paragraph, it says, "Use of the DSM-5 to assess for the presence of mental disorder by nonclinical and nonmedical." I'm a clinical licensed and board-certified professional with extensive training and background in forensics.
Q Counseling, not diagnosis. You're --
A No.
Q -- a great counselor, but you're not a --
A No, counselors -- state-licensed and board-certified professional counselors are qualified to provide DMS-5 diagnosis.
Q Including psychotic episodes that are --
A That's correct.
Q -- organic in nature?
A That's correct. In fact, a number of years ago, to make sure there was no problem with that, the South Carolina Board implemented a requirement that prospective licensees had to have six months with people exhibiting severe psychopathology in their training so that that wouldn't be an issue.
Q Okay. I understand your answer. I understand your answer. Excuse me.
And as you talk about -- and we'll get back to

that in a second. I just want to talk about some -- you have written quite a bit. I think the last one was '94; is that right?

MS. WALKER: '99.

Q '99? And see if some of the titles that we're talking about, that you wrote about, is -- in '99, "Behavioral Medicine Hypnosis in Cardiovascular Disease." I think you wrote "Creative and Complimentary Custody Decision Assessment." You wrote an article about recordkeeping, "An Expedient Solution."

A Um-hum.

Q I think you wrote about --

THE COURT: You need to answer yes or no, please. Doctor -- Doctor, you need to answer yes or no. Don't say "um-hum."

THE WITNESS: Okay, yes.

THE COURT: Thank you.

Q I think in '92 you wrote about hypertension and blood pressure measurement?

A Yes.

Q You also wrote an article in '90 about diagnosing multiple sclerosis?

A Yes.

Q And your time working in New York, I think in '91,

you wrote a comprehensive forensic evaluation system for counseling for the New York State Journal, so it's a counseling article.

A Well, it was on conducting clinical forensic evaluations of people who have committed crimes.

Q Okay. And that was written in the State Journal for Counseling and Development; right?

A That's correct.

Q Also, looks like you worked for developing a statewide classification system for criminal offenses and gradings, unpublished manuscript, I guess, in '84, I guess is what the --

A Yes.

Q It looked like you had an article in the American Journal of Hypnotherapy in '88. Also talk about hypnosis in working with delinquent youth?

A That's correct.

Q Wrote an article about counseling AIDS victims?

A Yes.

Q Okay. Looks like you wrote an article about -- in the Journal of Hypnotism concerning -- "Mommy Sees the Light"; I don't know what's that about. And finally, in '90, it looks like you wrote about hypnosis in cardiovascular disease.

A Yes.

Q Do any of those articles have anything to do with the medical evaluation, rather than just a counseling evaluation, but the medical evaluation of a psychotic transient disorder? Does any of those have anything to do with that?
A Yes. Well, they're not separable. All licensed mental health clinicians, with the proper training, education, and background in forensics can do a forensic evaluation and provide a DSM-5 diagnosis.
Q In contradiction to the cautionary page?
A No, it's not contradicting. It says nonclinical. All the people that we're talking about, there were six licensed mental health professions in South Carolina, and all of them are clinical healthcare professionals.
Q You're exactly right. And you're licensed as a counselor, not as a clinician.
A In mental health.
Q That's okay. Well --
A Mental health counseling is clinical mental health work.
Q I understand that, but your report is a forensic consultation. You're diagnosing disease or --
A That's correct.
Q -- defect in your report, and that's outside your qualifications.

A No, it's not.

Q Okay.

MR. HIXSON: Your Honor, I think we know where we kind of stand here. We would object to the wide range of the mental health field that the Defense has offered this witness up to. We believe he's an expert in mental health counseling. We believe he is not qualified to render an opinion on a forensic medical diagnosis that's contained in his report that he has generated.

He is an expert in mental health counseling, there's no question. He never testified that he was an expert or has ever been qualified as an expert in psychotherapy forensics, which DSM-5 says requires a medical diagnosis of an organic problem. So we would object to the range in which he's offered to qualify in his testimony.

MR. MUREDDU: Judge, we and as the doctor disagrees with the way that he reads that DSM-5.

THE COURT: All right.

MR. MUREDDU: It's an either/or.

THE COURT: Okay. Ladies and gentlemen, step back to your jury room. We'll be back with you in just a few moments. Do not discuss the case.

(WHEREUPON, the jury exited the courtroom at

10:22 a.m.)

THE COURT: Okay. So I don't understand why he's qualified as an expert in such a broad area. That's what I'm confused about.

MR. MUREDDU: Well, Judge --

THE COURT: I mean, mental health? I mean...

MR. MUREDDU: Judge, as the doctor had reservations about waiving confidentiality, what I want to qualify him on and I think that he is qualified in is in the field of psychology, recognizing he's an expert in the field of diagnosing depressions, treating depressions, specific depressions such as postpartum depression, peripartum depression, which are all major depressions. He has extensive training in that. He's had extensive professional work history in that.

Transient peripartum psychosis is a variation and an acting out -- a thing that generates out of and accompanies major depressions and depression episodes. If they become so extreme, they can go into psychosis. So, basically, that's what his testimony is going to be in and...

THE COURT: Mr. Hixson?

MR. HIXSON: I agree that he's an expert as a counselor, and the role of a counselor is taking the diagnostic tool from a psychiatrist to say, Treat this

person in this manner. And then the treatment program by the counselor is the one that executes that treatment plan.

That's what the cautionary statement -- I'll let the Court review it, but it's basically just a warning to all -- everyone involved in the legal and mental health field: Be careful of using this tool because it's not just a Lego set where you plug A, B, C, and that gets D. It cautions -- it warns you to use this document for other purposes than it's intended for.

THE COURT: Let me see it.

MR. MUREDDU: I would like to be heard on that.

THE COURT: (Reviewing documents.) Okay.

THE WITNESS: Your Honor, could I say something that might be clarifying?

THE COURT: Please.

THE WITNESS: What's being proposed is a model from the late '50s and 1960s when everyone worked under psychiatrists. Starting in the early '70s, all the mental health professions began to get independent licensure, which meant that they could function without the auspices or direction of a psychiatrist and make their own diagnosis and provide treatment. And that's the model that continues in the mental health fields. So that all the six licensed mental health professions

in South Carolina, representatives of those fields, are all with the appropriate education, training, and credentials qualified to render independent and autonomous forensic evaluations, if they're so qualified, on any situation.

THE COURT: Let me see the book again. I'm sorry.

MR. MUREDDU: Judge, can I say one thing briefly?

THE COURT: Sure.

MR. MUREDDU: The Solicitor is basically putting forth to the Court that for somebody to give this testimony, they have to be a psychiatrist. Well, that book doesn't say that, and that's a misstatement of the law, that's a misstatement of what that book is. And I think the doctor clarified that the cautionary warning was you could either be a licensed clinician, as he is, or a psychiatric doctor. So what's being put before the Court as to whether he could testify, that you have to be a medical doctor/psychiatrist, that's not -- that's just not right.

THE COURT: All right. So we agree that you're not a medical doctor; correct?

THE WITNESS: Well, that's correct.

THE COURT: Okay, hold on. Stay with me.

All right. So are you clinical? That's the question.

THE WITNESS: Yes. I'm a licensed and board-certified mental health clinician.

THE COURT: Okay. And tell me how you are clinical. What does "clinical" mean?

THE WITNESS: Clinical means any of the licenses that are recognized, independent mental health professions. So a psychiatrist is just one of those. Psychologist is another. Marital and family therapists are another. Licensed professional counselors are another. Psychiatric nurses with a master's or Ph.D. and so forth.

THE COURT: So which one of those are you?

THE WITNESS: I'm a licensed and board-certified professional counselor.

THE COURT: Okay. And so tell me how you've been trained to -- what training you have received to be able to make a diagnosis based upon the DSM-5.

THE WITNESS: Yes. In psychology programs, the focus is on diagnosis and treatment planning with DSM-5 disorders. All the representatives of the major health organizations, including the American Counseling Association and the American Mental Health Counselors Association, served on those subcommittees that wrote DSM-5. So they contributed to it, and all of them were part of that process. And any wording in DSM-5 does

not exclude any of those discipline representatives.

THE COURT: Okay. I don't think what you just said answered my question.

THE WITNESS: Okay. I'm sorry, what --

THE COURT: My question is: Tell me how you have been sufficiently trained as a clinical person to be able to make a diagnosis.

THE WITNESS: I have degrees in clinical psychology, in clinical inquiry on a Ph.D. level. That -- all of that graduate training. Then you get supervision in the field when you're first starting out. You work under other clinicians, forensic clinicians. I also served on the Governor's Committee for Sexual Offending and Addiction in the State of New York as a forensic clinician when I was part of that ten-county team.

I've taken many courses. I've served on three national executive advisory boards of major mental health organizations in my career. And at the time of this evaluation, I was a board-certified fellow of the American College of Forensic Examiners. That's an elected position. You can't apply for that. You're appointed by your professional peers as someone who's made a noteworthy contribution to the field of forensic evaluations.

THE COURT: All right. So what's the objection?

MR. HIXSON: I believe the scope of the qualification is my major problem. He's an expert in counseling, no question about that. The question is, is the offered, the proffered testimony, the conclusions reached in this forensic report reach beyond his qualifications; that he says at the time of the offense this person was suffering from code 300.4, which is intermittent psychiatric problems based on dissociative or intensive -- excuse me -- depression. Specifically, the diagnosis on the conclusion pages of the doctor's report -- I apologize, Your Honor --

MS. WALKER: 17.

MR. HIXSON: Postpartum depression. This transient peripartum psychosis with psychotic features, with intermittent psychotic features, all those -- if you hear the term "psychotic," that means it's a diagnosis with organic medical problems, and that diagnosis is by a medical doctor generally.

Now, the peripartum discussion says there may not have to be psychotic features, but the point being, if you're going so far as to be so committed to that, we believe that's outside the scope of his qualifications. He can testify to clinical impressions, general clinical impressions, general ideas, but to go so far

as to say this is to a reasonable degree of medical certainty and testify to that, we -- our objection is it's outside the scope of his expertise.

Now, how he is offered in such a wide range, mental health field, that it's so wide that you can't really object to that, but the basis is -- the conclusions and the opinion, if reached on that board, is outside the scope of his expertise.

THE COURT: Well, I thought we weren't going to get to that issue anyway.

MR. HIXSON: No, no, no. I mean, he says he will diagnose her with transient peripartum psychosis. That is the conclusion, and it's probative in this case. He diagnoses her as battered spouse syndrome, diagnoses her as a victim of domestic violence, as suffering from PTSD from Patrick Taylor beating her, is part of the diagnosis as well. But he diagnosed her as PTSD due to abuse. But that isn't probative. And the baby-dumping conclusion -- and the baby dumping gets there by saying she is suffering from transient peripartum psychosis.

THE COURT: All right.

MR. MUREDDU: Judge, just because he says that doesn't make it so. I don't know what I can respond to that. I'm listening to the doctor shake his head as he's rattling off that to be able to testify to

something, you have to be a medical doctor. That's -- I think that has been asked and answered that that is not correct.

THE COURT: Well, can we not narrow his field of expertise about mental health in general?

MR. McCOLLUM: May I?

THE COURT: Sure.

MR. McCOLLUM: May it please the Court?

THE COURT: Yeah.

BY MR. McCOLLUM:

Q Dr. McCarthy, in order to produce the report that you produced based on your clinical work with a patient, what area of practice is that that you would be testifying about?

A That's clinical mental health and forensics.

Q And are you qualified to give an opinion in that area?

A Yes. Yes.

MR. McCOLLUM: Your Honor, at this time, we move to have him qualified as an expert in the field that he stated.

THE COURT: And that's clinical what?

THE WITNESS: Yes.

THE COURT: Say it again.

THE WITNESS: Yes.

THE COURT: Say what the area is again.

THE WITNESS: Oh. Most people who testify in forensics were originally mental health clinicians that then furthered their scope of practice and expertise.

THE COURT: Most people that testify in forensics in front of me are medical doctors.

THE WITNESS: That's what I've done. No, that's not true at all.

BY MR. McCOLLUM:

Q Dr. McCarthy --

MR. McCOLLUM: I'm going to repeat the question, please. May it please the Court?

THE COURT: In South Carolina, the majority of people that come in this court and tell me somebody has a forensic diagnosis are medical doctors.

THE WITNESS: Well, I can't speak to that. All I can tell you is --

BY MR. McCOLLUM:

Q Dr. McCarthy --

THE COURT: What area do you believe you're qualified in? Clinical what? Counseling?

THE WITNESS: I'm a board-certified clinical mental health counselor by the National Board of Certified Counselors.

THE COURT: Oh, my god. Ask him the question

again, Mr. McCollum.

MR. McCOLLUM: Thank you, Your Honor.

Q Dr. McCarthy, in terms of the area of practice, what area of practice qualifies you to draw a conclusion which you drew from the report regarding your patient, Shelby Taylor? What area of practice qualifies you to give the opinion?

A Well, being a certified clinical mental health counselor alone would qualify me to render that diagnosis.

Q And have you given testimony in the past regarding clinical forensic evaluations?

A Yes, many times.

THE COURT: In South Carolina?

THE WITNESS: Yes. Numerous times in South Carolina.

THE COURT: In what courts?

THE WITNESS: In this court.

THE COURT: Circuit court?

THE WITNESS: The Horry County court system, um-hum.

THE COURT: So you want him qualified as an expert in the area of what?

MR. McCOLLUM: Clinical forensic evaluations regarding mental health and state of mind.

THE COURT: State of mind?

MR. McCOLLUM: Your Honor, I'm sorry. I had it right the first time. All right? I apologize.

I want him qualified -- I'm asking that he -- I don't -- he says he's qualified in clinical forensic evaluations, and that's what I'm asking the Court to consider him as an expert in.

THE COURT: All right. Mr. Hixson?

MR. HIXSON: I don't have an objection as it relates to clinical evaluation. I have an objection to what's going to come after that, which is state of mind, which is not the law in the state of South Carolina.

MR. McCOLLUM: All right. I withdraw that, Your Honor.

THE COURT: Yeah, we're out of that.

MR. HIXSON: And I would object to the ultimate conclusions, and that's -- if Your Honor allows him to testify as an expert, that's fine. I understand. Because I think he is an expert in counseling. But I will, during the course of direct examination, object to the ultimate conclusions of law, and maybe we'll hear it from there.

THE COURT: Okay. So we're going to deem him an expert in the area of clinical forensic evaluations and

counseling. I believe he's got the sufficient education, training, and experience based upon a bachelor's degree, a master's degree, a Ph.D., he's a board-certified clinical mental health counselor, he's a licensed professional counselor, he's a board-certified fellow of forensic examiners, he's a master therapist, he's a board-certified posttraumatic stress disorder clinician and posttraumatic stress disorder expert, and he's had numerous jobs throughout his life where he was working as a staff psychologist, a supervising psychologist at a forensic facility, another supervising psychologist of a forensic facility, the program coordinator of a mobile mental health clinic that did forensic evaluations, and based upon that, I will allow him to be qualified as an expert in the area of clinical forensic evaluations and counseling.

Anything else, Mr. McCollum?

MR. McCOLLUM: How do you want to handle that? Do you want to state that as a conclusion to the jury?

THE COURT: Yeah, I will. When they come back in, I'm going to tell them that.

MR. McCOLLUM: So we don't have to ask him anything; you're going to do that?

THE COURT: You're welcome to -- this is the way

this works. I've determined from the purpose of 701 or 702, whichever one of those rule it is, that he's qualified based upon education and/or experience to give his opinion. So I'm going to tell the jury -- I have this thing that I always read.

MR. McCOLLUM: Okay. All right. That was my question, Your Honor.

THE COURT: But I want to answer your question fully. So I'm going to tell them, you know, normally, people can't give opinions. There's an exception: This person is going to be qualified. But in the jury charge, the jury charge says they can disregard an expert's opinion completely.

So if y'all want to go back through other things or go through some of the things that we have covered outside the presence of the jury as to his qualifications, you're welcome to do that. Make sense?

MR. McCOLLUM: Yes.

THE COURT: Okay. All right. Let's go get them.

MR. McCOLLUM: Thank you, Your Honor.

THE COURT: Yep.

(WHEREUPON, a brief recess was taken at 10:42 a.m.)

(WHEREUPON, the jury came into open court at approximately 10:55 a.m.)

THE COURT: All right. Welcome back, ladies and gentlemen. I apologize for the delay, and I accept responsibility for that so don't take that out on the parties. That was something that I needed to do.

So, normally, when a witness testifies, a witness is not allowed to give their opinion. Normally, when someone testifies, they have to testify as to what they saw, they heard, they did, they touched, they sensed by smell, something of that nature.

There is an exception under the rules. When someone is qualified because of education or experience, that person is permitted to give their opinions in certain areas if I qualify them in that way.

So Dr. McCarthy will be qualified as an expert in the area of clinical forensic evaluations and counseling. He will be allowed to give opinion testimony in that area.

Now, that does not mean that you have to accept his opinion, but it is evidence for you to use in any way that you see fit and give it the weight and the credibility that you believe is appropriate, as you are required to do with each and every witness that appears before you.

All right. Mr. Mureddu.

MR. MUREDDU: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

CONTINUING DIRECT EXAMINATION

BY MR. MUREDDU:

Q Doctor, you heard the Court just qualify you as an expert in the area of clinical forensic evaluation. Do you agree with that?

A Yes.

Q Okay. And that's actually what you did in Shelby's case. You did a clinical forensic evaluation of the entire case; is that right?

A That's correct.

Q Okay. Let me go through -- let's talk about specifically what you did in this clinical evaluation. I would like to talk about what your case review consisted of. Okay?

Now, did you review various documents that materially bear on this case? For instance, you reviewed the Horry County Police report investigation?

A Yes, I did.

Q So you reviewed the Horry County criminal case file?

A Yes.

Q All right. That was lengthy?

A Yes.
Q Okay. Now, there's been some testimony about Shelby seeing another counselor, Dr. Winchester, I believe. Did you review the counseling documents and all of the documentation of Dr. Winchester's in her treatment of Shelby?
A Yes, I reviewed those as well.
Q Okay. What about medical reports? Did -- they took her to Conway Hospital. Did you review those documents?
A Yes. I reviewed all 72 pages of the Conway medical folder.
Q Okay. That would be nurses' notes, doctors' notes?
A As well Dr. Oduwole's consultation.
Q Okay. Now, so that's -- Dr. Oduwole, that's the psychiatrist that saw Shelby?
A Yes.
Q So you reviewed his reports?
A Yes.
Q Okay. All right. So you reviewed all the relevant documents that you knew to exist in this case; is that fair to say?
A That's correct.
Q All right. Now, let's talk about your treatment,

your actual treatment of Shelby. Did you do interviews with what I'll call all of the parties involved? Who, out of Shelby and her family, did you interview and how extensive was it?

A Yes. I met with Shelby numerous times. My face-to-face involvement with everyone came to ten hours. And I interviewed the patient as well as her mother. And the last session, I spent with the entire family.

Q Okay. Now, when you were interviewing Shelby and her mother and the family, how far back did you go? Did you just limit it to what happened the day of or did you go well beyond that?

A No, well beyond that. When we do a comprehensive forensic evaluation, we begin with an extensive case history that goes back to someone's birth and get a lot of developmental information, all the way up to and including anything that's happened in the present.

Q So a live history; would that be fair to say?

A Yes.

Q And is that important to know all of these things in order to get to the root of the matter?

A Yes, absolutely. Because the end result is often a summation of contributions to people's lives over the duration of it.

Q Okay. Okay. So you reviewed a bunch of documents, you did extensive interviews with Shelby, her mother, family members?
A Yes.
Q Okay. Let's talk about some of the psychological tests or battery of standardized tests. What type of testing modalities did you use in doing your clinical evaluation?
A Yes. When we do a forensic evaluation, we use a range of tests, and the two most important is that forensic evaluation include both objective tests and projective tests so that you can compare the difference in data and information you get.

In addition, we then did some detail tests that were follow-ups from the general information we elicited to clarify things and make sure that our information and conclusions were accurate.
Q Okay. So would it be fair to say you did a large battery of various --
A Yes.
Q -- tests? Okay. I'll -- they're in your report. The WHODAS 2.0 test, would that be one?
A Yes.
Q Can you -- I think you have a list there. I see a Shipley-2 intelligence test.

A Yes.
Q About how many of those standardized psychological testing things did you do -- did you perform?
A I personally did all of the tests that are listed there, and I'm qualified to do a range of tests.
Q All right. Looks to me like about eight different of these standardized type of tests?
A That's correct.
Q Okay. Now, what's the nature of these things? Are they prepared by experts in the field? I mean, how did something like a Rorschach inkblot test or a Bordi test or an IVA-2 test, where do those come from? I mean, what are they?
A Okay. Some of them are IQ tests. Some of them are personality tests. Some of them are characterological assessments, and some are educational in nature to validate a learning disability that this patient had.
Q Okay. Are these tests, are they designed so, I mean, really, for lack of a better word, the patient, you know, to try to -- so they can't fake you out or something like that?
A Yes, yes, absolutely.
Q I mean, independently --
A All standardized tests have what they call

validity scales, and validity scales are basically paper-and-pencil lie detectors. So it tells the clinician whether the person is being overly negative, overly positive, or tending to fall within the range of what most people who are truthful do.

Q So do the tests, are they kind of like an objective criteria so you're not just relying on what an individual's telling you?

A No.

Q They are that or they're not?

A They were reliable, and I didn't see any gross contraindications to the results of these exams being illegitimate in any way.

Q I guess what I'm getting at, are the tests kind of to try to get an objective measure of what it is you're hearing --

A Yes.

Q -- and what the data means?

A Yes.

Q Okay. Now, along with the eight or so psychological -- the battery of standardized testing, did you consult the MCMI-3 study prepared by Dr. Caldwell?

A Yes.

Q Tell them a little bit about Dr. Caldwell and why

you would do that and what it means.
A Right. In all of the years that I've been testifying in the field of forensic psychology, the Caldwell report is typically the one that's brought to court. The Caldwell report represents the highest standard in MMPI-2 analysis. Dr. Caldwell is considered by most people to be the leading expert in the MMPI-2 in the world.
Q All right. And to, I guess, ultimately treat -- diagnose Shelby's condition, it's important that you use Caldwell's --
A Yeah. All of these tests contribute, and the way that I come to a conclusion is I look at all this information, including the results of a brain scan that we did, and we put all that information together.
Q Let me get into that, if I can stop you there a minute.
A Okay.
Q So did you do the MPI-2 study with -- prepared by Dr. Millon?
A Yes.
Q All right.
A And the MCMI-III, the person who standardized that test, was actually, up until the most recent, the head of the DSM manuals since they started from the

beginning.
Q Okay. Let me -- I'm getting ready to move to the brain scan, but let me sum up so we can kind of keep all this information. So you reviewed the Horry County criminal case file?
A Yeah.
Q Okay. You reviewed Shelby's psychologic- -- her counselor, she saw those documents, the hospital reports, psychological -- the psychiatrist's report?
A Um-hum.
Q Okay. Comprehensive interview with the family and Shelby?
A Yes.
Q Is that right? Okay. So we were just talking about your large battery of psychological testing, standardized testing.
A Yes.
Q Now, you mentioned brain scans. Tell us about that. Did you do brain scans and brain mapping in this case?
A Yes. The Quantitative Electroencephalogram is the most advanced EEG test that's given, and it compares a person's brain with the norms and looks at what's out of line, what isn't out of line, and tells us whether things are out of line in an overactive or underactive

direction. And the patterning we get on the final three-dimensional maps have diagnostic significance.
Q Okay. So that's the qEEG?
A Yeah.
Q What about the brain mapping? Is that the sLORETA? What exactly is that? Did you do that?
A Yeah. Well, we put a cap on the patient's head, and it looks at the 20 major brain regions and --
Q So tell me why that you felt that, along with all the other stuff that you did, that --
A Okay. The qEEG provides us with an assessment of brain function and dysfunction. It gives us an extremely comprehensive understanding of the individual that we're working with.
Q Okay. So that's helpful, then, in reaching an ultimate diagnosis or conclusion in a case?
A Yes. It adds the dimension of all the neurology involved in the patient.
Q Okay. Okay, Doctor. I want to move along to the psychological disorder of transient peripartum psychosis. What can you tell us about that and the circumstances surrounding that, in general?
A Yes. Postpartum depression is really just a major depression that's complimented by the biological and situational aspects of pregnancy. And there are

psychotic features when the psychotic dimension is diagnosed.

Q Okay. What I want you to do is -- just tell me when you can see this, Doctor.

A Yes, sir.

Q Do I need to move it back? Can you see what's on this?

A I'm fine.

MR. HIXSON: Your Honor, I have an objection. Just quickly.

THE COURT: Okay.

MR. HIXSON: Did the doctor prepare that, or did counsel prepare that for the doctor?

THE WITNESS: I didn't -- I had nothing to do with it.

MR. MUREDDU: This information came directly from the report, Judge.

MR. HIXSON: I don't mind it if he authenticates it before he's prompted. That's fine if he authenticates it, but if he's prompted by a litigation document, I have an objection to that until he testifies to it.

THE COURT: Well, he needs to testify to all that.

Q Could you see this, though? I'll get to that in a second.

MR. MUREDDU: Court's indulgence, Your Honor.
Q Okay. Let me start out, Doctor, explain to the jury, if you could, define what postpartum depression is.
A Well, peripartum depression is a depression that significantly intensifies during the month prior to delivery.
Q Now, let me stop you right there. You said "peripartum."
A Right.
Q I said "postpartum." Okay. Let's -- probably a good starting point is let's differentiate between the two. Is there significant difference or is it just meaning before/after? Explain that.
A Yeah. Technically, there are three terms that are of significance in postpartum depression. Prenatal refers to anything from conception to birth, peripartum refers to approximately the month prior to delivery and several months thereafter, and postpartum refers from the time of birth, subsequent.
Q Okay. So when I say "peripartum" as opposed to "postpartum," just that -- when we're talking "peripartum" before, post, after?
A Yes.
Q Okay. Are the -- is the depression -- the

symptoms, et cetera, are they -- is it virtually identical?
A Yes.
Q Just we're talking about peripartum, they occur before. Postpartum, they occur after. Is that --
A Yes. It's just temporally where they occur in the pregnancy and the time thereafter.
Q Okay. Now, peripartum depression, postpartum depression, are they a classification of just a major depression in general? Describe how that works.
A Yes. They're an extension of major depression. So major depression and postpartum depression basically share features except one is related to the conception/pregnancy/birth process, and the other is related to other situations.
Q Okay. So when we get into peripartum and postpartum depressions, is one of the distinctions, is it not, as far as you're talking about a pregnant woman?
A Yes.
Q All right. So -- and involved in pregnancy hormones. How does the hormonal pregnancy thing come into play, either amplify or not the depression? How does that work?
A Well, physicians will refer to a hormonal storm

that's associated with all pregnancies and deliveries, even in normal circumstances. But in postpartum depression, that can be more severe than for most people who deliver.

Q What about peripartum also?

A Yes. Hormonal factors are --

Q This hormonal storm can occur before, peripartum, after --

A Yes, based on all the changes that are occurring in a woman's body, uh-hum.

Q Okay. So if I'm hearing you correctly -- and please chime in if I'm not getting this right -- we've got a major depression; okay? And then a specific version of that that pregnant women can experience: Peripartum and postpartum depression?

A Yes.

Q Is that correct?

A Yes.

Q Okay. And which take into effect the hormones -- I think you called it a storm of hormones. Can that, in its extreme form -- peripartum, postpartum -- can that bring about what ultimately I was beginning to ask you about, which is peripartum psychosis?

A Yes. It's a major contributing factor.

Q Okay. Now, how would you define -- and I have it

up on the board, but I'll go ahead and let you define it. Let's just take the words "transient peripartum psychosis."

A Okay.

Q Break that down. The "transient" part, what's that about?

A "Transient" means it's acute, it's short-lived, it's not chronic. It can occur within a very brief period of time and then resolve itself.

Q Okay. "Peripartum," I think we covered that, but please cover it again.

A Yes. It's that time in the month or so before delivery and the several months thereafter.

Q Okay. And the psychosis, transient peripartum psychosis, how would you define that?

A The psychosis part of that for many women involves chaos and confusion on a cognitive level. So they become disoriented, they become illogical, they become irrational, and then they can engage in behaviors that they ordinarily wouldn't do.

Q Okay. I think you covered some of the symptoms, but I'm -- extreme agitation?

A Yes.

Q Okay. I think you said --

MR. MUREDDU: Your Honor, at this time, I would

like to refer to that. I think he's covered, basically, everything that's on that visual aid.

THE COURT: I haven't seen it, so I don't know.

All right. That's fine.

MR. MUREDDU: May I?

THE COURT: Yes.

MR. MUREDDU: Thank you, Your Honor.

Q Can you see that?

A Yes.

Q Can everybody else see this? Okay.

So not to be redundant but to recap, okay, we're talking about transient peripartum psychosis, which ultimately you give an opinion on as to whether it was present or not in Shelby's case.

A Yes.

Q Ultimately. Okay. But, now, let's go through the symptoms again. Somebody who is suffering or experiencing transient peripartum psychosis, could you go through the symptoms again about what their state of mind is, what's going on with the woman experiencing that?

A Basically, they become panic stricken. They become overwhelmed. They become extremely depressed or dysphoric. They start thinking in an irrational way. They contemplate things that they ordinarily might

contemplate but wouldn't consider acting on, but in that state, seems like something that they would do.

Q Okay. Now, transient peripartum psychosis, in general, is this something that happens frequently? Rarely? About how often do you --

A Well, the thing that's important, in preparation for this evaluation, we did an extensive Internet medical research search. We always do that as we prepare for these evaluations.

MR. HIXSON: Your Honor, I'm going to object to hearsay if we're referencing the Internet as a source of a learned treatise on transient peripartum psychosis. We'd object to Internet research on this syndrome.

MR. MUREDDU: Judge, I would submit he's an expert in the field. I think that he can determine where he gets his research materials and such like that. I realize the Solicitor is trying to trivialize it, but I would think the doctor should be heard if he has knowledge about how often this event occurs.

THE COURT: Well, it needs to be something beyond an Internet search.

Q Doctor, do -- you know what, I want to go back to your -- have you -- you talked about earlier, when we were qualifying you as an expert, that you worked at

various secure centers. Is that a kind word of saying prison?

A Yes, that's correct.

Q Have you -- in your work history, have you personally dealt with individuals and encountered individuals who have experienced this disorder and the consequences?

A Yes.

Q Can you elaborate about how many times you've seen that and what you -- what you know about its rate of occurrence based on your working in the field?

A Yeah. This is a very rare thing. Anyone, in the course of their career, probably only sees a handful, even forensic clinicians. Only two of these cases occur in every state about -- on an annual basis. So there's only about a hundred cases of disposing of infants nationwide on an annual basis.

Q Okay. And when you worked in New York in the criminal justice system, you actually encountered a few?

A Yes. I worked with several women who had been incarcerated for that.

Q Okay. Now, you're talking about the rareness or the commonality of it. Are there certain known risk factors that can lead to this or possibly make it more

likely to occur?
A Yes. There is a range of social, cultural, and emotional factors that all contribute as a constellation to what ultimately impacts someone.
Q Tell me what are -- and that will be my next visual aid that I'll put up. What are some of the known scientifically derived clinical risk factors that might lead to a peripartum psychosis episode?
A Well, women who engage in this behavior feel pressured in a negative way, that they are either perceiving or aware that other people will not react to their pregnancy in a positive fashion. So they anticipate rejection and negativity; that, a lot of times, these women have had extensive relationship or marital conflict, they anticipate the loss of one of those relationships. And, also, situational variables like financial struggles can contribute --
Q Okay.
A -- to this disorder in a woman's final decision.
Q What about the pressure surrounding the ultimate care and responsibility of the child? Is that one of them?
A Sure. They feel this is going to be their burden and not something that will be shared with other people.

Q So if we have somebody who is dealing with peripartum depression and these known risk factors that you just rattled off are present within the individual, what is likely or what -- put two and two together for me.

A Those are all the known scientific risk factors associated with what's technically called baby dumping.

Q All right. What about as far as the risk factors leading to -- are they also risk factors leading to the likelihood of a transient peripartum psychosis occurrence?

A Yes.

Q Do they increase the chances, I guess is what I'm saying?

A Yes. And the overwhelming number of women who are arrested for this offense have that diagnosis.

Q Okay.

MR. MUREDDU: Court's indulgence.

THE COURT: Yes, sir.

MR. MUREDDU: Judge, I would also -- the Solicitor has seen this. I'd like to go through this with him. I think it's what he testified to as the known risk factors.

THE COURT: Okay.

MR. MUREDDU: Thank you, Your Honor.

MR. HIXSON: As long as a foundation is in there for it.

THE COURT: I think he just said all that.

MR. HIXSON: Yep.

Q Doctor, this is what you just went through. Would you agree that you just testified to that these are the known risk factors that can lead to transient peripartum psychosis?

A Yes, as well as genetic predisposition.

Q Okay. Now, let me talk a little bit without specifically getting into Shelby's diagnosis. I want to go through something. In your investigation and your forensic review of her case, was it your understanding this was an unplanned pregnancy?

A Yes.

Q Okay. And in interviewing Shelby and her family members, was this present in her case: Being pressured by negative comments or inquiries regarding her getting pregnant?

A Yes, it was.

Q Okay. In your interview with her and her situation and her family, was she basically -- was she basically the person ultimately responsible for the care of the child?

A Yes, she felt she would be.

Q And did you conclude or did -- was the evidence there that she was overwhelmed by this ultimate responsibility?
A Yes.
Q Okay. Now, you interviewed her family, her mother, her father, other family members, and her. Did you determine or conclude that she was dealing with rejection from them because of these unplanned pregnancies and that situation?
A Yes.
Q Was it related to you that there were some financial struggles that she dealt with?
A Yes.
Q All right.
A They revolved around her not wanting to work, to be a stay-at-home mom, and her spouse wanted her to get employed.
Q Okay. Now, did she relate to you that -- let's forget about the abuse for a minute, but she had concerns that she would be abandoned by him if -- was potential abandonment by her spouse, in her mind, present in this case?
A Yes. They had substantial conflict around another woman that her husband was communicating and talking about.

Q Okay. And did she report to you that she had suffered abuse from him during the course of the marriage?
A Yes, she did.
Q Okay. And I think we got to this earlier, but did you come to the conclusion that she, or through your evaluation, learn that she was suffering from or involved in a major depression and even a peripartum depression? Was that present?
A Yes.
Q All right. So, in general, these factors are known risk factors just in general that can lead any individual, female, to -- they could be a catalyst to a transient peripartum psychosis event occurring; is that right?
A Yes.
Q And they were all present in her case?
A That's correct.
Q Okay.
MR. MUREDDU: Court's indulgence.
THE COURT: Yes, sir.
Q Now, let me ask you this: The fact that this wasn't Shelby's first child, as far as peripartum depression and transient peripartum psychosis, does that have any bearing on whether it would be likely to

occur with the birth of a second child or could it be just as likely with any child somebody could have?
A It can be related to the initial pregnancy.
Q I guess what I'm getting at is if someone were to argue, Well, she's had a baby before so that would make this more or less likely to occur, would that be a fair statement or would that be inaccurate?
A It's what happens and occurs during that first pregnancy that would be the answer to that. In Shelby's case, there was some conflict between she and her mother around Shelby not being able to fulfill goals, and that escalated to the point where, if I remember correctly, they hadn't spoken for a period.
Q Okay.
A And then after her first child was born, they resolved things and got back together and communicated.
Q But I guess what I'm getting at is, because she has had a child before, would that somehow lessen the chance that she could have an extreme event in a birth of a second child?
A Not necessarily.
Q Okay. Now, let's talk about her age and it's in relation to kind of that same question. Could this -- could this transient peripartum psychosis, could that happen to any pregnant woman regardless of age?

A Yes, it could.
Q Okay. So age isn't really a factor in the likelihood of this occurring?
A Not that clinical syndrome, but it is a factor in baby dumping.
Q Okay. Now, the fact that Shelby lied about her pregnancy, does that -- to police, to family members -- does that negate any of this science or any of the -- how does that bear on your diagnosis and what you understand to have happened?
A Yes. It may have actually contributed to it in that the denial was so extensive that, even when it became physically obvious that she was likely pregnant, that she was still telling people she wasn't. So there was a reality-testing issue involved.
Q What about her own denial? Is that --
A Well, that's -- she was denying to the point where it was no longer rational or logical.
Q All right. So after the event occurred and when she's being questioned by the police, continuing to lie, continuing to deny, is that somehow in conflict or is it possibly consistent with this syndrome, for lack of a better word?
A Yeah. No, it's not in conflict with it and can be consistent, where it just reflects an extension of the

denial that she had from early stages of the pregnancy.
Q So it's almost childlike reasoning. Just deny, deny, it will go away. It's little more than that, I would say, but...
A Yes. And I would like to just add something about the first pregnancy.
Q Oh, go ahead.
A There was a time in her first pregnancy where she was taken to the hospital, disoriented and totally cognitively confused and unable to think. And at the time, doctors attributed that to another disorder that she had, but it could have been a precursor of what occurred in the second pregnancy.
Q Now, I want to refer specifically to a part of your report. Do you have a copy of your report?
A Yes.
Q I can't tell you what the page it's on because it goes into your conclusions. Next page. So if -- to your knowledge, Shelby saw -- she dealt with the police in questioning, to your knowledge; right?
A Yes.
Q Shortly after this. She was then arrested, taken to the hospital?
A Yes.
Q Seen by nurses?

A Yes.
Q Seen by, I think, an OB/GYN doctor?
A Yes, sir. You're talking about the Conway Medical Center?
Q Yes, yes.
A Yes.
Q Seen by a social worker?
A Yes.
Q A psychiatrist?
A Yes.
Q Okay. And I'm referring to your report about if she's calm, she's not freaking out, she's not hysterical, is that somehow inconsistent, or what do you make of that, somebody, after the fact, being questioned being perfectly calm and not hysterical?
A Because of everything that went on in her body biochemically and everything that had led up to this, it's not unusual for a person to be numb and to be unresponsive or nonresponsive or only of limited responsiveness.
Q Okay. To be able to, after the fact, even after this traumatic event, maintain your ability to reason and even lie --
A Yes.
Q -- and deny, is that inconsistent somehow with

this psychological disorder?
A No.
Q Can you elaborate on that? Why isn't it?
A Well, because people remain in denial. There was a level of denial throughout her whole pregnancy before and after that just continued until sometime subsequent to the arrest.
Q So behaving that way, continuing to deny, as you say, that's consistent with this?
A Yes.
Q Okay. Not inconsistent?
A I wouldn't see that as a contraindication, no.
Q Okay. I'd like to now get to your actual diagnosis in this case. In your expert opinion, did Shelby experience transient peripartum psychosis in this case?
A Yes, she did.
Q What do you base that on?
A On everything that we have, from the documents we read to the thoroughness of our clinical evaluation and all the information with interviews, both she and her family members.
Q All right. So it is your opinion she experienced that in the birth of Baby [redacted]?
A Yes, with everything we did and know.

Q Okay. Now, I think that you've talked about -- so you're saying it's present in her case, and you're talking about -- we've gone through the symptoms.

In your expert opinion, your review of this case, were -- did those symptoms present -- were they present in her case?

A Yes.

Q Now, there has been some suggestion as to planning out certain things, premeditations. In general, now, a person experiencing transient peripartum psychosis, are they able to or --

MR. HIXSON: Your Honor, I would object as it relates to testimony concerning mental state.

THE COURT: Sustained.

Q Let's talk about the behavior of someone with transient peripartum psychosis and the actual disposal of the child.

MR. MUREDDU: Court's indulgence.

Q Somebody experiencing and in the throes of transient peripartum psychosis, are they acting maliciously?

MR. HIXSON: Just going to object. That's a characterization of mental state.

THE COURT: Sustained.

Q Is their behavior rational?

A No, it's bizarre.
Q Is it logical?
A Illogical, irrational, bizarre.
Q Can it be delusional?
A Yes.
Q Let me be clear and please tell this jury: Your review of this case: Reviewed the police report, reviewed all the hospital documents, battery of testing, extensive family history, brain scans, brain mapping, is your opinion that, in Shelby's case, your expert opinion that she was experiencing an episode of transient peripartum psychosis?
A Yes.
MR. MUREDDU: Please answer any questions the Solicitor has.
THE COURT: Cross-examination.
MR. HIXSON: Thank you, sir.

CROSS-EXAMINATION

BY MR. HIXSON:
Q How are you, sir? Do you need a drink of water? Are you okay?
Do you need a drink of water? Are you okay?
A I didn't hear.
Q I apologize. Don't worry about it; okay? Let's just get, I guess, some fundamental concepts related to

being an expert specifically in your field.

Can't we all, I guess, agree that, in order to develop an effective expert opinion, that more information is better than less information?

A That's correct.

Q That's true? Let me put it in truisms: That accurate information is more important than inaccurate information in order for you to be the best in your field that you can be; is that safe to say?

A Within limits.

Q Is there ever a limit to accurate information?

A In other words, you can still come to a valid conclusion even if a hundred percent of information you have is not accurate.

Q Well, I agree with that. We'll get to that part first. I guess what I'm trying to get to is that we can all agree that the accuracy is pretty important in this case?

A Yes.

Q And, specifically, I just wanted to bring to your attention with the accuracies -- do you stand by the accuracy of your report?

A Yes.

Q The basic fundamental information. And I'm specifically drawing your attention to Shelby Taylor's

date of birth. She was born [redacted] of 1991; is that correct?
A Yes.
Q And that makes her 23 years old at the time of the offense, 24 at the time of your evaluation; isn't that correct?
A That's correct.
Q Well, you cite her as 21 years old at the top of your evaluation. Top of the page in the masthead, it says she's 21. Right out of the gate, you missed her by two years. Actually, three.
A I think --
Q We'll just chalk that up to a scrivener's error.
A Her date of birth is [redacted]/91?
Q Right. I won't do the math. It's 23. She's 24 when you talked to her.
A Okay.
Q She was three years older than you had --
A Okay.
Q So let's talk about some of the other areas in this report; okay? Isn't it true, I guess, as a fundamental idea, I think under Rule 702, it's appropriate for me to talk about the basis for your opinion. And I think you've talked to Mr. Mureddu specifically about the documents that you reviewed that

allowed you to come to the conclusion that you come to. And I guess that's the question I'm asking you: Isn't it true that we want to have more information rather than less information; isn't that safe to say?

A To some extent.

Q To some extent. Okay. So it's pretty important for you to review contemporaneous records? In other words, you did review in the course of your evaluation --

A Yes.

Q -- Dr. Oduwole. He's an M.D. psychiatrist.

A That's correct.

Q He's actually a medical doctor that works --

A Yes, I know Dr. Oduwole.

Q Okay, okay. And I am proud of your accomplishments. Don't get me wrong. But he's a medical doctor, a step up as related to his qualifications to review this patient?

MR. MUREDDU: Your Honor, I'm sorry to -- we have a matter. Can we approach, please?

THE COURT: Sure.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Your objection is overruled.

MR. HIXSON: Thank you.

Q So, I think -- let me just talk about a couple other things, and we'll talk about that report in a second.

So I think counsel had talked about validity scales, I think, which you indicated in your testimony that you reviewed -- used that to confirm the accuracy of the testing that you used. In other words, it's normal forensic or counseling -- you know, mental health thing --

A Yes.

Q -- to use some method to determine whether or not the data or the answer that you're ending up with is accurate?

A Yes.

Q Is it valid or not; right?

A Yes.

Q So if you are going to interview folks -- the Defendant, the defendant's mom, the defendant's family -- in formulating your opinion, and you wanted to validate the accuracy of that subjective information; in other words, if I know I'm going to trial and I'm saying this is what happened to me --

A Yes.

Q -- wouldn't it be effective to validate that

testimony by talking to Patrick or talking to Patrick's family or somebody to offer information that would be contra --

A Validate --

Q -- to validate that?

A Yes. There are numerous ways to validate things, and one of the ways you can validate things is give psychophysiological measures of assessment that people don't have control over.

Q Um-hum.

A So one of the things that she took was the test for what's called paradoxical temperature increase. Paradoxical temperature increase is a psychobiological measure of PTSD.

Q Okay. Let me just cut you off for a second. I just want to know if you picked up the phone and called the guy she says that's been beating her for the past two years. Did you talk to him?

A No, I did not.

Q Okay.

A But I did talk to her mother and family about it.

Q Okay. And that's important. That's half the story, right?

A Yes, yes.

Q Let's talk about -- specifically, let's clarify

this and lay the foundation correctly to make sure we're clear. I believe you already testified -- and, as a matter of fact, isn't it true, in your report, you say under Rule 702 that you specifically relied on the medical records from Conway Hospital, Conway Medical Center; you specifically relied on the nurses' notes, 72-plus pages, voluminous reports; I believe you testified earlier you relied on Horry County Police records, eight pages, plus others in formulating your opinion.

A Yes.

Q Okay. And specifically in that packet of information was a consultation report by Dr. Oduwole. He's a psychiatrist, an M.D. And I want to see if you reviewed this in formulating your report. And you said that you did.

A Yes.

Q Okay.

MR. MUREDDU: Your Honor, could he have a copy of the doctor's report while he's being questioned about it?

THE COURT: If he needs it.

MR. MUREDDU: Would you like a copy?

THE WITNESS: Yes, please.

MR. HIXSON: Okay.

Q I would love to have you read it. If you want to read it, that will be great. Not that you haven't before. I'll give you a moment to get oriented with it.

I'm going to ask you some questions specifically past psychiatric history. That is the second paragraph on Dr. Oduwole's report. Okay? So let's make sure we're on the same page before we get confrontational. Okay? So this report was written April 10th of 2015; isn't that correct?

A (Shaking head affirmatively.)

COURT REPORTER: Is that yes, sir?

Q Okay. That's one day after the birth of the child; correct?

THE COURT: You need to answer, please.

Doctor, you need to answer out loud.

THE WITNESS: Oh, I'm sorry. Yes.

Q We agree that this was written one day after --

A Yes.

Q -- the birth of the child. And isn't it true that your report was written 14 months after?

A Yes.

Q In other words, May 16th of 2016?

A Yes.

Q So one day after Ms. Taylor put her baby in a

trash can, she told a psychiatrist -- the patient -- the psychiatrist says the patient has no significant past history of psychiatric illness. And you are aware of that as you formulated your opinion; is that correct?

A Yes.

Q Okay. Also --

A I know where Dr. Oduwole said that.

Q That's right. That's what I mean. That's the basis for your opinion.

A Right.

Q She specifically reports to you -- reports to Dr. Oduwole and you reviewed it for your opinion that she has always been a very happy person. She's not depressed and she has never taken any antidepressants before. That was the clinical impression at that time; is that correct?

A That's correct.

Q Okay.

A That he got.

Q That's what she told him. I draw your attention to the report that you relied on in forming your opinion on the next page, sir. And that's "Family History." Under "Family History" -- it's on the next page if you'd like to see if you contest that or you

relied on that in formulating your opinion.

In this, Dr. Oduwole states that the patient says she denies any history of abuse. She denies any history of physical, emotional, or sexual abuse by anyone. Were you aware of that when you formulated your opinion?

A Yes, yes.

Q Okay. One of the reasons I'm specifically talking about this is I would like to refute point by point -- we have substantial evidence that each one of these points in Dr. Oduwole's report aren't present. So let's keep going. Okay?

So when don't have any abuse, by Dr. Oduwole. We don't have any sexual abuse. No psychiatric problems. Let's talk about the next one: Mental status evaluation. It's in the same report you relied on to form your opinion.

A Yes.

Q Okay. She tells Dr. Oduwole, "She appears to have good attention and concentration." Okay?

A Um-hum.

Q "She denies any psychotic symptoms. She has no symptoms of mania." And follow along right here and see if you agree with this, "Her mood is very depressed at this time because of the situation she has found

herself in. She is very sad at this time but denies any depressed mood."

A Well, I don't see where it says "based on the situation she's in." He just said that the mood is, obviously, very depressed, very tearful, and quite emotional.

Q Okay. I'll show you right here. Do you want the highlighted copy? "Mood is very depressed at this time because of the situation that she found herself in."

A Okay.

Q See it? This is the one I want to talk about here: Confusion. One day after an M.D. says, "She appears to be cognitively intact with good attention and concentration. She is able to follow commands. She responds to questions appropriately. The only diagnosis of psychiatric symptoms that she reported at this time is nightmares because of what she did."

A Um-hum.

Q Okay. And you are aware of all of that --

A Yes.

Q -- when you write a report one year later to say that she's confused, that she's irrational --

A Yes.

Q -- that she's agitated --

A Yes.

Q -- that she's anxious. She is anxious because of what she did.

MR. MUREDDU: Argumentative, Judge. Objection.

A That's what Dr. Oduwole said.

THE COURT: Sustained.

Q No, this is what you said.

THE COURT: Ask a question.

MR. HIXSON: Thank you, Your Honor. I apologize.

Q Okay. Did you have an opportunity to review the nursing notes?

A Yes.

Q I'll bring your attention to this. I'm not trying to trap you. That's in black and white.

A Um-hum.

Q Okay. At the time of her intake, she denies injuries from another and says -- you considered this and when you said that you relied on this for your opinion, that she appears in no apparent distress; she's comfortable but her behavior is flat.

A Yes.

Q Isn't that safe to say? Wouldn't you agree that is kind of clinically in contradiction to extreme agitation?

A That can be transient.

Q Okay. Let's talk about transient.

A A lot of what was observed in the hospital can actually be an extension of this, but -- because Dr. Oduwole is a hospital psychiatrist. And the main focus of this evaluation, when you read all the notes, was to determine whether she was suicidal or homicidal and could or could not leave the hospital. He did not do an in-depth comprehensive forensic evaluation. This was a clinical evaluation of short duration just to determine whether a patient's okay for discharge.

Q You're exactly right. That is exactly what you said in your report.

A Yes.

Q I'm going to question that. That's one of the conclusions you put in your report. As a fundamental point, Dr. Oduwole works for a healthcare, and, specifically, Conway Medical Center. He doesn't work for anybody else. He's not hired by -- isn't it true that he's not hired by defense counsel, he's not hired by the victim's family, defendant's family. He's not hired at all?

A That's correct.

Q This patient came in the door -- and you're a very learned person. I don't want to be insulting. He's a medical doctor, and as a psychiatrist --

A Yes, but also --

Q -- and you are an expert in --
A He also works at numerous places, including The Lighthouse, Grand Strand, and other places.
Q That's right. I'm sorry.
Let me just bring a couple other little points out of the -- the point of my -- let me make sure I'm clear. The point of my cross-examination on Dr. Oduwole's report is that you knew this information, you took that into account when you came with a clinical diagnosis of all these factors --
A Yes.
Q -- and you ignore all of this.
A I didn't ignore it.
Q Because to use a validation scale is directly contradictory -- it can't be both --
MR. MUREDDU: Your Honor, I'd object. He's arguing with the witness.
Ask a question, please.
A Yeah, it is not at all uncommon for busy psychiatrists to talk to people and come to a conclusion or make observations that is inconsistent with an in-depth comprehensive forensic evaluation.
Q Fair enough. Fair enough.
In the course of your -- let's talk about some of the findings in your report, some of the other

information that you had and you took into account when you wrote this. And I'll specifically refer you to the interview with the Defendant's mother. Okay?

Do you recall -- and I'll refer you to the page of your report. I believe it is page 7. And it's the sixth paragraph down.

A Page 7? Yes, sir.

Q Page 7, sir.

A Okay.

Q That some of the information that you considered was the fact that her mother told you that Shelby was, quote, "naive, immature, and a bad liar"?

A Yes.

Q Okay. Also, as it relates to the normalcy of the family life, that your understanding was -- and that's the last one above your clinical analysis -- that the patient's mother indicated to you there's nothing more shocking than what's happened here in her previous life prior to this. There wasn't any more shocking incident than -- nothing more shocking than what's happened here. Is that what you mean by that sentence?

A Right. That was the mother's reaction.

Q Yes. I'm just trying to see what the major depressive incident was, if the most depressing incident in your opinion is, according to the

information that you got, was this is the worst thing that's happened so far.

A Well, that's partly denial on the mother and on the family's part. Going back, Shelby has suffered from what's called persistent depressive disorder. Persistent depressive disorder is a low-grade depression. It used to be called dysthymia in DSM-IV. It's primarily not biological in the early beginning. And it goes back to, in her family, the conflict involving her parents that ultimately wound up in their divorce. So she's had a low-grade depression most of her life --

Q Okay.

A -- that then exacerbated into a major depression which predisposed her to being overwhelmed during this delivery.

Q Okay. I understand that. Let me draw your attention to page 20, on the 20th page. As you relied on Dr. Oduwole's concern over, "There doesn't appear to be any psychotic issues" -- well, you read his report. You know exactly what he says.

On point 18, on the bottom, you write that, "There are presently situational contributions to the patient's mental status, for she is on a high-level state of distress awaiting trial and prosecution for

attempted murder."
A Yes.
Q All right. Isn't that consistent -- precisely consistent with Dr. Oduwole's opinion when he says there's no prior psychosis but she's stressed out now?
A No. That's -- that's only consistent with what it says, not that she wasn't psychotic then. Anyone awaiting trial and prosecution for anything is going to be in a state of high distress, usually.
Q Yes, sir. I'd also like to draw your attention, then, to 19 and touch on a few more points and sit down.

On page 19, you discuss the vulnerability factors to suffer from this mental disease -- or it's not a disease; it's a disorder. Isn't it true that, in your report you say, "Peripartum depression is a combination of factors." Okay? Do you see what I'm talking about in your report?
A Yes.
Q And the contributing factors are fatigue, and this would be in a mother that had a child; if you're married and have a child, it's a husband and wife situation; is that safe to say? If you're married and have a support system for that?
A Um-hum.

Q So factors are fatigue, sleep deprivation, anxiety, awareness of increased responsibility, and lack of partner support all play a critical role in this diagnosis. And that's what that says?
A As risk factors contributing, yes.
Q Are you aware of a single newborn couple, husband and wife, that do not have every single one of those factors: Fatigue, sleep deprivation, anxiety? I'm a parent now, and my husband isn't doing enough to take care of the baby?
A There's a lot of parents who don't have those symptoms. Some parents are delighted, elated, happy, optimistic, proud.
MR. HIXSON: Beg the Court's indulgence just for a moment.
Q One final question. Let me make sure I understand, you know, the features associated with your specific diagnosis.
Persistent depressive disorder. And had to exist for two years prior to; right? So if you interviewed them one year after, the persistent depressive disorder has to --
A No, no. Actually, persistent depressive disorder for her started in her childhood.
Q Okay.

A And extended -- was intensified during high school when she had a lot of academic problems and so forth.
Q And I just, if you can help, I had -- I got every other nomenclature that you used, but this transient nature of this psychotic episode, I can't find it in DSM-5. Where is the transient nature that you assigned to this that it somehow could exist and then disappear at will almost? Where is the transient diagnosis in DSM-5?
A Right. It's part of the post -- the peripartum/postpartum depression nomenclature and explanations.
Q Well, with peripartum onset, can you find that?
A Well...
Q That's peripartum onset for what you diagnosed her for, and there's no transient nature to it. It doesn't just go away.
A Psychosis can be transient or persistent.
Q Is that in there?
A And that's -- yeah, with psychotic features.
Q That's not transient features. If you're psychotic, you're there. You don't just get arrested and it goes away.
A No, you commit another one. I've worked in hospitals where people were psychotic, given medication

and treated or not had anything done, and their psychotic symptoms dissipated and then came back several days later. It has to do with brain chemistry.

Q I'm going to be very polite and respectful to you. I'm sure that's true, but it's not in DSM-5. And your testimony was DSM-5, 300.4, has transient peripartum psychosis. And the transient nature is not listed in DSM-5 under that.

A Yes, it's in the literature.

Q Okay. Fair enough. Literature.

A It's in the medical literature and it is in DSM-5.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: Redirect?

MR. HIXSON: Nothing further, Your Honor.

THE COURT: Okay. Thank you, sir. You can step down.

(Witness excused.)

THE COURT: You may call your next witness.

MR. MUREDDU: Your Honor, at this time the Defense rests.

THE COURT: Okay. All right, ladies and gentlemen. At this point in time, the Defense has rested its case. I have an issue of law that I have to take up outside of your presence. We're not going to

break for lunch just yet. We're going to take a short break, and I'll be back with you in just a few moments as far as plans for the rest of the day. Okay? So do not discuss the case, keep an open mind, and I'll be back with you in just a few moments.

(WHEREUPON, the jury exited the courtroom at 12:03 p.m.)

THE COURT: Where are you on reply?

MR. HIXSON: We're good.

THE COURT: You're not going to call any? Okay. All right. Like I said, we're going to do that other hearing at 1:00?

MR. HIXSON: Yes, sir.

THE COURT: So let's do this. I'm going to bring them back in here and release them for the day, tell them to come back at 9:30 tomorrow morning, and then we can do motions at that point in time; they'll be gone. And then we can -- we either got to talk about jury charges at the end of the day or talk about jury charges before I start that other hearing.

MR. HIXSON: An e-mail by counsel in the next hearing, they were flexible to somewhat a degree. In other words, I don't think it would bother them if it was pushed back an hour or so.

THE COURT: Okay. Let's bring them back in here,

and I'm going to get rid of them for the day and tell them to come back at 9:30 tomorrow. Fair enough?

MR. MUREDDU: Thank you, Your Honor. Fair enough.

THE COURT: All right. Let's go ahead and bring them back in real quick.

(WHEREUPON, the jury came into open court at approximately 12:07 p.m.)

THE COURT: All right. This is only going to be real quick, so just grab a seat.

All right. So here's what we're going to do. The Defense has rested its case. The State is not calling any reply witnesses. So the only thing left for us to do is to give the closing arguments and for me to tell you what the law is, and then you'll be allowed to begin deliberating. Okay?

I have a hearing that is set for this afternoon that has been set on a case that has nothing to do with this case that's permanently assigned to me that has people coming in from literally all over the state to participate in, and it will take all afternoon.

So what we're going to do is we're going to break for the day, because I'm going to send you home right now. You're not allowed to talk about the case. You're not allowed to form any opinion on the case. You're not allowed to do any research on the case.

You're not allowed to watch any news media about the case. You're not allowed to let anybody talk to you about the case.

When you come back tomorrow morning, I want you just like you are right now. The attorneys will have an opportunity to come before you and make closing arguments. I still have to tell you what the law is in South Carolina as it pertains to the issues that have arisen in the case, and then you will be allowed to begin your deliberations. And doing it in the morning is good. Everybody comes in fresh, we do them, and then no one feels like there's any time constraints. Okay?

So you're not allowed to discuss the case. You're not allowed to do any research. You're not allowed to watch the news or read or listen to the news. And when you come back tomorrow morning, I want you just like you are right now, well rested and ready to go. Thank you for your hard work today. We're going to start tomorrow morning at 9:30, and we will see you then. Thank you very much. Have a nice day.

Everyone else, remain seated.

(WHEREUPON, the jury exited the courtroom at 12:09 p.m.)

THE COURT: All right. Motions?

MR. McCOLLUM: May it please the Court?

THE COURT: Yes, sir.

MR. McCOLLUM: Your Honor, at this time, the Defense would renew its motion for a directed verdict, also renew all objections previously made, and renew all motions previously made.

THE COURT: Okay. And your motions are noted for the record, and I believe you've raised them at the appropriate time, and my ruling upon them is the same based upon the existence of the evidence and not the weight of the evidence in the light most favorable to the non-moving party. The motion for directed verdict is hereby denied.

Okay. When do y'all want to talk about charges? Do you want to do it now? Do you want to go to lunch and do it? What you want to do?

MR. McCOLLUM: You have that other hearing at 1:00?

THE COURT: Well, they can wait. I mean...

MR. HIXSON: I think in the morning --

THE COURT: I mean that with all due respect.

MR. HIXSON: SCDC is late, usually, too, so...

THE COURT: SCDC is usually late and all that kind of stuff, so...

MR. McCOLLUM: I think that it may be somewhat

lengthy, so I would -- maybe it's better if we do it in the morning.

THE COURT: No, we're not doing it in the morning. We're doing it right now or after lunch.

MR. McCOLLUM: Oh, okay. I'm sorry.

THE COURT: I plan on having this charge crafted by the time I leave here today.

MR. McCOLLUM: All right. Well, whatever the Court's pleasure, whenever you want to do it.

THE COURT: All right. Well, let's go ahead and do it.

All right. Let's start with -- I'm going to go through the charge, because I know y'all are not familiar with my charges, so you know what I normally say. And once we get a finalized charge, I will e-mail everybody a copy so that you know exactly what I say and what I don't say so it doesn't -- hold on one second.

(Discussion off the record.)

THE COURT: So I start with a paragraph that says, The indictment charges the Defendant with the crime of attempted murder. I remind you the fact that the Defendant was arrested, charged, and indicted is not evidence, simply the document that contains the charge against the Defendant.

I then go into the duties of the jury and the trial judge. It's my responsibility to preside over the trial of the case, rule on the evidence. You're to consider only the competent evidence before you. I have the additional duty to charge you the law in this case. You have to take the law as I give it to you whether you like it or not. You're the sole and exclusive judge of the facts. I can't tell you what the facts are. Don't infer from anything I've done as to what I think the facts are and what I think your verdict should be.

Let's see. There's not multiple defendants so take out "multiple defendants."

I then go into the presumption of innocence. I go in, It's an important rule of law that no matter what the seriousness of the charge may be, she is presumed innocent. They have to prove evidence -- by evidence that satisfies you beyond a reasonable doubt. It's like a robe of righteousness. It's not a mere legal theory. It's a substantial right.

I then explain reasonable doubt. I use Victor versus Nebraska. Take the other language out of there. That's the wrong one. Yeah, that's the right one. I'm sorry.

Proof that leaves you firmly convinced of the

defendant's guilt. There are very few things in this world that we know with absolute certainty. So on and so on.

Okay. And then I go into what is not evidence. I tell them statements and arguments of the attorneys, questions and objections, those are things that are not evidence. I then go through direct and circumstantial evidence. I give the new circumstantial evidence charge. Then I go through the credibility of the witnesses. You can believe all, some, or none; it's your duty to determine this.

I then go through an expert witness and the things that they can consider in evaluating an expert witness. And then -- okay. And then so take out failure of the Defendant to testify.

All right. Then I go through statement of the Defendant, a statement is alleged to have been made. They have to determine whether or not it was made voluntarily and freely, that kind of thing.

And then I go through intent. In order to establish criminal liability, criminal intent is required. There is no way medical science can dissect a person's brain, all this stuff that we've reading for 30 or 40 years. It's a mental state, a conscious wrongdoing. Okay.

Then at that point in time I will insert the charges. We'll come back to that. And then at the end, I do this. I tell them they have a duty to deliberate, they have a duty to discuss the case in a calm, thorough, and courteous manner, listen to each other's views and points of views, and to talk about it and discuss it and to do it deliberately. That means you're not in a big hurry; don't be in a big hurry here. This case is very important to both sides. They all have to be in the room to deliberate. Your verdict must be unanimous.

And then I will have a verdict form, which we're in the middle of creating right now, that tells them -- that gives them the options for a verdict.

So any objection to any of that before we get to the complicated stuff?

MR. HIXSON: No, sir.

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

THE COURT: Okay. All right. So let's start with the crimes charged. What's the State's position on lesser includeds?

MR. HIXSON: Your Honor, as you're aware, State versus Smith stands for the proposition that lesser-included offenses can only be charged if there is some evidence of the existence of the

lesser-included offense. In this case, there is no existence of any of the lesser-included offense. The facts, as it relates to the placing of the baby in the trash bag were conceded to, basically. That is what happened, I think were the words used.

There is no evidence to moderately harm the child. There is no evidence of any other nature of trying to harm the child, just to place -- you know what the facts are. There's no evidence of lesser-included offense under State v. Smith.

THE COURT: Okay. Do you want to be heard on that? What's y'all's position on lesser includeds?

MR. McCOLLUM: Your Honor, our position is that the statute, obviously, 16-3-600, goes through and specifically delineates that each one of these levels of assault, without naming them all, is a lesser-included offense of the greater. We can talk about specific evidence and the inferences from that evidence if I need to.

THE COURT: How do I get around this Middleton case, I guess is my question, where, in Middleton, the guy was -- the two victims in Middleton's case, they were shot at five to seven times. One victim had a cut from a broken glass; that was her only injury. The other victim was not injured in any way. Judge

Buckner -- e-mail me that -- Judge Buckner refused to charge -- they were charged -- the Defendant was charged with attempted murder. He shot at them from one car to another car five to seven times. He was charged with attempted murder, and Judge Buckner refused to charge any lesser includeds as to the victim that said he was not injured. As to the victim that said she was injured, he did charge a lesser included, and the Supreme Court said he should have charged all the degrees of assault and battery. I don't know how I get around that.

MR. HIXSON: I thought that's a transferred intent case, Your Honor, where the intent to do ill will against the shooting --

THE COURT: No. The words "transferred intent" are not in that case. I read it last night.

MR. HIXSON: My understanding of it was it was because one person was cut with a glass but one is the intended victim, and that's why there's a difference. But that's the only way I would distinguish specifically. But it still stands for the proposition that there is no -- is there any evidence that, if the facts as presented, that Ms. Taylor put her baby in with the intent to do minor bodily injury? Is there any intent of sexual misconduct?

THE COURT: Assault and battery of a high and aggravated nature. So where is the evidence that she injured another person and great bodily injury to another person resulted? Mr. McCollum?

MR. McCOLLUM: Does the Court deem that that has to be present? Because in our argument --

THE COURT: There has to be some evidence that a great bodily injury to another person occurred or the act is accomplished by means likely to produce death or great bodily injury.

MR. McCOLLUM: Well, I think clearly that's the State's case.

THE COURT: I mean, how is Section B of that not met based upon the facts?

MR. HIXSON: As it relates -- I would assume that great bodily injury is a likely consequence of putting the baby in the trash can.

THE COURT: Yeah. I mean, I would assume that act is accomplished by means likely to produce death or great bodily injury.

MR. HIXSON: Yes, I think so.

THE COURT: Okay. All right. So assault and battery first degree says, "A person commits the offense of assault and battery in the first degree if the person unlawfully injures another person and the

act either" -- of course we don't have any nonconsensual touching here; obviously, that wouldn't apply -- "occurred during the commission of a robbery, burglary, kidnapping or theft." That doesn't apply. They define "private parts," which wouldn't apply.

And then it says if -- Section 2 says, "If a person offers or attempts to injure another person with the present ability to do so, and the act is accomplished by means likely to produce death or great bodily injury." How is that?

"Great bodily injury means bodily injury which causes the substantial risk of death or which causes serious, permanent disfigurement," blah, blah, blah, blah, blah.

How does that, "Offers or attempts to injure another person with the present ability to do so and the act is accomplished by means likely to produce death or great bodily injury," how does that not apply?

MR. HIXSON: I think that does -- is likely to cause death or serious bodily injury.

THE COURT: I really don't understand the difference between ABHAN and assault and battery first degree, do you?

Now, assault and battery second degree says the same thing, which says, "The moderate bodily injury

results or moderate bodily injury to another person could have resulted." What about that, Mr. McCollum?

MR. McCOLLUM: I think that, you know, in these kind of cases, Your Honor, there are situations where the babies die. They are situations where the babies are found in critical condition. There are situations where the baby is dehydrated and suffers temporary injuries. So, you know, I think those moderate bodily injuries maybe happened in this case or, you know, certainly could have happened.

THE COURT: What about that, Mr. Hixson?

MR. HIXSON: There is no evidence of moderate bodily injury. Either she's fine and she didn't --

THE COURT: No, no. I'm not saying that there's -- there's obviously no evidence that moderate bodily injury occurred, but the statute says, "Moderate bodily injury could have resulted."

MR. HIXSON: I guess, absent being rescued, I don't know how moderate bodily injury could have occurred either -- if we waited a couple hours or if they waited a couple hours to find her and she was more dehydrated. But as it relates to evidence of -- it's evidence of moderate injury, same as minor injury. There is no moderate or minor. Either it's an attempted act to kill or the act would have likely

caused. But I don't know how to moderate -- I don't know how there's evidence of trying to partially hurt the child but not completely hurt the child.

THE COURT: In a bag that's tied shut.

MR. HIXSON: Right.

THE COURT: And it's a newborn.

MR. HIXSON: Yes.

THE COURT: Being put in a trash can.

THE COURT: Right.

MR. HIXSON: There is no moderate. It is or it isn't. I understand the assault likely to cause death, like firing a weapon and missing and they're completely fine, but the mechanism, you know -- anyway, Your Honor understands the State's position.

THE COURT: What about it, Mr. McCollum?

MR. McCOLLUM: Your Honor, this is an extraordinary statute. I think the intent is very clear. Again, it says that it is a lesser-included offense. I don't know why you would chop it off at that level. I understand why --

THE COURT: Because if there's no facts -- if there's no evidence in the record to support it, then the law does not allow me to charge it.

MR. McCOLLUM: In a situation where the child is placed where the child was placed, certainly, if

moderate bodily injured occurred, it would have certainly been foreseeable and likely. It, obviously, has to do with the intervening acts of somebody hearing the child or rescuing the child, but it's certainly different than the intentional killing of the child by strangling the child or some other horrible means. It's is it likely to have happened? Yes, depending on the circumstances once the child was left alone.

THE COURT: I'm listening.

MR. HIXSON: I just happened to think of a way of doing it. The major stepdown from attempted murder and the assault and battery ABHAN in the first is, of course, the malice aforethought aspect of malice isn't required. But if we're going to do a jury charge that relates to the conduct of the Defendant, it's her conduct that determines whether moderate bodily injury was intended or not. Was she improperly touching somebody, which is simple assault and battery?

There was nothing in evidence that indicates that Shelby Taylor intended to unlawfully cause moderate bodily injury. She intended to either -- well, as alleged, to terminate the life of that child. There is no evidence that she intended to just partially -- like leaving the baby outside someone's door in a dehydrated and -- but it was saved. It is all in, and there's

no -- the malice is fine with the lesser includeds, but when you get down there, there is no -- the evidence shows the intention was to unlawfully harm the child, and the harm would have caused death or serious bodily injury. And there is no moderate bodily injury under our fact pattern, from the Defendant's perspective, not from the rescuer's perspective.

THE COURT: Anything else, Mr. McCollum?

MR. McCOLLUM: I would say that, you know, it's a little bit unusual because you have a newborn and a mother. So, in general, you would say that, you know, the mother -- it's not an unwarranted touching, but I think certainly it would be possible or feasible to say that, you know, once she gathered the child up, okay, and placed the child in the bag and took those steps to dispose of the baby, that that is an unwanted touching. You know, that's nothing consensual about that.

I know the child, you know, isn't at the age of consent, but certainly, you know, if somebody observed that, okay, or if her husband got up or somebody saw that and they said, you know, "What are you doing?" You're trying to put a baby in the trash bag. Then, at that point -- you know, I don't know, maybe it would be an attempted murder charge, maybe it would be something else, but the evidence would be, well, she took the

child in a way that violates the law, it's an unwarranted touching, and that cannot happen. She seemed to have some bad intent, I don't know what was wrong with her, but that would be an unwarranted touching. That would be my response, Your Honor.

THE COURT: Okay. Let's talk about this attempted murder charge. All right. So we have this case, State versus King, and I went back and read it last night, because my memory of it wasn't as simple as Mr. Hixson made it seem.

What this case says from the State Supreme Court in October of 2015, it says clearly what is indisputable is that attempted murder is a specific intent crime. That's not in dispute. In the statute, it says, "Intent to kill with malice aforethought, either express or implied." The Court of Appeals never gets into whether "either express or implied," and the Supreme Court here attempts to get into that issue. And they go into this thought process that it is impossible to attempt an unintended result. And they go into this Nevada case from 1998, Keys versus State, where the Nevada court holds that you can't imply malice or infer malice in a specific intent crime. The Nevada court says clearly -- this is a direct quote from the South Carolina case quoting the Nevada case --

"One cannot be guilty of attempted murder by implied malice because implied malice does not encompass the essential specific intent to kill." They say, "Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being when such acts are done with express malice; namely, with the deliberate intention unlawfully to kill."

And then the Court goes through this lengthy, lengthy, lengthy history of ABIK and general attempt and the Omnibus Crime Bill and all these things. And then they go, basically, include the section with a footnote where they suggest to the General Assembly to reevaluate the language following malice aforethought as to the inclusion of the word "implied malice," because it is arguably inconsistent with a specific intent crime. And then they directly quote the Nevada case again saying you can't attempt to kill another person with implied malice because there is no such criminal offense as an attempt to achieve an unintended result.

So I'm open to suggestions on what the malice charge and the specific intent charge says and what it shouldn't say. I've read the Nevada case, it's Keys versus the State of Nevada, 104 Nev. 736, December 1988, Supreme Court of Nevada. In Keys, one

man was shot. That conviction was fine. The second man had a gun pointed at him and pulled the trigger twice and the gun failed to fire and the gentleman escaped. They made a specific request for specific intent to kill. The Court didn't give it. They said that's wrong. And then they go into this discussion of the idea that you can imply malice in a specific intent crime is, you know, basically almost like a falsity.

So what's the State's position on what should be charged with malice?

MR. HIXSON: I think, specifically, if you're dealing with the existing charges, I think the Court's standard charge is malice is -- express or implied malice is not two separate types of malice, to start with.

THE COURT: Right.

MR. HIXSON: It's two ways to prove the existence of malice.

THE COURT: Right.

MR. HIXSON: It's an evidentiary feature, not a mens rea feature. In other words, maybe the problem is the term "implied," like Belcher, inference versus an implication. But there is no question -- I think it's probably irrefutable that, in a murder case, you can use the circumstantial evidence leading up to a crime

without an expressed "I'm going to kill you" to use that to show the existence of malice was there at the time the crime occurred. Preparation for -- and, you know, you get an idea of what we're going to talk about as it relates to malice in this case.

So -- and I understand in Mouzon -- and it's probably a good thing to do is to shy away from general malignant recklessness, to not use that term, and the charge the State would request would be, "Malice does not necessarily import ill will towards an individual injured but signifies, rather, a condition of mind which shows a heart regardless of social duty and fatally bent on mischief."

It is difficult to imagine that the Court and our legislature would intend to have a lesser standard for murder -- you kill a human being and you can use express or implied malice, but if you don't kill them, you can't use implied malice; you have to use the word "I'm going to kill" and then do it.

And I do understand the Court's concern. You can't attempt to do something you wouldn't intend to do, but that seems like it goes to the recklessness mens rea rather than -- in other words, there's only a handful of criminal cases that we can actually use recklessness and that is, you know, child endangerment

and things like that where you -- or felony reckless homicide.

So I can understand the Court shying away from that you didn't say, "I'm going to attempt to kill him." You can imply it through recklessness. I understand that concern. But it can't be the case that you can't use circumstantial evidence to show malice. And so if that's called express malice or implied malice, I think the problem is the term "implied," not the evidence that's used to show that malice exists at the time, you know, the fatal blow is struck. And we have no problem -- obviously, have no problem eliminating the recklessness nature, to not wade into that problem, because I think that is a substantive problem.

THE COURT: Mr. McCollum?

MR. McCOLLUM: I think that -- I'm not sure if I have this completely right, but on -- in the case we're discussing, State v. King, there's some discussion of this, I believe -- I think this is where I found it, on page 11 down there under -- looks like the third paragraph from the bottom.

THE COURT: Give me the -- where it is in the case.

MR. McCOLLUM: Page 12. Okay, yeah. It's page

12, I think, at the top where they talk about, you know, the attempted murder statute actually having more of an element --

THE COURT: Yeah, I agree with that, yeah. I said that.

MR. McCOLLUM: And they talk about Foust and those things, but they say, while it may be strange, that's what they said. That's what the legislature passed.

THE COURT: I mean, the attempted murder charge that's in the book right now says it does not require specific intent to kill. And that is, obviously, an incorrect statement of the law. So, I mean, the idea that I'm going to say that, I'm not going to kill you, that's not going to be coming out of my mouth. I mean, I'm going to have to say there has to be a specific intent to kill by, you know, with malice aforethought, either express or implied, which is exactly what the statute says.

The issue is how does inferred or implied malice get defined? It will not be defined by a deadly weapon, which is, obviously, not an example in this case that meets the facts. And I don't know that it can be defined by any type of recklessness or unintentional behavior. But, I mean, it's clear that attempted murder -- I'm going to have to tell them

attempted murder is a specific intent crime.

MR. McCOLLUM: And we're asking for that, obviously.

THE COURT: Yeah, I'm going to do that.

MR. McCOLLUM: In terms of the implied malice or malice can be inferred, is that the same thing, implied and inferred?

THE COURT: You know, you can infer malice from the use of a deadly weapon. You can imply malice based upon the circumstances shown to have existed surrounding the offense.

MR. HIXSON: It's basically a circumstantial evidence charge. Very rarely in any case do you have, "I'm going to kill him," and they go do it. You have to say, you got a gun, you went over, drove over to her house, kicked the door in. You know, all those things show that they intended the act that they did. And that's an evidentiary ruling, not a mens rea ruling.

MR. McCOLLUM: You know -- and maybe the circumstantial evidence charge clarifies that.

THE COURT: Well, the circumstantial evidence charge is very pro-defendant. Do you want me to read it to you?

MR. McCOLLUM: Not if it's pro-defendant.

THE COURT: The way the circumstantial -- I mean,

Rockwise spent his entire adult life getting the circumstantial evidence charge changed, and it is charged, but, you know, it's basically all the circumstances must add up. If one of them doesn't add up to prove this issue, then you can find reasonable doubt based on that. I mean, that's a very -- I'm doing that off the top of my head. I'm not reading it.

MR. McCOLLUM: That was the old version.

THE COURT: No, that's the new version. Yeah, the new version -- here, let me just -- it will be easier just for me to read it.

MR. McCOLLUM: I don't need to hear it, Your Honor.

THE COURT: It will make me feel better. Hold on.

MR. HIXSON: It's the law of the land, Judge. That's it. That's the one.

THE COURT: What it says is circumstantial evidence is -- they can be -- "Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight and the value to be given to either direct or circumstantial; however, to the extent that the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these

circumstances merely portray the defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the Defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether they rely on direct evidence, circumstantial evidence, or some combination of the two."

So there is a -- that circumstantial evidence, which, two or three years ago, wasn't even in there, has really been beefed up or made stronger.

All right. Anything else on the charges?

MR. McCOLLUM: The only thing, Your Honor -- and, obviously, we go into great lengths to make sure you get this right. Just for the record, we object to the inferred malice on the same grounds that we think it's implied malice, relying on State versus King.

THE COURT: Okay. All right. Here's what I'm going to do. So I'm going to charge attempted murder. I'm going to charge ABHAN. I'm going to charge assault and battery first degree. I'm not charging assault and battery second degree or assault and battery third degree. I understand that the statute says that those are lesser includeds, but based upon the facts that are now before this Court, I mean, the facts, essentially, are not in dispute at this point in time. She has

admitted that she was pregnant, that she birthed a child, that she put the child in the trash, that she tied the bag, and that she put the bag in the dumpster and left the baby there and went about her normal daily routine, everything from napping in the morning to taking her older child to the doctor to going to visit her mother in the afternoon.

I do not believe that there is any factual scenario that can be contemplated where that could have been an attempt to commit a moderate bodily injury. If the child was left outside of a door or in some other scenario beside -- and the other thing that I'm taking into consideration in that ruling is the age of the child. There is -- this was a child that was brand -- I don't know how to say it other than brand new. She admitted that she had the child and immediately set out upon this behavior, prior to her husband and her other child waking up. She also admitted that she put the baby in the trash can. She also admitted that she went back in the house to do what she could do prior to the husband waking up to conceal any evidence that anything had occurred.

I just don't know a scenario, you know, where you -- a brand-new newborn baby who is minutes old is put in a trash bag, and the bag is tied, where an

assault and battery second degree or an assault and battery third degree factual scenario can ever play out, even taken out to their wildest contemplations. That's just foreign in my mind, and I think that the evidence -- I mean, I understand her case, and I understand their point of view.

And the issue is the existence of the evidence, and the existence of the evidence at this point is the State's case which, you know, she admitted on the stand that basically everything that the State thought that happened, happened. And I just don't know a factual scenario where an assault and battery second degree or an assault and battery third degree can even be logically contemplated under the law. And so I will charge attempted murder. I will charge specific intent. I will charge ABHAN. I will charge assault and battery in the first degree.

Once we finish this other hearing, I'm going to spend some time crafting the malice charge to make sure that it does -- and I think, when I read these cases, and I sat there and read these cases over and over again last night with everything in the room off -- and sometimes that's just what I have to do to be able to process through them. I think the biggest issue is the Court continues to say and to quote that it is

impossible to an attempt an unintended result. So as I think about implied malice, it cannot be something to do with recklessness or malignant recklessness. That type of stuff has got to come out of the malice charge.

I think that's where the rubber really meets the road, is that you can't -- it can't be some form of general disregard or malignant recklessness. You can't have an intent. It's impossible to attempt an unintended result, and it's the unintended result. I think you can still have a dark and depraved and evil heart that is based upon intentional conduct in the facts as they played them out in the courtroom without getting into an unintended result or an unintentional, excuse me, result.

MR. HIXSON: To bring up one point I forgot.

THE COURT: Yes.

MR. HIXSON: Just relates to the charges.

I had mentioned a couple of days ago about State versus Ballington, and I wanted to request that relating to review that for a malice charge. In Ballington -- I have the copy for the Court. In that, the specific holding of that is that the husband spent quite a bit of time lying about the circumstances surrounding his wife's death to law enforcement. And the Court in Ballington said that malice may be

inferred from efforts by the Defendant to lie to police to cover up the crime, that that evidence was appropriate for the prosecution to use to infer there was malice by trying to cover up the crime.

Specifically, they refer to State versus Arnold in that and State versus Judge. And in that case, Judge -- it would maybe help the Court -- Judge defined malice as a wicked condition of the heart, a wicked purpose, a performed purpose to do a -- a performed purpose to do a wrongful act. And that was based on attempt by the Defendant to mislead police as to who committed the crime as one indicator of the presence of malice, so...

THE COURT: All right. Pass those up.

MR. HIXSON: And then Mouzon -- I'm sure the Court already knows Mouzon, but I have a copy.

THE COURT: Yeah, pass all those up. I don't have good access to a printer, so...

MR. McCOLLUM: Should I say anything about Ballington now?

THE COURT: If you want to, yes.

MR. McCOLLUM: The only thing I'd say, Your Honor, is it's a 2001 case, Court of Appeals. The issue before the Court is that you've got that King case, which is very specific as to this charge. And there's

nothing subsequent to that. And it's a South Carolina Supreme Court opinion that the Court has relied on up to this point.

THE COURT: Okay. I'll read both of these. And then once we finish up this other hearing this afternoon, I will -- I'm going to craft something, and then I'll send it out to everybody so that everybody can see it, so that no one is caught off guard. Okay?

MR. HIXSON: Yes, sir.

THE COURT: All right. Now, my mind is blank at this moment because I've been thinking about the King thing so much. So how are closing arguments going to work?

MR. McCOLLUM: Your Honor, before you go to that, may I just put something on the record?

THE COURT: Sure, yes.

MR. McCOLLUM: Because I don't think it's been clear that I've requested the statute. I respect Your Honor's ruling on the jury instruction.

THE COURT: Right.

MR. McCOLLUM: Just for the purposes of the record, I would just say that the Defense is requesting a lesser-included offense on all the assault and battery types under 16-3-600; specifically, the Defense has asked the Court to charge as a lesser-included

offense that section, subsection (D)(1), which is assault and battery in the second degree, and citing specifically subsection (3) where the statute says assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined, assault and battery of a high and aggravated nature, as defined, and the section of attempted murder, as defined.

THE COURT: Okay.

MR. McCOLLUM: Additionally, Your Honor, we're also going one step further and asking, under the same statute, 600, we are specifically asking that the Court instruct the jury regarding assault and battery third degree, subsection (E)(1), which is assault and battery in the third degree. Also noting in subsection (3) of that statute, assault and battery in the third degree is a lesser-included offense of assault and battery in the second degree, assault and battery in the first degree, assault and battery of a high and aggravated nature, and attempted murder.

So, respectfully, Your Honor, we are asking for those instructions. We understand the Court's ruling. We're not trying to argue with the Court's ruling.

THE COURT: I don't think you are.

MR. McCOLLUM: But I just want the record to be

clear that we have asked for those instructions, Your Honor.

THE COURT: And you sure you don't want me to charge those other two?

MR. HIXSON: I'm pretty sure.

THE COURT: Okay. If you change your mind, let me know.

MR. HIXSON: Well, on the second and third?

THE COURT: Yeah.

MR. HIXSON: No, sir.

THE COURT: Okay. All right. So I haven't read State versus Beaty in a month, so remind me of how closing arguments work now since they put up a case.

MR. HIXSON: Counsel put in evidence, so I -- unless -- a lot of times in the circuit, we've been saying, Do you want to close on the law or do you want me to come back to close on the law? So open -- and I get a rebuttal at the end because he put evidence in.

THE COURT: Are you requesting that they open in full?

MR. MUREDDU: Yes.

THE COURT: Okay.

MR. MUREDDU: Yes, sir, Your Honor.

THE COURT: So the State closes in full, the Defense is allowed to give a closing argument, and the

State is allowed to reply --

MR. HIXSON: Yes.

THE COURT: -- to something that the State said in their closing -- that the Defense said in their closing.

MR. HIXSON: So two bites at the apple instead of one.

THE COURT: Yeah.

Okay. Any questions about that?

(Discussion off the record.)

MR. MUREDDU: We agree with that, Your Honor.

THE COURT: All right. So the State's going to close in full, the State -- the Defense will give their closing argument in full, and then the State will be allowed to reply to something that the Defense says in rebuttal. Is that the way everybody agrees?

MR. HIXSON: Yes, sir.

MR. MUREDDU: Yes, sir.

THE COURT: And, Ms. Taylor, I thank you for being here on time today. And, again, today your behavior was exemplary and there were not any issues or problems, so I'm going to allow you to stay out.

Now, tomorrow morning, once closing arguments are over and I've done the charge, you know, what I want to do -- I don't know that we need to take her in custody

and take her in the back, but she can kind of -- as long as she stays in here and doesn't leave, and then if we make it to lunch and just depending on how far we make it, we will need to take you into custody tomorrow. But, you know, as far as the morning goes, of course, I'd never let the jury see you in any handcuffs or anything like that.

THE DEFENDANT: Okay. Thank you.

THE COURT: But make sure you have the things that you need with you. Okay?

THE DEFENDANT: All right.

THE COURT: And then so it's ten till 1:00. Let's start that death penalty hearing at 2:00.

(WHEREUPON, the hearing concluded at approximately 12:50 a.m.)

(End of Transcript of Record)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, TERESA J.F. BAUTZ, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 23rd day of May, 2018.

I FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

S/Teresa J. F. Bautz

TERESA J.F. BAUTZ, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF HORRY	)	**2015-GS-26-01938**
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	**Transcript of Record**
	)	
vs.	)	
	)	February 8, 2018
SHELBY HARPER TAYLOR,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Robert E. Hood
Horry County Courthouse
Conway, South Carolina

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Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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(FEBRUARY 8, 2018)

(REPORTER'S NOTE: The following takes place outside the presence of the jury.)

BY THE COURT:

THE COURT: All right. Good morning everybody. I know there's a lot of people in here so I wanted to kind of explain the delay. I do my best to run things as efficiently as possible. All the lawyers and all the court staff including me were all here probably before 9 o'clock this morning, and the court reporter that we've had all week is sick. She was sick last night, she was sick again this morning. And she decided to come in any way and she looked at me and she said, if I get up and leave in the middle of the arguments, I just want you to know I'm sick. And so I said, well, let's go ahead and see if there's another court reporter available. So, Ms. Dixie, who has been a court reporter for a few years came in. She had to drive all the way in from Murrells Inlet, so that's what the hour-long delay has been, her getting in and then getting set up. So, I sincerely apologize to everybody. Some -- as much as I like to think I'm in control of things, some things are out of my control.

So, the first thing we need to deal with this morning is a juror. So, can you go ask Mr. Danna to bring in Juror Number 135, please?

BAILIFF: Yes, sir.

(REPORTER'S NOTE: Juror 135 enters courtroom.)

THE COURT: All right. Come on over, sir. Just stand -- you're good right there. And you are Mr. Gibson; is that right?

JUROR 135: Yes, I am.

THE COURT: You swear everything you're about to tell me is the truth?

JUROR 135: Yes, it is.

THE COURT: Okay. The clerk brought it to my attention this morning that you made a statement to her about not feeling like you could be fair and impartial or -- help me with that information.

JUROR 135: Yes, that's correct, Your Honor. I worked with one of the family members for a long time and ---

THE COURT: Right, you were the manager ---

JUROR 135: Manager at Lowes.

THE COURT: Manager at Lowes.

JUROR 135: We interacted quite a bit when I did work with that just one person and knowing how it's gonna affect the, you know, the family, you know, this trial and whatever may happen with the defendant, I just felt like it's gonna be hard for me to make a unbiased decision in the matter.

THE COURT: Okay. And do you -- and you've done the right thing, number one, by bringing this to my attention that you are following my instructions and doing exactly what I

would ask you to do.

Is there anything there anything the state requests that I ask this gentleman? Mr. Hixson?

MR. HIXSON: No, sir. Appreciate your honesty.

THE COURT: Okay. And Mr. Mureddu?

MR. MCCOLLUM: Nothing, Your Honor.

THE COURT: Okay. All right. So, Mr. Gibson, you are excused from the trial of this case. I want to say on behalf of the citizens of Horry County thank you very much for your service this week. You have been here every day. You have paid attention. You've stayed with us and you've done the right thing this morning by letting us know this information. You've told us the truth and I promise you that I sincerely, and the parties sincerely appreciate that honesty. You will be excused. You will not need to return today or return tomorrow in any way shape or form. This is exactly the reason why we have alternates, so you do not need to feel bad about it. You have done the right thing. And Ms. Danna can show you how to -- or the officers can show you how to get out.

JUROR 135: Thank you.

THE COURT: Thank you very much for your service, Mr. Gibson. All right. Good luck.

(REPORTER'S NOTE: Juror 135 excused and exits courtroom.)

CHARGE CONFERENCE:

THE COURT: Okay. So, the rule is in criminal cases we

draw alternates. In civil cases, they go in order; in criminal cases they are drawn. I had to write that down because finding that rule is a nightmare.

So, the two alternates are Mr. Holmes and Mr. Hazzard; is that right, Janet?

CLERK: Yes, sir.

THE COURT: Okay. All right. And you got their names in a cup?

CLERK: I do.

THE COURT: All right. Let Bailey draw out of there.

Okay. So, we have drawn out of cup for Mr. Holmes and/or Mr. Hazzard. And the, the alternate that will be seated will be Dontre Hazzard, Mr. Hazzard, Juror Number 168. And so I'll let him know that when he comes out.

Okay. Is there anything we need to take up from the state before we begin?

MR. HIXSON: I apologize, no. I was talking to co-counsel, I'm sorry.

THE COURT: Now, anything from the defense before we begin?

MR. MCCOLLUM: Your Honor, just briefly. I know Your Honor has spent a lot of time and energy and thought on the jury instructions, and I would like to register an objection to two parts of the charge, Your Honor. One is that the phrase, just before the attempted murder, I think this is

criminal intent. It's ---

THE COURT: Criminal intent can arise from an action or a failure to act. It may arise from negligence. I actually marked that out five minutes before walking in here. So, as I was reading and pondering through the charge one more time, I marked out that entire paragraph. Is that what you were gonna ask me to do?

MR. MCCOLLUM: Yes, sir.

THE COURT: Okay. I read your mind, Mr. McCollum.

MR. MCCOLLUM: And then the other thing, just below there, and I know it's in the statute and that's the odd thing.

THE COURT: Right.

MR. MCCOLLUM: But the first paragraph where it says murder ---

THE COURT: Where is says expressed or implied?

MR. MCCOLLUM: Yes, sir.

THE COURT: Okay. Now, for the record, the defense put all these motions on the record yesterday and I believe they are protected for the record under that. And that I am -- I am expressly leaving -- I am leaving the terms express or implied in the definition of attempted murder because that is the statutory definition of it that was created by our legislature. And so, your objection is noted for the record on that issue.

MR. MCCOLLUM: And Your Honor, I understand that it's odd that I would ask you to charge something other than what the statute says ---

THE COURT: I understand that.

MR. MCCOLLUM: But I just based it on the *State v. King*, which was cited earlier.

THE COURT: Right. And so this -- and so for the record, we worked on this yesterday once the jury was gone. We worked on the jury charges, I worked on the jury charges for hours upon hours yesterday trying to craft -- trying to deal with two issues. The first issue was trying to craft a definition of malice that complied with the statute and that complied with *State v. King*. I have -- the one that I will read today, so that the record is clear is a -- is a mixture of the standard charge definition that is in the book that they provide judges for jury charges. It has some language in it from *State v. King*. It also has some language in it directly from the Nevada case, which the State Supreme Court, our State Supreme Court is, you know, really, that's the majority of the reasoning in the *King* case is that Nevada case. So, it has a good mixture in there. I have taken out any reference to recklessness or unintentional behavior. In multiple places throughout, it goes on to define that it must be an intentional act, and it must be based upon the conduct of the defendant, and I think that's really where the rubber meets

the road. One of the things that I have found in a vast study of the *King* case and of the Nevada case is the difference is the implied malice can focus on not the behavior of the defendant. It can focus on the consequences of the act, whereas express malice focuses on the behavior of the defendant. And I think that's the true distinction when you read those cases, and so I have tried to take out any reference to anything other than the conduct of the defendant, and that's what they may base their decision on. I have also gone in to define, pursuant to *State v. King* that attempted murder is a specific intent to kill charge, and that is in there. So, I have done my best, my level best, to remove any reference to unintentional behavior or recklessness or negligence or anything of that nature in the definition of malice that I give with the attempted murder charge.

And then yesterday, we -- I had decided that I was gonna charge ABHAN, A&B first, and not A&B second and A&B third. By the end of the work day, I had decided to charge ABHAN, A&B one, A&B two, and A&B three. This morning, I had a meeting with the lawyers and upon an extensive review of 16-3-600, I have made the decision and I believe there's no objection from the state and no objection from the defense, but if I'm wrong, they can certainly correct that. The ABHAN statute in this case does not apply because the ABHAN statute is the only one out of ABHAN, A&B one, A&B two, and A&B three that requires an

injury. And at this point in time, based upon the evidence that's in the record, the evidence in the record is the baby was found, the baby was breathing, the baby was alive. The first paramedic, and I think he may've had a different terminology, but the first paramedic/fireman, the first gentleman that was on the scene found the baby, took out his kit, when they have to -- when they have to deliver babies, he removed the umbilical cord, he got out a bulb syringe, and put the bulb syringe in the baby's nose and the baby's mouth, stabilized the baby and I think all the evidence at this point is that the baby was perfectly fine that day, you know, and is still -- and has still suffered, quote-unquote, injury. So, I think the ABHAN statute is inapplicable in this case. Also, I think the assault and battery second and third are also inapplicable because there was no attempt to do moderate bodily injury or no attempt just to injure the child. But I do think assault and battery first does apply. I believe that there's evidence that the jury could find that there was an attempt to injure another person with the present ability to do so, and that the act could've been accomplished by means likely to produce grave bodily injury or death.

All right. Anything from the state on those issues?

MR. HIXSON: No, sir.

THE COURT: From the defense?

MR. MCCOLLUM: No, Your Honor.

THE COURT: All right. So, at this point, the defense is specifically waiving its objection to the lesser includeds and is agreeing that I'm charging them with attempted murder and assault and battery first; is that correct?

MR. MCCOLLUM: That's correct, Your Honor.

THE COURT: All right. Anything else?

MR. HIXSON: No, sir.

MR. MUREDDU: No ---

THE COURT: Okay. All right.

Now, I don't -- I do not put time limits on people; I know that some judges do. This is y'all's opportunity to get up and give your closing arguments to the jury.

I will ask that if you are in the audience and you have a phone, make sure that it is off. Okay? I do not want to hear anybody's phone go off in here.

The second thing that I would ask is that if you are in the audience, I ask that you stay in the audience throughout the entire closing arguments. This is -- these attorneys have lived with this case for years. This is their opportunity to present their case from their respective points of view to the jurors and I think that it is only fair that the jurors not have their attention drawn away from the attorneys by people coming and going.

Now, I know there's a lot of lawyers in the room and I know the lawyers know that when jury charges start, the door

is locked. So, if you do not want to listen to me give a jury charge, which I promise you is not the most exciting thing in the world, once the third closing argument is over, you can slide out the door, I'll let the lawyers slide out at that time. I know that jury charges are not exciting. So, if you want to exit -- so, the state will go first, the defense will go second, the state will go last. Once the state finishes that last time, if you want to slide out, that's your time to slide out if you don't want to listen to me ramble -- or not ramble, but talk for 30 minutes. Okay?

All right. Everybody good? Everybody got the rules? Okay.

All right. Let's bring them in.

(REPORTER'S NOTE: Jury enters courtroom.)

BY THE COURT:

THE COURT: All right. Welcome back ladies and gentlemen and good morning.

Juror Number 135 has been excused for reasons that you don't need to worry about.

Mr. Hazzard, you will be set as a normal juror. You can stay in that seat that you're in but you will be a normal juror and not an alternate in this case. Okay?

JUROR 168: Okay.

THE COURT: All right. Ladies and gentlemen and I do want to sincerely apologize to you this morning. I know that

you were all here and ready to go. As much as I like to control things and make sure things run on time, and I want you to know that all the lawyers were here, all the parties were here, all the court staff was here. Our court reporter, Ms. Terry, who had been with us all week, was sick and she was sick last night, she was sick again this morning. She decided to come in anyway and said, you know, I may need to get up and leave in the -- and it would've just created too much havoc. Okay? So, Ms. Dixie is with us now. And she is a great court reporter. She had to drive about an hour to get here, so we had to wait for her to -- for them to get in touch with her, then for her to get here and then for her to get set up. So, I sincerely apologize for us starting at the hour that we are.

I do have one question that I need to ask you. We are gonna feed you lunch today. So, your choices are Pizza Inn, Chick-fil-A, or Maryland Fried Chicken, or a couple of sandwiches from the Trestle. All right. So, what's the verdict? What's the verdict?

Mr. Foreman, see if you can get a consensus on what they want.

FOREMAN: I brought my own lunch, so ---

THE COURT: Okay. He brought his own lunch. Okay.

What y'all want? You want Chick-fil-A -- pizza. Pizza's good. All right. We'll do pizza.

That's the easiest question you'll have today.

Now, we have reached the point of the trial known as closing arguments. And so, this is the opportunities -- this is the opportunity for the attorneys to come before you and summarize the case from their respective points of view. As with every single thing we do in this courtroom, there is a procedure to how that works. So, the state will be allowed to give their closing argument first. The defense will be allowed to give their closing argument second. And then the state will be allowed to give what we call a reply or a rebuttal argument. Okay? Now, I don't put time limits on lawyers, some judges do, sometimes I wish I did but I don't. This is their case and they've lived with it and this is their opportunity to be heard. So, I ask that you give them your undivided attention. Depending on how long the arguments are, we may or may not take a break before I charge you on what the law is in this case. We'll just kind of play it by ear.

And then, so please give your undivided attention to the attorneys.

Mr. Hixson, are you closing?

MR. HIXSON: Yes, sir.

THE COURT: All right. Yes, sir.

CLOSING BY HIXSON:

MR. HIXSON: Truth, honesty, personal freedom tempered with personal responsibility. The idea that you can do whatever you want in this country but you realize that you're

gonna be held accountable for the decisions that you make. Have we strayed from those ideas? Somehow in 2018, intentional deceit, can that triumph over basic truths. Can convoluted legal theories somehow cloud out common sense? And have we gotten to the point that we can equate a human being with day-old carry out rice and dirty diapers? No. No. Those clouds are lifting and the sunshine of truth is shining in this courtroom that's being going on for three days, and it's gonna shine in this jury room, in your jury room when you begin deliberating on this case. The issues were joined and we finally have one final question for you to answer. And that question is, Did Shelby Taylor with malice intend to kill her child or did she intend to merely assault it? Did she merely intend and hope it didn't die? That's the question you're gonna have to answer. Is she guilty of attempted murder or assault and battery in the first degree? That's your question. How are we gonna answer that question? What tools do you get to use to answer that question?

Well, the first one you got and the Judge will charge to you is your common sense, and that's why you're on the jury. Common sense, that's it. And the second tools, the second group of tools that you'll use is what you've heard here; no mumbo jumbo, no strange legal theories, basic facts. That's the foundation we're gonna deal with. And those are the tools that we're gonna talk about in the next couple of minutes

through my closing argument. Okay?

The facts surprisingly enough, unlike most trials, are fundamentally not in dispute. As a matter of fact, I don't think there's a single fact that's in dispute in this case. Shelby Taylor has a child. She's married to Patrick Taylor and she had a child on May 9th of 2015, uncontroverted. It's not beyond a reasonable doubt; there's no doubt. There's also no doubt she concealed that entire pregnancy from everybody in her life. No doubt. The other amazing fact and one that we really didn't talk much about that I want you think about is she intentionally kept that pregnancy from any medical care or any kind during the entire time of her pregnancy, including when she was taking her child to see a doctor, to see a pediatrician. Remember that because there is absolutely no intention for the months leading up to that pregnancy to make sure that unborn child was gonna be healthy because she was it was never gonna be healthy, never, because she knew -- she didn't want to tell Patrick, she didn't want to tell her mom or her family or her support system; for whatever reason, she didn't do that.

And on the day in question, at that moment in time, that moment in time when most families get to sit around in the waiting room and wait patiently and sometimes they get to buy cigars, and sometimes they don't know what the sex is gonna be, and sometimes they do know what the sex is gonna be.

Shelby Taylor deprived everyone in her life from knowing, everyone in her life, the people that care about her. Did she do it because she doesn't care about her family or did she do because she did not want any evidence of the fact that she was pregnant because her plan was to make sure she did not have a second child until five years later.

I want you to pay particular attention, if you would like to listen to the recorded statement, you'll have an opportunity to hear that if you want to and listen, in Shelby Taylor's own words, about 45 minutes, of intentional deceit; not basic truth, intentional deceit. No, I'm not pregnant. Are you sure? I'm not pregnant, no. Well, it makes sense because, you know, most people, if they've got a child already -- anybody else, anybody else, I have no idea. Well, you know, if we get DNA testing, we're gonna find out. I don't know, but it isn't me. Intentional deceit is specific evidence of malice. You can infer malice by an effort to cover up a crime. You can infer an intentional wrongful act by saying I didn't commit the wrongful act in the face of all kinds of evidence that you did. If you recall one thing, when you get into a courtroom, and you guys have sat through this for three days, it seems so obvious at the end, doesn't it? When we have to concede DNA, we hear testimony, man, this thing is a slam dunk. But when you're a defendant and you're committing a crime, the idea of getting caught versus getting

away with it is extraordinarily close. But, for one piece of paper, we're not in this courtroom. If that was a clean trash bag, we'll have un-arrested infanticide, a nameless baby in a nameless trashcan somewhere in the Grand Strand dump decomposing. That damn Mon Café receipt caught her. After the Mon Café receipt was recovered, oh, I don't know, it could've been somebody else, but I don't know. I don't know. Even to the point the DNA testing absolutely hold on to that intentional deceit. Intention to keep it away from family and loved ones. Do you know where Patrick Taylor was? At work. Kept it from Patrick. Which comes to the most distasteful thing that I want to talk about a little bit, and I want to be as delicate as I can, but we're dealing with grownup issues and grownup things to come to grips with. And when we search our conscience to understand motive, understand why, to put it in our own moral framework to understand, man -- you heard on the recording, Ryan Sikes saying people are already calling the police department and want to adopt that baby. The fireman testified, man, there's a big yellow sticker on the door, you can drop a baby off. You don't have to want it. You just can't kill it after it's born. Let's not get into any of that. There's big stickers, take the baby. He said anonymous, no responsibility, walk away.

During the course of the doctor's interview there's a quote, a loving quote from Shelby's mom that mentioned that

she was immature. I can't talk about personal experiences in my life, I can only assume the universality of the all of our experience, and those of you that have kids or not kids, those that hope to have kids or not kids. When Dr. McCarthy said a symptom that led her to her kill her baby was anxiety, stress over increased responsibility about being a parent, stress over finances, stressed over the lack of parental -- partner support. In other words, you take him to the bathroom this time, you change their diaper this time. I submit to you that every parent in the United States of America currently undergoes that level of stress. They don't kill them.

I hazard to say that the most telling part of that interview and that testimony is Shelby Taylor didn't want to go back to work. Her husband is pushing her, we got financial problems, we got financial problems; you got to get a job, we got one income; I'm getting up at 6:00, I'm coming back late. Is it possible that Shelby Taylor cared more about not going back to work than having a second child, unless it was a boy, and that was in five years. That's not mental disease or defect; that's infanticide, that's gender selection, if that's true.

There's ample evidence in the record to support that conclusion. One thing that's in the record that is unsupportable is transient peripartum psychosis. Now, that's a combination of a bunch of stuff. It's kind of like figuring

out what to do, you take an elephant, you put a beak on the front of it, put some -- a curly tail on the back of it and try to fit it what your argument is. There is no question, I believe, or I will submit to the jury, that we are all under stress, new moms, new dads, having a child, not having a child is one of the most memorable and stressful things in your life. So, I do not in any way mean to demean the pressure and stress that comes from making a decision of bringing another human being into this world, especially when you don't intend to -- especially when you don't think you can afford it. Especially when, as everyone knows, if you wait until the time that you can afford a baby, no one would have a baby, the species will stop existing. But, somehow, we've all been able to get through those problems and we don't put babies in trashcans and put knots around them and put them in a place that no one can help them with the intent for them to die. And that's what we have here.

Mr. Mureddu mentioned that he didn't want you come back with a verdict on emotion, on reason, I could not agree more. But you see the facts are so shocking that it's important to not escalate but to deescalate and talk about specifically what happened. And that is, no evidence of any kind that Shelby Taylor was pregnant through a time she was very familiar with being a mother, when there was family support, when there wasn't reunification between Shelby's mom and her

family, after the reconciliation period we talked about. They're married, they actually got a place to live now. They're actually were living in Island Green, not living in separate places. The photographs of the apartment, modest apartment, things are trending. Shelby's got a job a Dunkin' Donuts. She mentions that she -- that they're starting to give her too many hours and doesn't want to have to work that many hours. But, during that period of time, there was an unplanned unexpected pregnancy. Now, when my initial comment in the opening statements was about personal choice versus personal responsibility, what husband and wives do among themselves is absolutely appropriate; it doesn't matter. Shelby testified that she didn't really think much about the consequences of whether or not they're gonna have another child, didn't intend to, planned it down the road, but nonetheless the gift of life was given to them unintentionally and now comes personal responsibility. Fundamental, what are we gonna do with it? There's a lot of decisions to be made for nine months. But, when the birth occurs, those decisions are set in stone, and the die was cast.

How do we know it wasn't an impulsive decision? One of the most shocking things is going through the facts and the testimony that you heard, Shelby gave a child -- birth to the child, put it in a trash bag, didn't leave it in front of somebody's door in a basket or something, doesn't do anything

else with it, put it in the dumpster, went back upstairs, hid the consequences of the action so they would be no evidence of this and then took her new baby to the pediatrician, to the doctor where she clearly knows where to go. She -- you heard Mr. McCarthy have to waive confidentiality to the judge to talk about the situation. She could've had confidentiality with the pediatrician and say, I'm pregnant, I don't want anybody to know about this. How can I adopt, anything else. Danial's law; drop it off. Her voluntary and intentional choice was to commit an unlawful act with malice aforethought for the months leading up to that to not have any evidence of her intention to not have another child. And of all things, there was testimony if you recall by Dr. McCarthy, I got lectured the first time, I didn't want to get lectured again.

In the immature mind of Shelby Taylor, a lecture hurts more than murder. It's shocking to say but it's the only reasonable conclusion that you can come to grips with and it's difficult but it's beyond a reasonable doubt.

Let's talk a little bit about the malice elements that you're gonna have to come to grips with, the difference between the options of the questions you're gonna have to answer. Okay? Attempted murder is specifically what it sounds like. I tried to kill you and you survived. It wasn't because I wanted you to survive. I did my darn best to make sure you didn't, but somehow you did. And this one, of all

things, a thirteen-year-old saving grace by Brandon [redacted] is the only reason the act wasn't completed. He thought it was a cat. It was baby. Wow, that's not something you see every day.

Her mental intent was to exterminate or eliminate the life of the unborn child. She didn't want to make it halfway, didn't give it the chance to breathe. That's why we kept talking so much about tying that knot in that bag because if it's your daily life, I can tell you, sometimes people fill up the trash, then the set it outside the bag to put a couple of more things in, they go around, maybe go around to the bathroom, bathroom trash out put it in there, oh, I got to get the one from garage and put it in there, and then I tie that knot so it doesn't spill out, and I put it in where it's going. That tying the bag on -- that knot on that bag is expressed malice. It's over. That life is in the rearview mirror and I'm never coming back. That's expressed malice. There's no words, I'm gonna kill the baby, there's no specific hatred to that little creature. I do not want that life to live because it's an inconvenience to me. Maybe in five years, I'll have another one, maybe I'll have a boy, but not this one.

Assault and battery of the first degree is an assault that's not intent to kill. All right? It is I intend to assault you. I assault you in some way. I threaten to hurt

you, and the way that I do that, if completed, could cause death. So, if I take a baseball bat and say this bat could cause death, it could, the mechanism, but I don't have a specific intent to do that. All right? I just intended to merely assault you and the mechanism I used could've been so bad that you could've died. Is that what we have here? Was there any intended mercy or anything absent death afforded that baby. Death or nothing. No phone calls to 911, no pediatrician wondering why the appointment has been cancelled, pure death, malice aforethought. There is no lesser included attempt to assault. That's what I referred to by convoluted legal theories versus common sense, versus common sense.

It's a lot to come to grips with walking in first thing Monday morning, not really sure you're gonna get a speeding ticket or something simple. You come to grips with fundamental issues that we don't think we ever want to talk about. This kind of stuff you want to look away from. We don't want to talk about this stuff but here we are. Friends, through our obligation, we're getting close to the end now. As I said before those clouds are starting to break up. Those clouds, those clouds of doubt and confusion, that sunshine of truth is starting to shine down. As a matter of fact, looking at some of your faces, I'm pretty confident it's been shining for a couple of days.

Here in a little bit, you're gonna hear from counsel, I'm

gonna get a chance to talk to you again. The Judge is gonna give you the case and then you're gonna go in that jury room. When I came to work, it was little cloudy, the clouds don't matter now because the sunshine of truth is in your hearts, it's in your minds, and you're gonna return a verdict of guilty of attempted murder against Shelby Taylor.

Thanks.

THE COURT: All right. Thank you very much, Mr. Hixson.

All right, Mr. Mureddu?

MR. MUREDDU: Thank you. May it please the Court?

THE COURT: Yes, sir.

CLOSING BY MR. MUREDDU:

MR. MUREDDU: Folks, the last thing that I said in my opening statement was that transient peripartum psychosis was present in this case. Now, to ignore it, to deny it, to dismiss it, that's just not the truth. I stand by that statement. I stand by it now more than ever. Now, as we told you, we were gonna call an expert in the field of this, Dr. McCarthy, that he was gonna explain to you what transient peripartum psychosis is, what its symptoms are, and the conditions when it's likely to occur. The conditions in Shelby's case, every single known scientific risk factor was present in her case. It was literally the perfect storm and it's very unfortunate. It's unfortunate for her, it's unfortunate for her family, most importantly it was

unfortunate for Baby [redacted]. But you need to understand that transient peripartum psychosis is not some made-up condition. It's rare but it happens a hundred times on average in the United States alone. It's not made up.

Now, when we put up our case, the state disputed nearly everything that we presented but they haven't offered you any evidence whatsoever to disprove this. They disputed the testimony of Dr. McCarthy but they didn't call the psychiatrist, their psychiatrist who saw her, they didn't call him as a witness to contradict what Dr. McCarthy said. They disputed the abuse and the bad behavior of Shelby's husband, but y'all saw him in the back of that courtroom. They didn't call him to the stand. They denied that all of these known scientific risk factors were present in her case, but they didn't offer any evidence that refutes that. They have the burden of proof in this case but no evidence that they offered nullifies what we know. Transient peripartum psychosis was present in this case. So what? What does that mean? Well, they've charged her with attempted murder. A crime in which one of the elements is malice aforethought. That's one of the elements that they have to prove was involved.

Malice is legally defined as hatred, ill will, hostility towards another person. That element, the element of malice is not present in this case. Hatred, ill will, hostility towards a child, come on.

The charge of attempted murder was a bogus charge, was the wrong charge from day one. Now, their position is, well, she hid the pregnancy, she lied about it. She cleaned up the mess after the birth occurred. This is all some evidence of some grand plan, some premeditated act because this is clear evidence of a grand plan that you can consider that and draw the conclusion from that that malice was present in this case. Folks, I submit to you that nothing has been more unplanned in our lives. How in the world could Shelby or anybody else for that matter know when you're gonna go into labor, how long the delivery is going to take, where you're gonna be when this occurs. She was working at Dunkin' Donuts. For all she knew, she could've delivered that baby in the middle of the floor next to the coffee machine. It's denial. It's delusional. It's childlike reasoning; if I just ignore it, it'll go away. It's not some grand plan and it's not evidence of malice.

Now again, okay, Dean; so what? The so what is they charged her with attempted murder and a verdict consistent with that is a verdict, it's an emotional verdict, malice simply is not present.

Now, the solicitor indicated and he talked about emotion, and in my opening statement I talked about emotion and I asked you to set aside and to not be overwhelmed by the emotion in this case, to use your power of reason. There are psychological disorders that explain and account for bizarre

abnormal behavior. Science tells us this, reason tells us this. Heck, common sense tells us this. Transient peripartum psychosis explains the bizarre behavior of Shelby.

Now, we all, all of us, wish that this wouldn't have happened but you have the power to decide what happens today. All of you are charged with the task of rendering a verdict in this case, a verdict that speaks the truth. Shelby Taylor was caught up in a situation where she was completely overwhelmed. She experienced a psychological disorder that profoundly affected her behavior and her actions in this case. That is what happened in this case. That is the truth in this case. A verdict that speaks the truth must take that into account. We ask you to consider all this. Use your powers of reason and be fair.

THE COURT: All right. Thank you very much, Mr. Mureddu.

All right. Mr. Hixson, would you like to make a reply?

MR. HIXSON: Yes, sir. Thank you.

THE COURT: Okay. The floor is yours.

REPLY CLOSING BY HIXSON:

MR. HIXSON: Hello again. Let's focus on a couple of specific issues, that's the nature of a reply.

If you recall the cross examination and the foundational elements from the social worker to the interview on here, I want you to listen closely when on the recorded statement by Shelby Taylor to Jeff Caudle when she specifically said, hey,

if I was pregnant I would tell him, he's a great guy. Is that evidence of spousal abuse that realize the PTSD, postpartum depression at that moment in time? Not postpartum depression. Postpartum depression is absolutely real; it's not psychotic. Psychosis means delusions, hallucinations, hearing devil voices, kill the baby, kill the baby. That's what this is. This is real. And this, if you recall my cross examination on the doctor, transient is not even in the DSM-5. It's not a disorder.

MR. MUREDDU: Your Honor, objection, the facts are in dispute. The doctor did not testify that way.

THE COURT: Overruled. You may continue.

MR. HIXSON: Let me clarify. He said, no, they're in the literature. If you recall, I opened the book for him and said point to me under peripartum disorder with psychotic features, where is transient? He said, it's not in there; it's in the literature. That's the internet search. The transient means it comes and goes when it's convenient, when you're on trial for attempted murder; that's what transient means. Peripartum depression is real. Folks suffer from it all the time but they don't intend to kill their baby as a result of it; that's infanticide. So, I agree with part but not the full-blown part.

So, let's talk about the evidence that we have that disproves that and shows that specific intent to commit a

crime or murder, killing. She said, Patrick is a great dad. I'll tell him if I was pregnant. I'd adopt a child; I'd love it. IT's we're not gonna have one yet. All intents to intentionally deceive. But after the birth, not realizing what the legal issues were facing or going to be to the less that -- the evidence from the stand, I've never been abused before; I'm a generally happy person; I've never been depressed. That was on April 10th of 2015. All right? Once the issues were joined and this case was headed to final disposition, I think Dr. McCarthy called it state stress, that we are stressing her out because the personal responsibility fundamentals start to kick in. I'm starting to get stressed out. If you recall the cross examination with Dr. Oduwole, that is evidence that you heard. When Dr. McCarthy admits of what Dr. Oduwole said, that is evidence. And their witness, which was the far more effective way of doing it, admitted that that's a correct diagnosis of no abuse, no psychotic symptoms, no evidence of psychiatric disorder. That is evidence that this does not exist. Postpartum exists, absolutely, but not so delusional to the point that you feel like you're ready to kill a baby. That's the contentious effort, that's the contentious decision.

And then finally, as we get specifically to malice aforethought, which is the fundamental different between a simple assault and this. Let me be clear, and this is what

Judge Hood is going to charge you in a couple of minutes on the law to be applied in the case. Okay? Express malice is shown not just from hatred or ill will, because see these charges apply to a whole bunch of different fact patterns. They could apply to like from a gang shooting to an armed robbery to a domestic violence, these -- so, I try to cover them all. All right? So, in this case, pay specific attention to express malice, in other words, the State of South Carolina has carried their burden of proof if expressed malice is shown when the person prepared beforehand to do the act which was later accomplished. Did she prepare beforehand in any way to do the act that was later accomplished? All that discussion with no discussion, no evidence, absolute denials are an effort to get away with the act that she had prepared and done. Now, malice can happen in a snap of a finger. At the point the fatal blow was struck is when malice has to be there. It doesn't have to be there for a long period of time. It doesn't have to be a plan where you -- that involved co-conspirators. But, in the moment in time when Shelby Taylor makes the conscious decision to put in motion what she did, take the baby, don't tell anybody, don't yell out, put it in the bag, boom; that's malice right there. It doesn't have to be there for a long, long time. It's not premeditated murder like you see on T.V. It has to exist in the mind of the defendant at the time the fatal blow was

struck. And at this point, the fatal blow was struck when the baby was put in with -- you know what was in the bag. You have pictures. I don't have to go through that again.

Another element of malice, to prove malice is malice -- and you'll hear it from the Judge, it's the law in the State of South Carolina. Malice may be inferred from conduct showing a total disregard for human life. You can infer an ill will if you have total disregard for human life. I'll hit this briefly. I can't imagine a more total disregard for human life. That's for you to decide.

And, a specific intent to kill is required to have attempted murder. You have to specifically intend to kill your target. You don't have to hate it personally with a vengeance, but it's the performance of an act or acts which tend but fail to kill a human being when such acts are done with deliberate intention. That's what Shelby Taylor did. Let's go find her guilty.

THE COURT: All right. Thank you very much, Mr. Hixson.

BY THE COURT:

THE COURT: All right. Everybody stand up, stretch, twist around. All right.

We'll let all those people get out of the courtroom.

You want to take a quick bathroom break?

All right. Do not discuss the testimony, do not discuss the case in any way, shape, or form. Use the restroom and

then we'll be ready to go as soon as you're done.

Thank you very much.

(REPORTER'S NOTE: Jury exits courtroom.)

*******OFF THE RECORD*******

(On the Record.)

(REPORTER'S NOTE: Jury enters courtroom.)

CHARGE TO JURY:

THE COURT: Welcome back, ladies and gentlemen. Now, it's my responsibility to charge you on the law applicable to this case. So, if you would, please give me you undivided attention. Now, the indictment has charged the defendant with attempted murder. I remind you of that the fact that the defendant was arrested and charged and indicted in this case is not evidence and it cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. The indictment is simply the formal written instrument which contains the charge made against the defendant. It is the formal document by which the case is brought into this court.

Now, during this trial, you and I have had certain duties to perform. As the Trial Judge, it is my responsibility to preside over the trial and I also had the duty to rule on the admissibility of evidence that is offered during the trial. You are to consider only the competent evidence before you. If there was any testimony that was ordered stricken from the

record, you must disregard it. You are to consider only the testimony which has been presented from this witness stand, the exhibits which have been made a part of the record in the case, and that is all.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law and it is your duty to accept the law and apply the law as I now give it to you. If you have an idea of what you think the law is or what you think the law ought to be and it doesn't agree with what I now tell you the law is, you must abandon your own idea because you are sworn under your oath that you took to accept the law and apply the law exactly as I give it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts. A trial judge is not allowed to state, comment on, or make any statement to a trial jury about the facts in the case. You are the sole judge of the facts. You are not to infer from anything that I have said during this trial in ruling upon the admissibility of evidence or otherwise or anything that I say now that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts. This is for you to determine. It is your duty to determine the effect, the value, and the weight of the evidence presented during this trial.

Now, as I told you in the very beginning the defendant has pled not guilty to this indictment, and that plea puts the burden on the state to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence that satisfies you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations but it accompanies the defendant throughout the trial until you reach a verdict of guilt based upon evidence that satisfies you of that guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant which remains with the defendant until it has been stripped from the defendant by evidence that satisfies you of the defendant's guilt beyond a reasonable doubt. The presumption of innocence is not just some mere legal theory. It's not just some legal phrase that we say. It is a substantial right to which every single defendant is entitled unless you are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

So, what is beyond a reasonable doubt? The state has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true such as by the greater weight or the preponderance of the evidence. In criminal cases, the state's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. If based upon your consideration of the evidence, you are firmly convinced that the defendant is guilty, you must find the defendant guilty. If on the other hand you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find her not guilty.

Some things that you have heard this week are not evidence and you must not consider them as evidence in determining the facts of the case. The following things are not evidence: Number one, the statements and the arguments of the attorneys are not evidence. Number two, the questions and the objections of the attorneys are not evidence. Number three, anything that I told you to disregard.

Now, there are two types of evidence which are generally presented during a trial, direct and circumstantial. Direct evidence directly proves the existence of a fact and does not require any deduction. Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or the value to be given to either direct or circumstantial evidence. However, to the extent that the state relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portrayed the defendant's behavior as suspicious, the proof has failed. The state has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the state regardless of whether they rely on direct evidence, circumstantial evidence, or some combination of the two.

Now, as I told you in the beginning, you must determine the credibility of the witnesses. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence. In determining the believability of the witnesses who have testified in this case, you may believe one witness over several or several over one. You may believe a part of the testimony of a witness and reject the remaining

part of the testimony of that same witness. You may believe the testimony of a witness entirely or you may reject it entirely. You may consider whether the witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may also consider the appearance and the manner of the witness while on the witness stand. As I told you in the beginning, use your common sense.

Now, ordinarily, the rules of evidence do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses that we call expert witnesses. This is a witness who by education and experience has become an expert in some art, science, profession, or calling, and that person may state an opinion as to relevant and material matters in which the claim -- the witness claims to be an expert, and they may also state the reasons for that opinion. You should consider any expert opinion received in evidence in this case and like any other evidence, give it the weight that you believe it deserves. If you decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence you believe, you may disregard the opinion of the expert entirely. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert.

Further, you are not required to accept an expert's opinion even though it is not contradicted.

Now, there is a statement that is alleged to have been made by the defendant that has been admitted into evidence, in this case. While I have determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the defendant made the statement. If the defendant did make the statement, you must determine whether the statement was made by the defendant voluntarily and of her own freewill. This means that the statement was not caused by pressure, force, fear, threats, coercion, or intimidation, or by hope or promise of leniency or reward of any kind. In determining whether the statement was voluntary, you should consider both the characteristics of the defendant and the details of the questioning. Some of the factors that you must consider are the age of the defendant, the defendant's education, the defendant's mental ability or capacity, the defendant's I.Q. or intelligence, the defendant's background and environment, the place and the length of the detention, the nature of the questioning, and the advice or lack thereof to the defendant of her constitutional rights including but not limited to the right to remain silent, that any statement could be used against her in court, the right to have a lawyer, that if she cannot afford a lawyer a lawyer would be appointed to represent her without any cost, and that she

could stop making a statement at any time. You must consider all of the surrounding circumstances before you give any weight to an alleged statement.

The state has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give it any consideration that you deem proper. You must decide what weight if any should be given to the alleged statement. If you determine the alleged statement was not the free and voluntary statement of the defendant, do not consider the statement at all.

So, in order to establish criminal liability, criminal intent is required. For example, these are examples: The mental state required to be proven by the state for a particular crime could be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the state beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances that surround the situation. There is no way to prove intent to a mathematical certainty. There is no way that medical science can dissect a person's brain and determine what the person had in mind. So, the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element that requires intent was present. It is not necessary to establish intent by direct and positive

evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state. It is a conscious wrongdoing. It is up to you to determine what the defendant intended to do based upon the circumstances shown to have existed.

All right. So, Ms. Taylor is charged with attempted murder. So, what does the state have to prove? In order to prove this crime, the state must prove that the defendant attempted to kill another person with malice aforethought either expressed or implied.

So, what is malice? So, malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Now, what is malice aforethought? Malice aforethought does not require that the malice exist for any particular time before the act is committed. The malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of previous evil intent and the act. Now, malice aforethought may be expressed or inferred. These terms express and inferred do not mean different kinds of malice but merely the manner in

which the malice may be shown to exist. That is either by direct evidence or inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. Malice may be inferred from conduct that shows a total disregard for human life. If facts are proven -- are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you along with the other evidence in the case and you may give it the weight that you decide it should receive.

Attempted murder -- excuse me, a specific intent to kill is an element of attempted murder. Attempted murder is the performance of an act or acts which tend but fail to kill a human being when such acts are done with deliberate intention unlawfully to kill. Intent may be shown by acts and conduct of the defendant from which you may naturally and reasonably infer intent. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another human's life.

Now, if you find that the state did not prove reasonable doubt, excuse me, did not prove beyond a reasonable doubt that the defendant is guilty of attempted murder, you may consider

if the defendant is guilty beyond a reasonable doubt of the lesser included offense of assault and battery in the first degree.

So, what is assault and battery in the first degree? A person may also commit the offense of assault and battery in the first degree if the person unlawfully offers or attempts to injure another person with the present ability to do so and the act is accomplished by means likely to produce death or great bodily injury. Great bodily injury is defined by meaning bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protractive loss or impairment of the function of a bodily member or organ.

All right. I'm almost done.

Now, you have a duty to deliberate. Let me say something to you about your deliberations. The word deliberation is defined as careful consideration weighing up with a view to a decision. The genius of this system is that it allows 12 good men and women from 12 totally different backgrounds, life experiences, and perspectives to consider the evidence, to talk about it, and to reach a verdict. We call them deliberations for a reason. You are to consider the evidence in this case carefully and deliberately, and discuss it in a calm thorough and courteous manner. And, remember, you are not a partisan or an advocate for either side. You do not

favor one side or the other. You are a judge; you are a judge of the facts. Listen to the views of all of your fellow jurors, consider other people's points and points of view, and talk through and discuss the evidence. And remember, if you are doing something deliberately, you're not in a big hurry, and you should not be in a big hurry here. This case is very important to both sides. This is there only day in court to resolve this matter.

When you retire to the jury room, you should discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. That means you all 12 must agree. Each of you must decide the case for yourself, but you should do so only after you have impartially considered all the evidence, discussed it fully with each other, and listened to the views of your fellow jurors. Do not be afraid to change your opinion if the discussion persuades you that you should, but do not come to a decision simply because everyone else thinks it's right. It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own decision. Do not change an honest belief about the weight and the effect of the evidence simply to reach a verdict. In other words, do not change your opinion solely for the sake of reaching a unanimous verdict.

All right. Now, okay, this is -- I usually -- in my

normal courtroom I can walk right down to you. I got to walk out and walk around to come explain this form to you. So, give me one second to do this. Okay?

Okay. All right. So, this is your verdict form. All the lawyers have seen this so they -- everybody knows about this document. So, this is where you're gonna write your verdict. Okay? So, it's got the case caption at the top, and then Question Number 1, We the jury, by unanimous consent, find the Defendant Shelby Harper Taylor, as to the charge or attempted murder, not guilty or guilty. Now, I have to put one first and I have to put one second, so there's no rhyme or reason the not guilty is first and guilty is second. Okay? I have to pick one to go first. So, if you check guilty, then you sign and date and stop. Okay? If you check not guilty, then you can consider whether or not she is guilty or not guilty of assault and battery in the first degree and check either not guilty or guilty on that charge and then sign. Okay? So, you cannot find her guilty of both charges; it's one or the other or not guilty on both are you only options. Okay? And the form fairly explains that. All right?

I'll give you that, Mr. Foreman.

Now, I'm about to send you back to your jury room. Let me give you a couple of rules. I'm gonna send you back. You're still not allowed to discuss the case. I need to take up one more issue with the lawyers to make sure I've told you

everything I'm supposed to. Okay? So, the sign that you can begin deliberating is when my alternate comes out, okay, and the exhibits come in. So, when they bring -- when the bailiffs bring in the exhibits, that is your sign that you may start deliberating. Okay?

There is a recording in this case. If you want to listen to the recording just send out a little note that says we want to listen to the recording, then I'll provide you a computer so you can listen to the recording on. Okay?

You all 12 have to be in the room to deliberate. So, if someone needs to call home or someone needs to take a smoke break or someone needs to go to the restroom, you have to stop deliberating unless you're all 12 present in the room.

Your lunch is supposed to be here at 1:00. When lunch comes, you can stop deliberating or you can keep deliberating through lunch, that's completely and totally up to you. Okay?

Are you with me so far? All right. Let me make sure I've told you everything I'm supposed to.

Oh, yes, okay. Now, I learned this one the hard way. They don't tell you this in judges' school. Don't tell me the count. Okay? So, at some point in your deliberations, there will probably be a count, there's no point any time when you ever need to report that information to me. Okay? The count is your count, it belongs to you, it doesn't belong to me; so you don't ever need to send out a note that says the count is

X to X or anything of that nature. Okay? The count is your count and you don't need to report that. Okay?

So, I'm gonna send you back. Do not discuss the case. When the exhibits come in, okay, that will be your sign you can begin deliberating.

Mr. Dontre Hazzard, you are a normal juror, so you'll stay in.

Mr. Jones, is that right -- Mr. Franklin?

MR. FRANKLIN: Right.

THE COURT: Okay. Mr. Franklin, they'll pull you out. Okay? All right. And you can -- we can provide a spot for you to eat lunch if you want to stay and eat lunch or you'll be -- I'll talk to you before you go. Okay?

MR. FRANKLIN: Okay.

THE COURT: All right. Thank you very much. You may be excused.

(REPORTER'S NOTE: Jury exits courtroom.)

BY THE COURT:

THE COURT: All right. Any exceptions to the charge from the state?

MR. HIXSON: No, sir.

THE COURT: Any exceptions to the charge from the defense other than those previously stated?

MR. MCCOLLUM: Nothing beyond what we previously stated, Your Honor.

THE COURT: Okay. All right. Now, do we have a computer?

MS. WALKER: Yes, Your Honor.

THE COURT: Y'all have a clean computer?

MR. HIXSON: Yes.

THE COURT: Okay. All right. And make sure Bailey knows how to work that so in case they ask for it.

And then so y'all make sure with Ms. Dixie that the right exhibits are in evidence before they go back. Make sure Janet has your phone numbers and a way to find you. I'm gonna let Ms. Taylor stay in here. We don't need to take her into custody. I mean, we -- I mean, she needs to stay in here; she doesn't need to leave. If she needs to go to restroom, she needs to go in the back, but I'll let her stay in here with her family while this process starts. Okay?

DEPUTY: Yes, sir.

THE COURT: All right. You're not allowed to leave the room at this point, okay, Ms. Taylor, unless you need to go to the restroom and they can provide you one. Okay? You understand?

MS. TAYLOR: Yes, sir.

THE COURT: Thank you, ma'am.

(REPORTER'S NOTE: Counsel confers with Court Reporter and stipulate to exhibits to be submitted. Deliberations commence at 12:30 P.M.)

*******OFF THE RECORD*******

(On the Record.)

(REPORTER'S NOTE: The following takes place outside the presence of the jury.)

THE COURT: All right. It's my understanding we have verdict, so I'm gonna say this and I say this in almost every case, but I'm gonna say it just to make sure everybody understands. I understand that this case is highly emotional and very charged. I understand people crying, that is -- and Ms. Taylor has cried through some of the trial and I haven't said anything to her or called her down or anything like that. I understand people crying, but if you're gonna have a reaction beyond that, then you need to leave the courtroom now. Okay? And somebody can come tell you what happens but, you know, this -- we're not gonna allow any loud outburst or screaming or hollering or anything like that. It's okay to cry, it's okay be upset or be happy or whatever -- I have no clue what anything is in this case as far as a verdict. But, if you believe you cannot control your emotions just step outside and then once we get a verdict, somebody can come and tell you and, but just -- that's the safest way to do that. It puts the jurors at ease and just makes for a smoother process. Okay?

All right. Let's go get them, please.

(REPORTER'S NOTE: Jury enters courtroom @ 1:50 P.M.)

THE COURT: All right. Mr. Foreman, it's my understanding you have a verdict; is that correct?

MR. FOREMAN: That is correct, Your Honor.

THE COURT: Could you hand it to Ms. Danna, please? Thank you very much.

All right. And I find that the verdict is in its proper form and the clerk may publish.

VERDICT OF JURY:

CLERK: The State of South Carolina, County of Horry versus Shelby Harper Taylor, we, the jury by unanimous consent find the Defendant Shelby Harper Taylor as to the charge of attempted murder on indictment 2015-GS-26-01938 guilty. Signed by Mark Schilawski (spelled phonetically), foreperson, dated February 8th, 2018.

THE COURT: All right. Does the state or the defense request polling?

MR. HIXSON: The state does not, Your Honor.

MR. MCCOLLUM: Yes, please.

POLLING OF THE JURY:

THE COURT: Okay.

All right, ladies and gentlemen, we're gonna ask you one question, which is really two in one. The question is, is this your verdict? And then the second question, Is this still your verdict? Okay. So, as your name is called or your number, however the clerk does it, the question is, is this

your verdict, and is this still your verdict, and if you would answer out loud, please.

CLERK: Number 70?

JUROR 70: Yes.

CLERK: Number 127?

JUROR 127: Yes.

CLERK: Number 83?

JUROR 83: Yes.

CLERK: Number 319?

JUROR 319: Yes.

CLERK: Number 153?

JUROR 153: Yes.

CLERK: Number 317?

JUROR 317: Yes.

CLERK: Number 295?

JUROR 295: Yes.

CLERK: Number 303?

JUROR 303: Yes.

CLERK: Number 356?

JUROR 356: Yes.

CLERK: Number 90?

JUROR 90: Yes.

CLERK: Number 112?

JUROR 112: Yes.

CLERK: Number 168?

JUROR 168: Yes.

CLERK: Thank you.

BY THE COURT:

THE COURT: All right. Anything further from the attorneys before I release the panel from the state?

MR. HIXSON: No, sir.

THE COURT: From the defense?

MR. MCCOLLUM: No, Your Honor.

THE COURT: Okay.

All right. Ladies and gentlemen, I want to say this to you. I want to say thank you very much for your service this week. I know you all came in here Monday and the majority of you were trying to figure out how in the world can I get out of jury duty, and you actually got selected on a jury and you've been here for the better part of a week. I try cases all over this state and circuit court judges ride the circuit and they go to all the different counties and you all have been a excellent jury, you have been on time every single day, you have paid attention, no one has fallen asleep on me. You would be amazed at all the different things that I deal with jurors across the state and you all have done an excellent job. And I want to say thank you very much for your service this week.

So, a couple of things you need to know, you have a jury exemption for the rest of this year and for the following two

years. So, if you get called for jury duty in circuit court during 2018, 2019, or 2020, you will have an exemption and you will not have to serve.

The second thing is this, is that now that the verdict is back, you are free are discuss the case with anyone that you see fit. Okay? Now, you don't have to discuss it with anyone; that's your decision. If you -- if anybody contacts you or wants to talk to you about the case, and you want to discuss it with them, you certainly can but you do not have to. And if anybody bothers you or harasses you, then you just let your Clerk of Court Ms. Elvis know and she'll get that attention to one of the local judges and they'll deal with that person promptly and efficiently. Okay?

Your local judges here are Judge Hyman and Judge John, and then you have Judge Culbertson down in Georgetown, so you're very fortunate, you have three great judges. And, as I told you on Monday during jury qualifications, your clerk's office is great. The first week of this year, I did probably about a 150 guilty pleas here, the first week of the year. Last week, I did probably just over another 100 guilty pleas. And so, this is my third full week of being here in this courthouse. It's great, the staff is great, the clerk's office is great, the local attorneys both of the prosecution and on the defense are all very good and professional and competent and you should feel very proud of your courthouse

and the people that do the things they do in the courthouse. So, you're very fortunate to live here and live in this community and have this great facility.

So, thank you very much. If you'll go with Ms. Danna, she'll take your things from you. You will be excused and I appreciate your service. Thank you.

(REPORTER'S NOTE: Jury exits courtroom.)

THE COURT: All right. I'll be back in just a couple of minutes. Everybody stay put.

*******OFF THE RECORD*******

(On the Record.)

THE COURT: Mr. McCollum, y'all want to proceed with sentencing?

MR. MCCOLLUM: Your Honor, may we approach?

THE COURT: You may.

(REPORTER'S NOTE: Bench conference is held off the record.)

THE COURT: All right. Here's what we're gonna do. Normally, in these circumstances, I would sentence somebody immediately. Due to the nature of this case and the nature of the circumstances that have presented themselves during the trial, the defense has requested that I not sentence her right now. I understand that the state objects to that because that would be the normal progress of how things would occur. However, this is not going to be lengthy delay.

I'm going -- at this point in time, your bond is hereby

revoked and you will be taken into custody. And your sentencing will be next Thursday, that will be one week from now, at 2:00 P.M. I will need to arrange -- I do not know what courtroom yet and I'll need to arrange a court reporter with Court Administration, which I will do that this afternoon and we'll go ahead and get that information out. So, it's not gonna be lengthy delay, but we need to go ahead and do the post-trial motions right now so that those are -- or do you want to wait and do those Thursday, too?

MR. MCCOLLUM: I was just thinking that, Your Honor. If I make the post-trial motion, then I probably need to file ---

THE COURT: Right.

MR. MCCOLLUM: --- the appeal. I don't want to file the appeal, right, and I ---

THE COURT: The appeal won't need to be filed until she's been sentenced.

MR. MCCOLLUM: Out of an abundance of caution, what I would like to do is make the post-trial motions -- actually, if I make the motion and Your Honor hasn't ruled on it, then the clock doesn't start ticking, right?

THE COURT: Correct; that's correct.

MR. MCCOLLUM: So, I'll think I'll make those now.

THE COURT: Okay.

MR. MCCOLLUM: Because Your Honor, if Your Honor takes it under advisement ---

THE COURT: That's right.

MR. MCCOLLUM: --- then we should be fine, right?

THE COURT: And you're fine as time and then I'll make a ruling next Thursday when I sentence her and then you're appeal clock will run at that point.

MR. MCCOLLUM: Thank you.

THE COURT: Is that fair enough?

MR. MCCOLLUM: Yes, sir, Your Honor.

THE COURT: Okay. So, and then any other -- if the defense wants to get any mitigation documentation to me between now and next Thursday, that's fine, and just make sure that the solicitor's office is copied on that documentation.

MR. MCCOLLUM: We will, Your Honor.

THE COURT: All right. Let's go ahead and do post-trial motions.

You can sit down, Ms. Taylor. Thank you.

MOTIONS:

MR. MCCOLLUM: Your Honor, at this time, on behalf of the Defendant Shelby Taylor, the defense would move for a new trial and ask the Court to set aside the verdict. Also at this time, Your Honor, we would renew all motions previously made including the motion for directed verdict and also renew all objections that have been made through the course of the trial.

THE COURT: Okay. And I want to state for the record

that I believe the defense has presented their motions and their objections and their directed verdict motions, they were all done at the appropriate time. I think they've protected the record. It's been very clear what their legal arguments are from the very beginning and I understand all that. I'll rule on those post-trial motions next Thursday at 2:00 P.M. and I will also sentence. So, if there's anybody -- now, I have -- we've talked about the child and I've heard information that [redacted] is doing fine but if the caregivers to [redacted] want to be heard from by next Thursday -- are they here today? I did not know.

MS. WALKER: Your Honor, Pam Sellers, a representative from the Department of Social Services is here.

THE COURT: Okay. All right. And where is Ms. Sellers?

Okay. Thank you for being here, Ms. Sellers. And also anybody from your organization that wants to come back next Thursday on behalf of the child, that is fine. If the caregivers to the child want to come to the sentencing hearing and be heard from, that is perfectly fine and I'll be happy to hear from them. And then anybody that wants to speak on Ms. Taylor's behalf, I will also hear from then at that time. And so when we come back together for those of you that don't do court every single day of your life, we'll have another hearing and anybody that needs to speak or address the court, including Ms. Taylor, if she wishes to, of course, can be

heard from at that time as to sentencing. Okay?

So, at this point in time, your bond is hereby revoked.

She needs to be taken into custody.

I do want to say this, thank you very much to all the lawyers who participated in this case. You were all completely and totally prepared. You knew what you were doing, you knew where you were you going, you knew who the witnesses were. I -- just the little things that everybody was so professional and competent and put together and did such a good job and behaved nicely with each other and got along and did your job, and still were an advocate for the sides that you represent. It was a pleasure to be with all of you this week. And Ms. Elvis, I echo the words about your staff, your courthouse staff. They really are professionals and do a great job. So, thank you very much.

If something happens with next Thursday at 2:00 and the only that could happen would be Court Administration refuses to give me a court reporter, we'll let everybody know, but my goal is to get this done next Thursday at 2:00. And under these extreme circumstances, that's the only reason that I am postponing the sentencing. Okay?

MR. MCCOLLUM: Thank you, Your Honor.

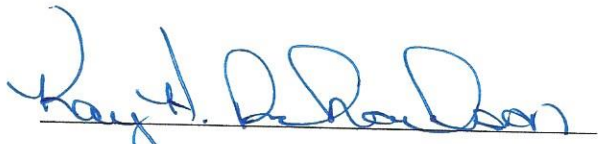
THE COURT: Thank you very much.

(ADJOURNED - 3:00 P.M.)

CERTIFICATE

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 State of South Carolina v. Shelby Harper Taylor, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 8, 2018, as reporter 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

May 24, 2018.

STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS COURT
COUNTY OF HORRY	)	2015-GS-26-01938
	)	
	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SHELBY HARPER TAYLOR,	)	
DEFENDANT.	)	
_____	)	

February 15, 2018
Columbia, South Carolina

B E F O R E:

THE HONORABLE ROBERT E. HOOD, JUDGE.

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

SCOTT HIXSON, ESQ.
Attorney for the Plaintiff

GREG MCCULLOM, ESQ.
DEAN MURREDEAU, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: All right. We're on the record there 2015-GS-26-1938. This is the State of South Carolina vs. Shelby Harper Taylor. Ms. Taylor was tried last week before a jury of her peers here in Horry County and was convicted of attempted murder. She was represented by Mr. McCullom and Mr. Murredeau at trial. The State was represented by Mr. Hixson and Ms. Walker at trial, and we are here today for the purposes of post-trial motions and for sentencing.

So let's start with post-trial motions, please, Mr. McCullom.

MR. MCCULLOM: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. MCCULLOM: Your Honor, at this time, I would reiterate motions that I believe we made previously, but out of an abundance of caution, I'd like state them again.

THE COURT: You may.

MR. MCCULLOM: Your Honor, since a verdict of guilty of attempted murder has been rendered by the jury, we would at this time move for a new trial and ask the Court to set aside the verdict and grant Shelby Taylor a new trial.

At this time, we also would renew our motion for a directed verdict. We also would renew all the objections

previously made and renew all motions previously made and ruled upon by the Court.

THE COURT: Any response from the State?

MR. HIXSON: Your Honor, we believe that the directed verdict motion was properly denied. There was ample evidence in the record concerning all the elements of the crime. We feel that was carried through and the case was properly submitted to the jury. There's been no evidence or indication of any improper influence of any kind surrounding the jury deliberation process. And as such, we would ask that the Court respectfully deny counsel's motions.

THE COURT: All right. Defense counsel's motions for a directed verdict and new trial are denied based upon my previous reasons for the ruling. This case was tried before the jury. The jury heard all the facts and circumstances surrounding the case and were actually allowed to hear a lot of evidence from the Defense expert that the State, you know, did not completely and totally object to. And so based upon that, I find that the jury verdict is proper and that the motions were properly ruled on before as to the reasons that I previously stated.

All right. Are you ready to go forward with sentencing?

MR. MCCULLOM: Yes, sir, Your Honor.

THE COURT: All right. I've got a little bit of a cold, so if you can't hear me, just say you can't hear me. I'm doing my best, but my voice is on its way out.

All right. What would you like to start with?

MR. MCCULLOM: Your Honor, I think that -- we have a number of people here on her behalf.

THE COURT: Okay.

MR. MCCULLOM: Your Honor can see the people here. Clearly, I'm not going to call all of them to testify in the sentencing hearing, Your Honor, but I would say for the record, Your Honor, you have three rows of people here. We have 35 or 40 people here who support her in the community.

I had asked them to choose a couple of people who could come up and maybe just say something good about her to the Court.

THE COURT: Okay.

MR. MCCULLOM: Some idea of who she is outside of what the Court has heard. At the same time, Your Honor, there have been a lot of -- there are a lot of strong feelings among them. I've reviewed some of the letters that were given to me here today, and I think that some of the things that they could say are -- I think probably are not appropriate to the sentencing phase. There's things -- more things that in terms of conduct of other

people and things like that. That's not really something that I want to present.

At the same time, I don't want -- you know, I don't want to cut them off. So I asked them if they could pick about three or four people here in the audience. I'd like to call them up. Basically, I said I would just like them to say one good thing about her that they know.

THE COURT: Okay.

MR. MCCULLOM: Just to give the Court an idea. So I'd just like to get an idea of who we're going to put up, if you can help me out here.

THE COURT: I know that court transcripts are hard to read, but during and throughout the trial, she had a number of supporters, probably more than 15 or 20 who appeared each day in court with her. I want that to be reflected for the record, that she did have that community support not only today, but throughout the trial.

MR. MCCULLOM: Thank you, Your Honor.

THE COURT: All right. Tell me your name, ma'am.

UNIDENTIFIED WOMAN: I'm Samantha Harper.

THE COURT: Ms. Harper, are you Ms. Taylor's sister?

MS. HARPER: Yes.

THE COURT: I'm happy to hear from you, Ms. Harper. If you're going to read, that's perfectly fine. What happens --

I'll say this once so I don't have to say it to everybody.

What happens is everyone's a little nervous, which is normal, and then when you read, you read faster than you normally talk.

MS. HARPER: Yeah.

THE COURT: So we want to make sure we get down everything that you say, so read just a little bit slower.

MS. HARPER: Okay.

THE COURT: So that I can follow you and that Madam Court Reporter can make sure she gets down every word you say. Okay? You understand?

MS. HARPER: Uh-huh.

THE COURT: Happy to hear from you.

MS. HARPER: I am the sister of a woman who was portrayed as a monster. I am the sister of a woman who is supposed to be a cold, calculated criminal, but I am standing here today because Shelby is not who she is perceived to be. I grew up watching my sister struggle to find who she is in this world and she probably doesn't even know now, but I do.

My sister is deeply loving, compassionate and caring. Shelby shows how much she cares by little acts, such as making my bed in the morning, doing my laundry when I come home from college, or calling to see how my exam went.

She did something that most of us couldn't fathom doing, but most of us haven't been through pain that Shelby has.

Human behavior is purely reactional. Shelby acted on reaction of pain, fear and depression. For the past three years, I have watched my sister go through the darkest time of her life. Every day, she struggles with pure remorse and guilt. Her life has been a daily turmoil not being able to see her kids. She has been in her own personal hell. The last three years for Shelby has consisted of isolation. She couldn't hold down a job, most of her friends left and has had weekly mental breakdowns followed by deep depression. The shining light at the end of her week is getting to see a picture of [redacted] eating her dinner or [redacted] playing in the park.

I have watched her grieve for her children for they will one day hear of this story. My nieces will one day be sat down and told of their past and on that day, their mother needs to be present. She deserves to explain that she was not well. She needed help. But most importantly, that she loved them and would do anything for them.

I know my sister would lay down her life and die for those children, but right now, she needs to live for them. She needs to get better and she needs to get the help she needs to become the mother that [redacted] and [redacted] deserve.

Right now, you have the opportunity to give her this help. Prison is a home for criminals and punishment. My sister and our family have suffered beyond what any prison could do. In order for her to be present in her kids' life, she needs to be given that chance. I'm not standing here making excuses for what my sister has done, rather, I am asking you to analyze this situation and realize there is more to this story. Shelby is not a cold, calculated criminal. She is a mother, she is a daughter and she is a sister.

THE COURT: Thank you very much, Ms. Harper. Thank you for being here.

Who would like to speak next?

All right. Come on up, ma'am. And would you please tell me your name?

UNIDENTIFIED WOMAN: My name is Christine Lilly, I'm Shelby's grandmother.

THE COURT: Ms. Lilly?

MS. LILLY: Yes, with two L's.

THE COURT: All right. Don't speak too fast, okay?

MS. LILLY: I won't. A lot of it I was told I can't say. I respect the lawyers, so I'm not going to, but I feel that it was important to show how she was, but I'll go along with what the Court wants.

THE COURT: You go ahead. You're fine.

MS. LILLY: To say all I want to say?

MR. MCCULLOM: Your Honor --

THE COURT: I would follow Ms. Taylor's legal advice from her counsel.

MS. LILLY: All right.

THE COURT: I'm not going to personally cut you off, if that makes sense.

MS. LILLY: Yeah.

THE COURT: But she has a lawyer -- they have lawyers for a reason.

MS. LILLY: I understand and I'll respect that.

THE COURT: But you're not going to hear me, unless you start saying something -- start cursing or saying something inflammatory, you're not going to hear me cut you off just for the sake of cutting you off.

MS. LILLY: I may stop a little bit because there are things I can't say now.

THE COURT: That's perfectly fine.

MS. LILLY: As Shelby's grandmother, I am partial, but let me say this. I would take her sentence and serve it gladly to protect her. I would give up my life for my children or any of my grandchildren, but on the other hand, I have two innocent great-grandchild that depend on us to protect and love them.

As a young girl, Shelby was always thinking of

others. I always took the grandchildren when they were younger to buy an outfit for their first day in school and take them to lunch. When we got back in the car, Shelby said, We all need to thank Nana for the clothes and lunch. And, of course, everybody said, Thank you, Nana, for taking us to get some clothes.

In one area of Shelby's life, I know her better than anyone else in the family. We spent many hours talking about physical and mental abuse that we both had lived through.

As for her pregnancy, she was very deep into denial as explained by the doctor. Shelby didn't want to hear from the family what we were thinking -- what were you thinking or you can't afford another child right now, so she internalized it and it consumed her.

With her first pregnancy with [redacted], she was the proudest mom. Facebook, every day was filled with pictures of her and [redacted]. She finally knew what a mother's love consisted of, was truly happy with a child in her life. She has always loved kids and very proud to be a mom.

Shelby was at my house one night. She spent many nights at my home so her mother could see the grandchildren. One evening, she was staring at the ceiling and said -- and I will never forget it. She said,

Thank you, God, for my baby living. Nana, how could I have done that? Oh, my God. I'm not a monster, I'm a very good person.

I, along with the entire family and friends, know who she is. She was ill. Her mind was not clear for months before this. If I felt in my heart that she was evil or had malice in her heart, I could not support her. I would always love her, but I could not support her. Her family and friends know that she is a good person, to be a wonderful and loving person.

Your Honor, Shelby loves God with all her heart. She was baptized just a few years ago. I know God forgave her and I pray you can have as much compassion as humanly possible for her, too. God saved that little girl, made it possible to have those boys hear her cry out. Society will judge her for years to come. They don't know her.

As the saying goes, no matter how flat you make a pancake, it still has two sides. So with God's grace, the girls will hear from us that mommy was sick at the time and, hopefully, Shelby will be able to tell them that, too, and that she did love them very, very much. Shelby only wants to be in their lives to be their mommy.

She has talked about maybe speaking to groups of battered women or children, endangerment groups. She wants to help people come to grips with nightmares that

they have lived for or are going through. Tell them not to be ashamed to seek help before it's too late.

Shelby has only seen the girls' pictures and movies, so she looks at them for hours. We on our end -- I'm sorry, we on our end always show the girls pictures of their mommy all the time. Hopefully, she can be with them before they are teenagers. No prison can rehabilitate her, only punish her. She will have been living in hell for three years in April. Please have mercy on this wonderful young woman. To know her is to love her.

In closing, I want to say she was under stress and shock and panic. Did she do this? Yes, cut and dry, she did, but had she had the love and support of a husband 100 percent, I believe would not have done this thing. As long as I live, I will never look at the news again and prejudge anyone. You have to live in this nightmare to understand things are never cut and dry. Thank you for taking the time to hear me.

THE COURT: Thank you very much, Ms. Lilly. Thank you for being here.

Tell me your name, sir.

UNIDENTIFIED MAN: Marty Parker.

THE COURT: Mr. Parker?

MR. PARKER: Yes, sir.

THE COURT: How do you know Shelby?

MR. PARKER: I am Shelby's pastor.

THE COURT: Thank you for being here. I'm happy to hear from you.

MR. PARKER: I knew Shelby before and after, up until. I've spent a lot of time with Shelby and just want to give you a side of Shelby that a lot of people won't see, is the Shelby that we know, the one that loves my children -- I have five children, and she has been able to love them, all of them know her. She has been working -- she has worked in the nursery. She has worked at vacation Bible school. She has done mission trips with us to our retirement home in Florence, Bethea Retirement Home.

Over the course of about four or five years, I've had the opportunity to get to know her. And we have seen all this and being here at the trial, something I never thought I would be a part of as a pastor. But also, I know that each one of us have different things that we struggle with, different things that we go through. And I think just seeing what we have here today as far as family that she is loved and that she's -- not only is she loved, but she has loved many.

And knowing what I know of her over the past couple of years, it's always going to be in her mind. She will always have that struggle of knowing what she did and really not having a relationship with her children. That

has tormented her, but I know that she still has a loving heart. She still, even after Hurricane Matthew, was able to go in the nursing home and help in that area and do different things.

She is loved. She's loved by her family. She's loved by friends. She is loved by her church family. And we just ask you -- we know that when it's all said and done that it lays in your hands. We have also been praying for you, as well, because we know this is not something lightly that you take lightly, but we know that you are the one that can show mercy to whom you see fit and can show compassion to whoever. And we ask for mercy and compassion not just for Shelby, but on behalf of Shelby's family and behalf of Shelby's church family, which consider her a brother and sister, regardless of what she's done and regardless of what happens from this point on.

THE COURT: Thank you very much, Mr. Parker.

MR. PARKER: Yes, sir.

THE COURT: All right. Tell me your name, sir.

UNIDENTIFIED MAN: Good afternoon, Your Honor. My name is Michael Earnest.

THE COURT: Ernest?

MR. EARNEST: Yes, sir.

THE COURT: Spell your last name.

MR. EARNEST: It's E-A-R-N-E-S-T.

THE COURT: Okay. Thank you, Mr. Earnest. How do you know Shelby?

MR. EARNEST: Your Honor, let me first apologize to you for writing this because this might get a little emotional.

THE COURT: That's fine. Most people that come in front of me write down what they're going to say, so you don't need to apologize for that at all. I'm happy to hear from you.

MR. EARNEST: I am Shelby's uncle.

THE COURT: Okay.

MR. EARNEST: Your Honor, my name is Mike Earnest. I'm Shelby's uncle. Thank you to this Court -- thank you and to this Court for giving me the opportunity to speak on Shelby's behalf. This has been almost three years since the date of this incident and I can still remember as if it were yesterday. It has been the most traumatic thing this family has ever endured.

My family is my life, as I'm sure yours is, as well. I thank the Lord every day that those -- can somebody come up here and read this? I can't do it. I'm sorry.

THE COURT: Okay. Mr. McCullom can read it for you or you can pass to it me and I can read it.

MR. EARNEST: He can do it. I can't.

THE COURT: All right. Thank you, Mr. Earnest.

All right. Mr. McCullom will now be reading Mr. Earnest's letter.

MR. MCCULLOM: May it please the Court?

THE COURT: Yes, sir.

MR. MCCULLOM: I thank the Lord every day that those two young boys found [redacted] that day. That was God's intervention. Shelby is not the monster that the prosecution made her out to be. If you were to just sit in a room and talk to her for an hour, you would see there is not a mean bone in her body. Shelby is a very passive and naive person. If you were to yell at her, she would cry. If you were to tell her the sky was green, she would believe you.

Shelby's parents separated when she was young and I think that was hard on her. I think she's always craved that father figure in her life. It's tough when parents live in separate homes. Her father is a wonderful man, but that one-on-one attention everyday is what Shelby needed. What I'm trying to say is Shelby is a very sensitive person who requires more attention than your average child. When she got any male attention, that is what she grasped onto. As far as I know, Patrick was her first and only boyfriend and she put him above everything, family, friends and even herself.

Your Honor, Shelby is the most nonviolent person I know. In fact, she's never even been in a fight. She's never been in any trouble of any kind. She's never had a traffic ticket. Your Honor, Shelby had no plan to try to destroy this child. Something triggered that in her because if that was her plan, it wasn't very well thought out, meaning that she had nine months. I can't and never will understand what she did that tragic morning. The more I think about it, the more confused I get thinking that her mind was so far gone that she had nowhere to turn. It makes me feel like a failure as a family member.

I pray this Court and Your Honor can have some compassion and understand this is not Shelby, the person we love with all our hearts. I understand that this is a system and the law must be complied. I beg you with all that I am, please show some mercy. I would give up my career and serve her time without hesitation. This whole thing consumes me. It's all I think about. Shelby needs help. Jail is not going to do anything for her specifically. I just pray to God that you will give her some compassion. Thank you for letting me speak on behalf of Shelby.

THE COURT: All right. Thank you, Mr. Earnest. Thank you for your letter.

MR. MCCULLOM: Your Honor, I think we have one more.

THE COURT: Okay.

MR. MCCULLOM: One more I think would probably be sufficient for the Court, Your Honor.

THE COURT: Sure. Come on up.

UNIDENTIFIED FEMALE: Can I get a tissue?

THE COURT: Yes, ma'am. I don't know where they are. If there's one, you may have it.

UNIDENTIFIED FEMALE: Thank you. Just in case my nose runs.

THE COURT: That's okay. Tell me your name.

THE WITNESS: Alex Hamrick.

THE COURT: Ms. Hamrick?

MS. HAMRICK: Yes.

THE COURT: Okay.

MS. HAMRICK: I am here today to stand alongside of one of my dearest friends on one of the toughest days. Although we don't understand why or what has caused it, the shame she embodies will now be far greater than any pain jail can bear.

Over and over again, I have thought could I have made a difference or been a better friend. It's a shared sense of guilt. Should I have, could I have or would I is no longer a thought.

Your Honor, what Shelby did was not right. And I agree that she needs help with her -- through her actions,

I believe she does need help. And I'm not here to sugar coat what has happened. However, as one of her closest friends, I can rest assured to everyone that the woman she was on that day is not the true Shelby. She has an amazing laugh with a beautiful smile that can illuminate a dungeon and a heart carved from the Lord's hands. I know this situation is hard for you to see that, but I do humbly ask Your Honor that she has the chance to shine her light again.

I stand as a mother of two, and I ask as the community -- as a person from the community that we can stand and bring light to mental illness because we don't need to be ashamed, but yet we need to reach out before we react. And although that is horrible incident, she is still the daughter of the King and deserves a life after.

THE COURT: Thank you very much, Ms. Hamrick. Thank you for being here.

MR. MCCULLOM: Your Honor, I think that's a sufficient showing --

THE COURT: Okay.

MR. MCCULLOM: -- in that regard. So, Your Honor, I will proceed on. May it please the Court?

THE COURT: Of course.

MR. MCCULLOM: Your Honor, this is -- you know, this is -- in a lot of ways, of all the cases that our law

firm, me and Dean and others, have handled, this one has been extremely difficult.

From the beginning, we tried -- honestly, we tried to resolve the case without the trial. We didn't want to go to trial. Shelby's family didn't want to go to trial. Shelby did not want to go to trial. We really wanted to plead. Some cases get in a posture in terms of interest and outside things that are going on because they're -- I don't know why, but there's sometimes it just becomes very difficult. What happened is we just weren't -- we just never got to the point, despite all our efforts, where we were able to resolve it.

So the trial itself was a little bit of an odd trial for us in that we never denied anything. And the issue that we thought was significant was simply her mental state. The issue of malice, which Your Honor went through that with us, so I don't need to go through that with Your Honor. Clearly, that's what we thought the main issue was.

Now, at the same time, you know, we presented evidence. The Court allowed us to present evidence and the jury for whatever reason -- as disappointed as we may be, we respect the jury's integrity. We respect the process. We respect the verdict even though it was not what we were looking for. So I don't disparage that in

any way as an officer of the court. At the same time, there is a part of that that we think is relevant for sentencing.

And in this particular case, Your Honor, the -- there's some things I'll present with a little bit of reluctance honestly, but it seems like in this case, Your Honor is faced with a fairly difficult decision because of the sentence -- the verdict that was returned and the sentencing range. And I don't know if we're really able to add to the Court's ability to make that determination or not. Simply, as an advocate for her, we're trying to make some attempt to try to give some input for what it's worth.

I understand Your Honor has been on the bench for some period of time. Your Honor has been involved in criminal cases prior to going on the bench. And you're very well acquainted with the criminal process, the judicial system of South Carolina and the ability to impose sentences. And we respect that and we know that. We're not trying to substitute anything for the Court's judgment. We just want to provide some information, which may or may not be helpful.

THE COURT: And normally -- now, when the verdict was returned last week, I mean, I can think of probably under five cases in my life where I didn't sentence the person

right then and there. And I recognized at that time that this was one of those where we needed to let things calm down and come back together and give you all an opportunity to put your thoughts together and make sure the record was complete. So this is your opportunity to do that.

Normally, I just sentence right there on the spot, but I thought in this case and these circumstances that it would be best to give everybody some time to put their thoughts together on both sides of the case before sentencing. So...

MR. MCCULLOM: Thank you, Your Honor. In terms of, you know, sentencing in general, it's my understanding that the sentence of any court in a criminal case, you know, serves the purpose of deterrence. Deterrence in general, deterrence for others looking, and that's a significant thing. What do people think is right or wrong? And what do people think should happen to someone who violates the law, especially in a way this severe? It's also specific as to the individual because, obviously, if they're incarcerated -- even if the person is on probation, but if they're incarcerated, they're deterred from future criminal conduct. Also, and along the same lines, they're incapacitated from doing that. If they're incarcerated, they're not going to harm someone

else and there's some period of time that's going to pass before they would be free from that incapacitation.

The other thing, Your Honor, which I think is important is the rehabilitation. In other words, the sentence that alters the defendant's behavior -- in this particular case, Your Honor, and based on these type of crimes -- I'm obviously no expert on this, but there's been, I think, a showing of some rehabilitation, of regret, remorse since this act. We've seen that in our representation of Shelby. There's also retribution, which is, for lack of a better term, maybe an Old Testament type of Biblical punishment, that there's -- when someone does something bad and they're not punished, sometimes that can be improper or inappropriate for a person's psychology. You know, being punished and atoning for something, I think in our society certainly has some value and a place.

In terms of restitution, Your Honor, I don't think that that's -- from my perspective, it doesn't seem to be a very big factor here.

We would state that, you know, in this case since the sentence range is so divergent, I think that -- I don't think the sentence can be suspended. I may be wrong, but I don't think --

THE COURT: That's correct.

MR. MCCULLOM: -- it can be suspended. It's an

85 percent sentence, so that whatever time she receives, clearly, the earliest point of release would be 85 percent of that sentence, which is significant because that's almost double what it would be on other types of sentences. Sometimes the public doesn't understand that as part of that truth in sentencing laws. So whatever sentence Your Honor hands down, that's the sentence. There's no hidden number there. There's no early release. That's the sentence that the person is going to serve.

We think in terms of mitigation of the sentence, you know, the evidence that we tried to present to the jury in terms of her state of mind with the peripartum event that she had, depression, we said it was psychosis. We don't really know what the jury found on that. We know they found malice, so we don't really know what the take on that was. We still would submit that as something that we think, at least, is very significant in terms of mitigation.

In preparation for doing this sentencing here, I reached out and talked to several people. One person who we chose not to call was an OB/GYN doctor. I think that she's actually the doctor that delivered one of my daughters. I talked to her about it. She was not going to be able to provide anything helpful to the Court here today, but in talking to her, she did reference the

peripartum psychosis as something that she was cognizant of as a medical doctor. She has been delivering babies for some 20, 24 years.

At the same time, I think it's so rare that that's not something that she sees in the delivery room. I don't think this is -- while I would say this condition is real, it's not common. It happens a lot, but statistically, it's very, very uncommon and very, very rare. With all candor, Your Honor, if she had said that she witnessed this kind of bizarre behavior during birth, I would have tried to call her here.

The other thing is that -- I can't remember the gentleman's name, but a person who runs the protection center for unborn children for New England in the State of Massachusetts had reached out to us. I talked to him for probably about 45 minutes on the phone. And I also read several studies which talk about how -- it's not common, but it happens a lot. In other words, statistically, it's very rare, but it's a very well-documented situation that she went through.

And he was saying that he was very emotional -- or not emotional, he had very strong feelings about it because he said in Massachusetts, what they had done is they had created some very good programs to make children aware of this. But his take on it was that that message

has to get to young people when they're teenagers. He said because --

What they do is they have these big billboards and their signs are big and they have people speak at youth concerts and youth events and youth sporting events and they've been very successful in not eliminating, but almost reducing these incidents in New England and Massachusetts where their audience is.

He referenced other jurisdictions, such as Illinois, primarily, Chicago, and the State of New York. And he tried to explain to me that their programs for prevention were not effective because they weren't aimed at youth. And he said in his opinion, what happens is when somebody gets to the stage that Shelby was, they needed to know that for a couple of years before they get in that denial and in that state that we think that she was in. So he was very impassioned about that and helpful and explained several things to us.

The other thing I would say, Your Honor, is, you know, I don't like as a lawyer -- I've been practicing for some time. I don't like sentencing guidelines, okay. I don't think they take into account everything. I think they're a starting point. In that end, Your Honor, you know, I looked at this, and I can provide this to the Court if it's helpful, for the attempted murder and the

federal sentencing table. And also in the State of North Carolina, I looked at it as well in terms of the attempted murder.

A colleague of mine, a lawyer named James Payne, is a very accomplished lawyer in North Carolina. I went through the guidelines. I had a conversation with him and asked him, you know, what would -- how would North Carolina deal with this. What information would the Court have if this were in the State of North Carolina, who has sentencing guidelines very similar to the federal guidelines.

Essentially, Your Honor, without going through all of it, the State of North Carolina, it has three different guidelines. It has an aggravated range, which is the most severe sentencing. It has the presumptive range, which is in the middle. And then it has the mitigated range. And essentially, Your Honor, the midrange in North Carolina for this charge, the starting point would be probably around 10 to 13 years. The mitigated range would go down to about seven-and-a-half years.

Having said that, I don't necessarily favor sentencing guidelines. I've worked with them in different jurisdictions. I think they provide some point, but I don't think they're the end all and be all. And I think in some ways, they impede on the Court's province to

render sentence. I think you cannot -- we select judges based on very specific criteria, experience and understanding. I don't think you can ever substitute the experience that a judge has who has been on the bench as Your Honor has who's seen these things. There's some human element to it that I don't think sentencing guidelines take into account.

In North Carolina, just for the Court's information, there are about 20 aggravating factors. According to my colleague in North Carolina, aggravating factor number 11, the victim was very young. He said the courts there would apply that. That would count. Probably nothing else in here would.

In terms of mitigating factors, Your Honor, she has probably -- it looks like seven -- and that's if you accept what we say as true, some of it, is that she was suffering from a mental condition that was insufficient to constitute a defense. It's not -- it didn't rise to a level of a legal defense, but reduces the Defendant's culpability.

The other thing would be the Defendant's age, immaturity and limited mental capacity at the commission of the offense. And while she denied it, the day that the child was found, she did go to the police station after denying involvement for some 45 minutes. Still at an

early stage of the prosecution of the criminal process, she acknowledged wrongdoing.

I think that we've shown that she's been a person of good character and has a good reputation in the community. She has a support system in the community. She's not maybe so much lately, but, certainly, prior, she had a positive employment history and done public works and public good in her church and Bible school and those things.

And then the only other mitigating factor is what kind of something else. And we would say the fact that she had sought counseling, not just for court, but counseling for the betterment of understanding and becoming a better person. And also in terms of the other mitigating factor, just her and her mental condition as was diagnosed.

Your Honor, in closing, I would say this, you know, she's -- she has no criminal record. This seems completely out of any kind of comprehension that anybody that knows her could ever believe this would ever happen to her, that she would ever do this.

Having said all of this stuff, Your Honor, and the solicitor hasn't presented anything, I'd want to say this, that clearly, we're presenting this stuff to the Court to try to provide some assistance to the Court in sentencing.

This does not in any way lessen nor do we take the position in any way that she has not been convicted of attempted murder. We're not trying to argue the facts. We're not trying to take issue with anything like that. She has been convicted.

We don't want to go so far as to say that somehow, you know, she's the victim of this. Clearly, she's been convicted of the offense. I just want to thank the solicitor for the ability to present this, but I understand what it's like. We have an adversarial system. And normally, one side doesn't talk and the other side doesn't present anything. I'm sure there's probably many things that he can present if he chose to. They've been in this case -- as far as the State goes, Your Honor, they've been very tough on us. They've been fair. They believe in their case. They presented their case and we are where we are.

I respect the State's position on this. I understand people that are outraged over this. I understand that. Her family understands it. Everyone that knows her, everyone that knows me and Dean, we all understand that. We are advocating for her. We believe that her situation does have a little bit of uniqueness to it. I don't think that, ultimately, she is a threat the way that normally sometimes people are perceived as threats in our society.

I want to thank Your Honor for this presentation. I want to thank Your Honor for hearing this. I want to thank Your Honor for coming back to court. I understand you had a lot of other things going on. We appreciate the way that you tried this case. We appreciate the Court's patience and demeanor and all the professionalism that the Court has shown us.

Clearly, Your Honor, we're asking for whatever mercy that the Court may be able to sentence with or render. At the same time, Your Honor, we understand where she is, understand the position of the Court and we respect that very much.

THE COURT: All right. Ms. Taylor, do you wish to say anything?

THE DEFENDANT: Yes.

THE COURT: Okay. You don't have to, but you're welcome to if you want to. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay.

THE DEFENDANT: I would just like to say that one, I'm sorry to my family and I'm sorry to my kids what they will have to hear about this. I just want to be a mom again and have my kids. And, you know, it's been a very difficult three years without seeing my kids.

I understand what happened. Now, you know, it's hard

for me to fathom that I did this. I am a loving person and that was not me in that moment. But I am very sorry and I love my kids with all my heart and I -- I regret this every single day. I live with it. I go to bed with it. It's awful. It's the toughest thing I've ever had to go through. All I ever wanted to do was be a mom. I used to mother my little sister, and she gets annoyed with me now, but all I wanted to do was be a mom. And, hopefully, if you let me, one day I can be a mom again.

THE COURT: Thank you, Ms. Taylor.

THE DEFENDANT: Thank you.

THE COURT: All right. Mr. Hixson, does the State have anything they'd like to present?

MR. HIXSON: Yes, sir.

THE COURT: Okay.

MR. HIXSON: Minimal. I think we would just concur quite a bit with what Mr. McCullom has said. What's fundamental about this case is it's just so primal in its nature. And a lot of that conversation can't occur in front of the jury, but they're so much interest in it because it kind of involves so many fundamental beliefs they we have in society in general and here in Horry County specifically. And that is the attempted taking of a life of a child by the mother that carried that. The result is extraordinarily intense emotions on both sides.

And so as it relates to a sentencing process -- and our intention is a fairly hands-off approach to the sentencing process because the issues have been joined.

You know, to not refute, but to point out some things. Our focus has always been on the conduct of the act that day, not that -- we have no problem the family caring so much about this person. And everyone that watches this proceeding screams out, I wish something would be said so the family would lovingly be taking that child and we would not be here. We would be trying another case or something. But the issues are so fundamental that the issues have to be joined on what it means for a mother to put her child in a trash can. And we don't know what that's worth. We know that's why we're here.

So there's no attack on the character of Shelby Taylor. There is no attack on the family's love. But everyone agrees, we just want to make sure that same decency is shown to every living being and not put in a trash can for whatever that means.

There is no -- we are all in agreement. That's what's shocking. We're all in agreement. And as such, there is not a lot of aggravation. I think it's important to make sure everyone understands what Daniel's Law is, that there are opportunities to save lives without

attempting to kill them. There are opportunities and I hope, if nothing else, people understand that so we don't have to be in courtrooms arguing about this.

The other thing that's important to understand is for clarification. In the State of South Carolina, you are either competent to stand trial or you're not competent to stand trial. If you're competent, then you haven't got a mental disease or defect that rises to the level of insanity. If you're insane, that's a legal defense. If you're not insane, then the rest doesn't matter. And that's for the purposes of guilt or innocence.

So the discussions during the course of the trial relating to diminished capacity are not admissible. They can mitigate, but they're not admissible. And that's much of the friction that we saw because if you're competent and you're sane, then you're responsible for what you did. That's just a fact finding step. That's not a punishment step. That's just the facts. So that's the effort to focus on the conflicts and the conduct of the parties and allow the nature of folks to take care of in front of Your Honor during the sentencing process is what that means.

There were several individuals that wanted to be here today, specifically -- and I think it's important to point out for them, not a long process, but one of the things that surprised us through the preparation of the trial was

the impact of this case on the First Responding individuals. I won't use their specific names because I don't want to breach any confidence they had in me, but quite a few of them talked about that they just don't understand and struggle with not understanding the sight that they saw and the willingness to discard that when they work so hard to save that to the point they continue to have problems going back to see the child alive so the last image in their head will not be covered with rice and that moment in time to try to destroy that. And those are people that are paid to respond to bad things. And they wanted to be here and were not able to be here. I don't want to belabor the point. But the impact beyond just the ones that love each other, but folks that don't know each other.

We heard a little testimony of that from Keith Drakenick (ph), how important it was that they had an opportunity to see the child after the fact alive to destroy the image they saw of a discarded human being, that that was important for them.

That's the end of the presentation on that. I do have Pam Sellers. She's an investigations supervisor for Department of Social Services. She has been involved in this from day one, been in court everyday. And she would like to address the Court. There are some confidentiality

issues, Your Honor, so we probably won't get into some of that, but that's the only presentation I would have related to the victimology.

THE COURT: Come on up, Ms. Sellers.

MS. SELLER: Thank you.

THE COURT: You're welcome.

MS. SELLERS: As you can see, I have notes all over the place. I came into the courthouse with well-organized notes, but this is different situation. I've been very comfortable in my 10 years at DSS speaking at any time about any child abuse case, but this one is different, so bear with me. My notes have changed. The last place I want to be here is talking about this because to be here means it's real and that it happened.

There are no winners today. Nobody in this courtroom is a winner, but I hope there is justice for [redacted] when we leave here. Everybody in this courtroom has been touched by this tragedy in some way or others, some more than others.

It's not my job to decide Shelby's innocence. It's yours. And every day, I have to make decisions at my job on families. And that's a difficult thing because you're going to make some people mad and some people happy. Some people are happy you're involved in their life and some people aren't. So it's a tough decision, and I'm glad

that your decision is not mine.

With that being said, I do keep [redacted] as one of my visions engrained in my mind. Every day when I make case decisions or I decide what's best for certain families, I keep her in mind to remind myself the importance of keeping children and families safe. So I think about her every day to make sure I don't take this job lightly. Because it's easy. I'm sure you've made hundreds of decisions on hundreds of people's lives. They've tried hundreds of cases. I've investigated hundreds of cases on my own and supervised just as many. Sometimes we can become complacent in our jobs and not really think about what's best for children.

I'm here to speak on behalf of [redacted] because she can't be here to speak. I also would like to speak to the family members left behind. I, too, sat a couple of weeks ago with my family on a heinous situation with one of my own family members, so I feel for them. It was a heinous crime. He was guilty. I didn't stand up and speak for him for leniency because he was guilty. I was there for support for my family, so I appreciate her family being here.

It's important to have parents and I'm thankful there are parents who still have morals, who still want their children to get married first and then have children. I'm

thankful there are parents who don't mind standing up and being a parent to their child and not a friend and saying this is what I expect. You know, this is what society expects. There are consequences. And I'm thankful for that. I think Shelby has a lot of family support.

So with that being said, I also want to say that having children is not a right, it's a privilege. And some of us take it way too lightly. There is more paperwork to get a dog from the animal shelter than there is to have a kid. There are so many second chances in life. We get to do over a lot of things. This is not one of them. There is no do over in this situation. There is no second chance in this situation.

Like I said, I feel for her family members. I understand what they're going through to a certain extent. But again, I'm here to speak for [redacted] who cannot speak, and [redacted].

One day, and some of the others touched on it, [redacted] and [redacted] are going to realize they don't have their biological mother in their life. One day that's going to be a realization. I don't know what the answer is on what to tell these children or what not tell to them, but I hope they never have to know the real truth. Because how do you deal with that? How does a child deal with this knowledge? And I hope they never have to do

that.

They're going to ask questions and search for their own answers when they're old enough. With the internet, social media, mean girls at school, as long as they stay in this area, as long as their names, the information is there. And that's my biggest fear in this whole situation.

My hope and prayer is that both sides of the family, the paternal and the maternal, that you guys come together to love these girls. They deserve having both sides of you. They really do. So I hope you're all able to put your differences aside and realize that you have two beautiful girls in common. They often say it takes a village to raise a child. We've all heard that old saying. And I do believe that. And I know there are single mothers and fathers out there who raise their children without family support, but how much better off are we as a society when we have a lot of positive influences in our life? So I hope these two girls have that.

[redacted] is a miracle and she's a survivor. And I have no doubt that God has great things planned for her. But I hope after today that [redacted] never ever has to worry about being thrown in a dumpster again. That's all I have.

THE COURT: Can you tell me how [redacted] is doing?

MS. SELLERS: She is doing well.

THE COURT: She is functioning and doing the normal things that three-year-olds do?

MS. SELLERS: Yes.

THE COURT: And she's staying with a parent group?

MS. SELLERS: She is.

THE COURT: And you have no concerns about them taking care of her?

MS. SELLERS: Not at this time.

THE COURT: And as far as you know, she is healthy, functioning and doing all the things that three-year-olds do, playing and laughing, starting to speak and have conversations and communication and all that good stuff?

MS. SELLERS: Yes.

THE COURT: All right. Thank you very much.

MS. SELLERS: Thank you.

THE COURT: All right. There's a couple of things I want to say before I pass this sentence. I usually don't talk when I sentence people, but sometimes I do.

One thing is this, I keep in mind as I give this sentence that I know that it is a no-parole offense. For all the lawyers that come in here every day, we know that some cases are parole eligible on a quarter of the time. Somebody that I sentenced in December is getting out this

Friday. So I know that in this case, it is a no-parole offense.

I also know that when she is released from the custody of the Department of Corrections, she will be released under what is known as the community supervision program and monitored for two years, so I take that into consideration in passing this sentence. I also take into consideration the fact that Ms. Taylor has no prior criminal history. She has absolutely no history of violence. She has no history with the Department of Social Service and them being involved in their lives or parenting plans. You know, as far as cases I've handled where parents harm children, this is the atypical case. Most of these cases that I handle and I see, parents have a long history with DSS. It's a -- they have a long history with the family court process. None of that is present in this case in any way, shape, or form.

Ms. Sellers talked about being thankful for some things. I think the one mom who's forgotten in this case, that is the one we all, including Shelby, should be the most thankful for is the one that told her kids to take out the trash because without that mama telling those little boys what to go do in the day and age where parents don't like to give their children chores or make them do things, she made those boys take out the trash. And if

she hadn't made those boys take out the trash, we would either be sitting here in a murder sentencing or no one would have ever known about [redacted]. So for whatever reason in God's providence, He decided to save [redacted] that day. And I only hope the best for her and for her sister and for her family and that includes you, Ms. Taylor.

THE DEFENDANT: Thank you.

THE COURT: All right. But this is a very serious crime with serious, serious implications, and a very serious situation.

The sentence of the Court is that you be committed to the State Department of Corrections -- she can stay seated. The sentence of the Court is that you be committed to the Department of Corrections for a period of 25 years. You are given credit for the time that you have served. You are to have no contact with the victim directly or indirectly. Your appeal time runs from today and you have 10 days from today's date to appeal this case. Thank you very much. Court is in recess.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions Court for Horry County, South Carolina, on the 15th day of February, 2018.

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

April 6, 2018

Penny M. Johnson
Penny M Johnson
Official Court Reporter

WITNESSES

Jonathan Martin Horry County Police Department

ARREST WARRANT NUMBER

2015A2610200874
CDR: 3410 16-03-0029
DOA: 4/11/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 28 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-26- 01938

FILED
HORRY COUNTY
2015 FEB 23 PM 2:37
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

The State of South Carolina

County of Horry

Martin D. Spratlin 15H01684

COURT OF GENERAL SESSIONS

MAY, 2015 TERM

THE STATE

vs.

Shelby Harper Taylor
W/ F
[redacted]
Myrtle Beach, SC 29588
DOB: [redacted]
SSN:

ATTORNEY:

Indictment for

ATTEMPTED MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

2015 MAY 29 AM 10: 15

CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 28, 2015, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED MURDER
CDR: 3410 16-03-0029

That Shelby Harper Taylor did in Horry County on or about April 9, 2015 with intent to kill her newborn child, D.O.B. [redacted], attempt to kill said child with malice aforethought, either expressed or implied in violation of Section 16-3-29, 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.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
HORRY COUNTY
2018 FEB 23 PM 2:37
RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, S.C.

COUNTY OF Horry)
STATE VS.)
Shelby Harper Taylor)
AKA:)
Race: Sex: F Age: 26)
DOB: [redacted] SS#:)
Address: [redacted])
City, State, Zip: Myrtle Beach, SC 29588)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2015GS2601938
A/W#: 2015A2610200874
Date of Offense: 4/9/2015
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ~~Murder~~ / Attempted Murder Ov 30-1/25

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Hixson, Scott R.	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 63-7-1360

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

FILED
HORRY COUNTY
2018 FEB 15 PM 3:37
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

FILED
HORRY COUNTY
2018 FEB 15 PM 3:37
CLERK OF COURT
HORRY COUNTY, SC

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge).	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd in equal, consecutive ~~weekly/monthly~~ pmts. of $ 25.00 beginning 3/15/2043
$ _____ paid to Public Defender Fund
Other: _____

NO contact with victim directly or Indirectly

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: Renee N. Elvis
Court Reporter: Karen Amborziak
Presiding Judge: R. E. Hood
Judge Code: 2164
Sentence Date: Feb 15, 2018

Mon Cafe Japan Surfside Beach
2734-A B[illegible] Run Rd
Surfside Beach, South Carolina 29575
(843) 215-2255

Server: MON CAFE 1 Station: 4

Order #: 239895 Take Out

>> SETTLED <<

1 ST SH CMB	12.60
2 CHICKEN BOWL	14.40
1 CHICKEN BOWL	7.20
SUB TOTAL:	34.20
Tax 1:	3.25
TOTAL:	$37.45
Cash Tendered:	[illegible]
CHANGE:	-2.55

>> Ticket #: 100 <<
Created: 4/8/2015 4:25:25 PM
Settled: 4/8/2015 4:26:02 PM
THANK YOU!

STATE'S EXHIBIT
1
2518 Fb
PENGAD 800-631-6989

STATE'S
EXHIBIT
6
8-5-18 FD
PENGAD 800-631-6989


PENGAD 800-631-6989
STATE'S EXHIBIT
7
25-18
fb


PENGAD 800-631-6989
STATE'S
EXHIBIT
8
5-18



STATE'S EXHIBIT 11 2-5-18 FD

PENGAD 800-631-6989

Appendix 580

EXHIBITS ON FILE

The following exhibits are on file with this Court:

- Court's Exhibit #1 – Recording of Interview
- State's Exhibit #3 – Recording of Interview
- State's Exhibit #23 – Photograph
- State's Exhibit #25 – Photograph
- State's Exhibit #26 – Photograph
- State's Exhibit #27 – Photograph
- State's Exhibit #28 – Photograph

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000341

THE STATE ..... RESPONDENT.

V.

SHELBY HARPER TAYLOR ..... APPELLANT.

FINAL BRIEF OF APPELLANT

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ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by instructing the jury that malice may be inferred by a variety of different means, where appellant was charged with attempted murder (which requires the State to prove beyond a reasonable doubt a specific intent to kill with malice aforethought) and where the State argued malice could be inferred by the mere fact that appellant initially denied committing the crime?

STATEMENT OF THE CASE

Appellant, Shelby Harper Taylor, was arrested and indicted on charges of attempted murder after she confessed to police that she gave birth alone in the bathroom of the apartment she shared with her husband and sixteen-month-old daughter (hereafter "Baby S") and then placed the newborn girl in a dumpster at her apartment complex in Myrtle Beach in the early morning hours of April 9, 2015. The infant – later named "Baby T" – was recovered by two teenage boys who were taking out their trash. Baby T suffered no injuries.[1]

The trial began on February 5, 2018, before the Honorable Robert E. Hood. Greg McCollum and Dean Mureddu represented Shelby; Assistant Solicitors Scott Hixon and Cara Walker represented the State. In the three years between her arrest and trial, Shelby remained out on bond and lived with her parents without incident. She worked, attended counseling sessions, and checked in with her bondsman once a week. R. p.47, ll.1-4; p.288, ll.12-21. The trial judge allowed Shelby to remain on bond and return home each evening during trial and repeatedly lauded her exemplary behavior. R. p.129, ll.12-14; p.136, ll.23-25; p.137, ll.12-18; p.198, ll.15-19; p.332,

[1]She and her sister were placed in the custody of Shelby's mother-in-law. They were approximately three and four years old at the time of trial and neither has had contact with Shelby since the day of her arrest. R. p.287, l.16 – p.288, l.2.

ll.5-23; p.467, ll.19-22. At the conclusion of the trial, the jury returned a verdict of attempted murder. On February 15, 2018, the trial judge sentenced Shelby to twenty-five years imprisonment without the possibility parole. The notice of appeal was filed on February 23, 2018.

ARGUMENT

I. THE TRIAL JUDGE ERRED BY INSTRUCTING THE JURY ON INFERRED MALICE.

A. Relevant Facts.

On October 25, 2017, the South Carolina Supreme Court held, in *State v. King*, that "a specific intent to kill is an element of attempted murder as codified in section 16-3-29" of the South Carolina Code.[2] 422 S.C. 47, 56, 810 S.E.2d 18, 22 (2017). The court explained:

> 'The highest possible mental state for criminal attempt, specific intent, is necessary because criminal attempt focuses on the dangerousness of the actor, not the act.' Thus, '[a]s the crime is commonly regarded as a specific intent crime and as it is logically impossible to attempt an unintended result, prosecutions are generally not maintainable for attempts to commit general intent crimes, such as criminal recklessness, attempted felony murder, or attempted manslaughter.'

Id. at 56, 810 S.E.2d at 22-23 (quoting 22 C.J.S. Criminal Law: Substantive Principles § 156, at 221-22 (2016)). In a footnote, the Court noted that although it was not necessary to address King's additional sustaining ground, the Court "would respectfully suggest to the General Assembly to re-evaluate the language following 'malice aforethought' as the inclusion of the word 'implied' in section 16-3-29 is arguably inconsistent with a specific-intent crime." *Id.* at 64, n.5, 810 S.E.2d at 27, n.5.

At Shelby's trial, which occurred less than four months after *King*, the basic facts were largely undisputed except for the question of her intent. Shelby met her husband, Patrick Taylor,

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[2] Section 16-3-29 provides, "[a] person who, with intent to kill another person with malice aforethought, either express or implied, commits the offense of attempted murder."

at age nineteen and shortly thereafter became pregnant. R. p.307, ll.7-22. She became estranged from her family during her pregnancy. R. p.354, ll.18-20. Shelby and Patrick married at a small ceremony to which her parents were not invited. R. p.270, ll.7-9; p.354, ll.21-25. At a routine checkup near the end of her pregnancy, Shelby's doctor decided to induce labor because of her high blood pressure, broke her water, and administered an epidural. Court's Exhibit #1. Baby S was born without complication in December of 2013. R. p.355, ll.6-7. After the baby's birth, Shelby and her family reconciled. R. p.355, ll.12-16. Six months later, Shelby became pregnant again. She did not disclose her second pregnancy to her family and friends, nor did she obtain prenatal care. R. p.272, ll.11-16. Around 5:00 a.m. on April 9, 2015, Shelby gave birth to Baby T at home in her bathroom. R. p.280, ll.4-14. She placed the baby in a trash bag and put the bag in the dumpster outside her apartment complex, where Baby T was later discovered. R. p.281, ll.15-16. Inside the bag, the police found a receipt from a local café dated the previous day. R. p.190, ll.18-21. They used the receipt to obtain photographs of Shelby with Baby S buying food at the restaurant counter and published them via various media sources. R. p.203, l.15 – p.204, l.7; p.205, ll.15-18. Shelby's family saw her photograph on the news and, later that evening, Shelby arrived with her parents at the south precinct of the Horry County police station. R. p.206, l.3 – p.207, l.5. Patrick Taylor arrived as well. R. p.207, ll.6-9.

In an initial interview with police investigators, Shelby stated that she did not know anything about the crime and denied she had recently been pregnant. State's Exhibit #3. She consented to give a buccal swab for DNA testing, which the officers collected. *Id.* She also agreed to go to a hospital for a physical exam. *Id.* The police then spoke separately with Patrick for approximately fifteen minutes. Court's Exhibit #1. Patrick told police he believed "she did it" and described Shelby as "not smart." *Id.* He stated "she's one of those ones where you wonder

how she made it to where she is. She is not clever. She gets taken advantage of because she's not intelligent." *Id.* Patrick denied knowing Shelby was pregnant and offered to give police permission to search their apartment. *Id.* The officers then recruited Patrick to assist them in their efforts to "get to the bottom of this." *Id.* They told Patrick they wanted to question Shelby while Patrick was present and gave him instructions about how to talk to her. *Id.* Shelby returned to the interview room, admitted that she put her newborn baby in the trash, and repeatedly expressed remorse. *Id.* The officers then administered *Miranda* warnings, asked Patrick to leave, and questioned Shelby further. Shelby stated that she "got scared" and "freaked out" and "didn't know what to do." *Id.* She explained that she did not initially know she was in labor because she never had labor pains with Baby S, so she did not know what kind of pain it was. *Id.* She cried and told the officers, "I'm so sorry," "I feel horrible," "I feel so bad," "I'm so sorry." *Id.* Shelby was then arrested and transported to the hospital where she was treated for retained blood clots within the womb, a tear and hemorrhaging. R. p.233, ll.12-21.

At trial, Shelby testified that Patrick was abusive and controlling. R. p.271, ll.9-23. She stated that they had financial difficulties and he did not want them to have another baby at that time. R. p.273, ll.17-21. On the morning of Baby T's birth, Shelby testified she had pains in her stomach, but she did not know she was in labor and she did not wake Patrick up to tell him because she was scared of him. R. p.278, ll.1-17. She acknowledged that she told police Patrick was a good husband and that she denied being the victim of abuse when questioned by staff at the hospital following her arrest.[3] R. p.304, l.9 – p.305, l.11. Shelby stated that she did so "because I was

[3] Shelby was interviewed briefly by a female social worker at the hospital who told Shelby that the information she shared with her would not be confidential. R. p.241, ll.17-22. Shelby then spoke to a male psychologist, Dr. Adedapo Oduwole, and denied any history of abuse, mental illness or physical illness.

protecting my husband." R. p.305, l.11. Shelby's mother, Angie Harper, testified that she "wasn't pleased with the way Patrick treated [Shelby]," R. p.308, ll.16-17, but that Shelby "loved him so much that she just excused, you know, the way he acted." R. p.311, l.24 – p.312, l.1. She stated that Shelby was a good mother to Baby S, and she was never abusive or neglectful to her child.[4] R. p.320, ll.4-16.

Dr. Robert McCarthy diagnosed Shelby with Transcient Peripartum Psychosis, which stems from a major depression "that significantly intensifies during the month prior to delivery." R. p. 397, ll.5-7. Dr. McCarthy explained that major depression combined with hormonal issues during pregnancy can sometimes produce psychosis involving "chaos and confusion on a cognitive level" such that a woman suffering from the condition becomes "disoriented," "illogical," "irrational," and "can engage in behaviors that [she] ordinarily wouldn't do." R. p.400, ll.16-20. Throughout her life, Shelby "suffered from what's called persistent depressive disorder. . . . [S]he's had a low-grade depression most of her life . . . that then exacerbated into a major depression which predisposed her to being overwhelmed during this delivery." R. p.430, ll.4-16. Dr. McCarthy described a variety of risk factors that can contribute to this condition, including: unplanned pregnancy; perceived negative pressure regarding the pregnancy; feelings of isolation and overwhelming responsibility; financial difficulties; abuse; fear of rejection or abandonment; and, a history of depression. R. p.404, l.6 – p.408, l.16. Dr. McCarthy opined that all of these risk factors were present in Shelby's case. R. p.408, ll.17-18.

Solicitor Hixson disputed Shelby's claims of abuse and argued they were not credible because Shelby never called the police during her relationship with Patrick and she denied abuse

[4] The parties stipulated that DNA results established Shelby and Patrick Taylor were the parents of Baby T. R. p.223, l.20 – p.225, l.2.

on the day of her arrest. R. p.299, ll.1-11. Hixson conceded Shelby was not properly *Mirandized* and did not seek to introduce her second, incriminating statement to police. R. p.67, ll.17-22. Instead, the State offered only Shelby's initial recorded interview in which she denied knowledge of the crime. Hixson asserted that his purpose in offering Shelby's initial statement was related to "an absolute denial and the existence of malice" because "overt attempts to cover up a crime can be circumstantial evidence of malice." R. p.94, ll.22-25. He reiterated this argument at the charge conference, during which he requested an inferred malice charge and stated "malice may be inferred from efforts by the defendant to lie to police to cover up the crime." R. p.462, l.25 – p.463, ll.2. McCollum objected to an inferred malice charge, R. p.459, ll.14-16, and argued that the South Carolina Supreme Court's recent decision in *King* "repudiate[d] implied malice" and held "[o]ne cannot be guilty of attempted murder by implied malice because implied malice does not encompass the essential specific intent to kill." R. p.256, l.12, *see also*, *King*, 422 S.C. at 57, 810 S.E.2d at 23 (quoting *Keys v. State*, 766 P.2d 270, 273 (Nev. 1988)). The defense objected again the following day, immediately before the trial court instructed the jury. R. p.476, l.16 – p.477, l.6. The trial judge noted the objection and stated he had taken *King* into consideration, but he nonetheless planned to give an inferred malice charge. R. p.477, l.7 – p.478, l.15.

Hixson then argued to the jury that Shelby concealed her pregnancy for nine months and never sought prenatal care because she planned to kill her baby. R. p.485, ll.8-17. He asked jurors to listen again to Shelby's initial recorded interview with police and to pay "particular attention" to it because her denials were "intentional deceit" from which the jury could conclude that the State had proven malice beyond a reasonable doubt. He argued, "[y]ou can infer malice by an effort to cover up a crime. You can infer an intentional wrongful act by saying I didn't commit the wrongful act in the face of all kinds of evidence that you did." R. p.486, ll.7-20. He further

told the jury that "[m]alice may be inferred from conduct showing a total disregard for human life. You can infer an ill will if you have total disregard for human life." R. p.501, ll.6-8.

Defense counsel Mureddu told the jury that all of the risk factors for Transient Peripartum Psychosis were present in Shelby's life. R. p.494, ll.17-23. He argued "the element of malice is not present in this case," and stated there was no evidence that Shelby had a "grand plan" from which the jury could conclude that malice was established. R. p.495, l.23 – p.496, l.9. Mureddu described Shelby's thinking as "denial," "delusional," and "childlike reasoning" – "if I just ignore it, it'll go away. It's not some grand plan and it's not evidence of malice." R. p.496, ll.14-16.

But the trial judge instructed the jury that evidence of malice could, indeed, be inferred in a variety of ways. He explained "in order to establish criminal liability, criminal intent is required," but that "criminal intent may be inferred from the circumstances shown to have existed. . . . It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case." R. p.509, l.11 – p.510, l.4. Next, the trial judge explained that Shelby was charged with attempted murder, which he said required the State to prove that she "attempted to kill another person with malice aforethought either express or implied." R. p.510, ll.8-12. He stated "malice aforethought may be expressed or inferred." R. p.510, ll.23-24. He repeated that malice could be shown by "inference" and added:

> malice may be inferred from conduct that shows a total disregard for human life. If facts are proven – are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be considered by you along with the other evidence in the case and you may give it the weight that you decide it should receive.

R. p.511, ll.2-12. Finally, the trial judge explained that attempted murder requires a specific intent to kill, but he instructed that a specific intent may be inferred as well:

> Intent may be shown by acts and conduct of the defendant from which you may naturally and reasonably infer intent. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another human's life.

R. p.511, ll.17-22.

The jury deliberated for approximately one hour before returning a guilty verdict of attempted murder. At a subsequent sentencing hearing, the trial judge was informed by DSS that Shelby's daughter was "healthy, functioning and doing all the things that three-year-olds do, playing and laughing, starting to speak and have conversations and communication and all that good stuff." R. p.569, ll.11-15. Before passing sentence, the court noted that Shelby had been convicted of a "no-parole" offense. R. p.569, l.22. He also noted that she has "no prior criminal history," "absolutely no history of violence," and "no history with the Department of Social Service. . . ." R. p.570, ll.9-17. In the court's view, "none of that is present in this case in any way, shape, or form." R. p.570, ll.16-17. The trial judge nevertheless sentenced Shelby to twenty-five years in prison and ordered her to have no contact with her children.

B. DISCUSSION.

"Criminal liability normally is based upon the concurrence of two factors: the defendant's criminal intent and the actual, physical act constituting the offense." *State v. Fennell*, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000). "A defendant may not be convicted of a criminal offense unless the state proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for that particular offense." *Id.*

In 2010, the South Carolina General Assembly created the crime of attempted murder. Lawmakers defined the offense as: "A person who, *with intent to kill*, attempts to kill another person with malice aforethought, either express or implied, commits the offense of attempted

murder." S.C. Code Ann. § 16-3-29 (emphasis added). In its first, and only, case interpreting the statutory offense, the South Carolina Supreme Court held the Legislature intended to require the State to prove the defendant had a specific intent to commit murder as an element of attempted murder. *State v. King*, 422 S.C. 47, 55, 810 S.E.2d 18, 22 (2017).

In *King*, the Court addressed the "implications of the phrase 'malice aforethought, either express or implied'" as used in the statute. *Id.* at 56, 810 S.E.2d at 22. The Court explained that "'[a]ttempted murder can be committed only when the accused's acts are accompanied by express malice, malice in fact. One cannot attempt to kill another with implied malice because there is no such criminal offense as an attempt to achieve an unintended result.'" *Id.* at 57, 810 S.E.2d at 23 (quoting *Keys v. State*, 766 P.2d 270, 273 (1988)). Further, the Court explained that "one cannot . . . attempt to have the general malignant recklessness contemplated by the legal concept, 'implied malice.'" *Id.* (internal quotation omitted). In short, "[o]ne cannot be guilty of attempted murder by implied malice because implied malice does not encompass the essential specific intent to kill." *Id.* However, "[a]n attempt to kill with express malice is completely consistent with the specific intent requirement of the crime of attempt." *Id.* "Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill." *Id.* (internal quotation omitted).

The Court explained that assault and battery with intent to kill (ABWIK), which was supplanted by the codification of attempted murder, required "the same general intent as murder." *Id.* at 59, 810 S.E.2d at 24. After recounting prior law interpreting ABWIK, the Court noted that South Carolina's appellate courts had interpreted malice aforethought and general intent to kill, as required under ABWIK, as the equivalent of each other. *Id.* at 60-61, 810 S.E.2d at 25. In sharp contrast, statutory attempted murder requires "intent to kill" *and* "malice aforethought," which the

Court interpreted to mean the Legislature intended to "elevate[] the required mental state above a general-intent crime." *Id.* at 61, 810 S.E.2d at 25.

In *State v. Shands*, --- S.E.2d ----, 2018 WL 2944992 (Ct. App. 2018), this Court held that the trial judge erred by giving an inferred malice instruction where the defendant prevented his wife from leaving the house by pulling her back inside by her hair and then stabbing her multiple times with a barbecue fork. Relying on *King*, this Court concluded that "the State needed to prove Shands acted with express malice and the specific intent to kill in order to be found guilty of attempted murder. Therefore, we question whether an implied malice instruction is proper in any attempted murder trial." *Id.* at *10 (internal citation omitted); *see also*, *id.* at *9 (stating the majority in *King* "indicated its belief in a footnote that malice can never be implied in an attempted murder case) (citing *King*, 422 S.C. at 64 n.5, 810 S.E.2d at 27 n.5)). This Court stated that "[d]espite the number of times Shands stabbed [the victim] and the nature of the attack, a jury could have found Shands only had a general intent to kill instead of the higher *mens rea* of specific intent to kill." *Id.* at *10. A specific intent "means that the defendant consciously intended the completion of the acts comprising the [completed] offense." *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001) (quotation omitted)). By contrast, "'[g]eneral intent' is defined as 'the state of mind required for the commission of certain common law crimes not requiring specific intent' and it 'usually takes the form of recklessness . . . or negligence.'" *State v. Kinard*, 373 S.C. 500, 504, 646 S.E.2d 168, 169 (Ct. App. 2007) (quoting BLACK'S LAW DICTIONARY (7th ed. 1999)). This Court held that the instruction error required reversal of Shands's conviction for attempted murder. *Shands*, 2018 WL 2944992 at *10.

As in *King* and *Shands*, the instruction error in this case was not harmless, and respondent cannot meet its burden of demonstrating "'beyond a reasonable doubt that the error complained of

did not contribute to the verdict obtained.'" *Arnold v. State/Plath v. State*, 309 S.C. 157, 165, 420 S.E.2d 834, 838 (1992), (quoting *Chapman v. California*, 386 U.S. 18 (1967)); *see also*, *Yates v. Evatt*, 500 U.S. 391, 403 (1991) (holding the court must "find that error unimportant in relation to everything else the jury considered on the issue in question as revealed in the record"). The only disputed issue at trial was whether Shelby Taylor possessed the requisite *mens rea* to have committed attempted murder. Despite the South Carolina Supreme Court's instructions in *King* that "[o]ne cannot attempt to kill another with implied malice" nor can one "attempt to have the general malignant recklessness contemplated by the legal concept, 'implied malice,'" the trial judge in this case repeatedly instructed the jury that both malice *and* a specific intent to kill can be inferred. Specifically, the trial judge instructed the jury that criminal intent could be inferred: "from the circumstances shown to have existed;" by "the acts of the parties and all the facts and circumstances of the case;" from "conduct that shows a total disregard for human life;" by "the acts and conduct of the defendant from which you may naturally and reasonably infer intent;" or "when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another human's life." R. p.509-511. Although the trial judge did, on one occasion, note that "a specific intent to kill is an element of attempted murder," he gave the jury no definition of specific intent or any further instructions on this element apart from his references to the ways in which it could be inferred. R. p.511, ll.13-14.

Solicitor Hixson likewise told the jury "malice may be inferred from conduct showing a total disregard for human life. You can infer an ill will if you have total disregard for human life." R. p.501, ll.6-8. Hixson went so far as to argue that malice could be inferred from the mere fact that Shelby denied knowledge of the crime in her initial interview with police. He asked the jury to pay "particular attention" to Shelby's initial statement because "you can infer malice by an effort

to cover up a crime. You can infer an intentional wrongful act by saying I didn't commit the wrongful act in the face of all kinds of evidence that you did."[5] R. p.486, ll.17-20.

Because of the trial judge's improper inferred malice instructions, the State was not required to prove every element of the charged offense beyond a reasonable doubt. On the contrary, the jury could have believed that Shelby's state of mind constituted only "recklessness," "negligence" or a "general ill will" and found that sufficient for a conviction of attempted murder. Indeed, according to Solicitor Hixson, the mere fact that Shelby did not confess immediately upon initial police questioning was enough to prove malice. This error contravenes the instructions set forth in *King* (and reiterated in *Shands*) that the State must prove a defendant "acted with express malice *and* the specific intent to kill in order to be found guilty of attempted murder." *Shands*, 2018 WL 2944992 at *10 (citing *King*, 422 S.C. at 54-64, 810 S.E.2d at 22-27)). It is not possible to conclude that the trial judge's improper inferred malice instruction was harmless beyond a reasonable doubt, and the conviction must be reversed.

[5] This argument was particularly unfair under the circumstances, given that the solicitor offered only Shelby's initial statement to police but did not tell the jury that Shelby confessed to the crime and expressed remorse approximately fifteen minutes later under questioning which the State conceded was in violation of her *Miranda* rights.

CONCLUSION

For all of the reasons stated above, this Court should reverse Shelby Taylor's conviction for attempted murder based on the trial judge's erroneous instructions regarding inferred malice and remand for a new trial.

Respectfully Submitted,

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April 18, 2019

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000341

THE STATE ..... RESPONDENT.

V.

SHELBY HARPER TAYLOR ..... APPELLANT.

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The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County
Honorable Robert E. Hood, Circuit Court Judge
Appellate Case No. 2018-000341

THE STATE,

Respondent,

vs.

SHELBY HARPER TAYLOR,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed no conceivable error when instructing the jury on attempted murder because his jury instructions as presented conveyed to the jurors all the necessary elements of that offense and ensured they understood they could not convict Appellant unless they expressly found she had a specific intent to kill her victim when she put the newborn infant into a plastic trash bag, tied the bag shut, tossed the bag into a garbage dumpster, and left it there.

STATEMENT OF THE CASE

In April of 2015, Appellant Shelby Harper Taylor was arrested following an investigation that began after a newborn baby was discovered inside a trash bag that had been discarded into a dumpster. In May of 2015, the Horry County Grand Jury indicted Appellant for attempted murder. On February 5, 2018, a jury trial was commenced in the Horry County Court of General Sessions with the Honorable Robert E. Hood, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge deferred the sentencing proceedings. Subsequently, on February 15, 2018, a sentencing hearing was conducted, and the trial judge sentenced Appellant to a term of imprisonment of twenty-five years. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In the early morning hours of April 9, 2015, Appellant Shelby Harper Taylor quietly gave birth to a child in the bathroom of an apartment she shared with her husband and sixteen-month-old daughter while those two were asleep. (R. p. 272; p. 274; pp. 279-281). Up to that point, Appellant had known she was pregnant with the child, but she had been actively concealing the pregnancy from her husband and other family members. (R. p. 272; p. 299; p. 301). Once the baby was born, Appellant, who was fully aware she had given birth, placed the newborn infant into a plastic trash bag filled with garbage, tied the bag shut, exited her second-floor apartment, headed down the stairs, and threw the trash bag with the newborn infant inside into the apartment complex's dumpster. (R. p. 165; p. 280). She then returned to her apartment but did not wake up her sleeping husband or call anyone for help at that time. (R. p. 280). Instead, she took steps to clean up the residence to prevent anyone from finding out about the birth. (R. p. 283). Then, she took a nap. (R. p. 285). Thereafter, around 1:00 p.m., Appellant headed out to take her daughter to a doctor's appointment while leaving the helpless baby behind in the dumpster. (R. p. 284; State's Ex. # 3 (Recording of Interview)).

Roughly an hour or so later, two boys went to take household trash to the apartment complex's dumpster at their mother's request. (R. p. 164; p. 169; p. 174). As they were disposing of the trash, the boys heard a strange noise coming from inside the dumpster that sounded like a cat, so they climbed inside and began searching around for the source of the noise. (R. p. 164). During their search, they came across a white plastic trash bag that had been tied shut and saw a baby's face pressed up against the side of the bag from the inside. (R. pp. 164-165). At that point, the boys quickly removed the bag from the dumpster, tore it open, and found Appellant's newborn baby covered in trash inside. (R. pp. 165-166; pp. 172-173; pp. 223-

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224). Miraculously, the baby was still alive. (R. p. 173; p. 188). The boys then hurried to alert their mother of what they had found, and the authorities were quickly notified of the boys' shocking discovery. (R. pp. 169-170).

In response, law enforcement officers and other emergency personnel rapidly rushed to the scene. (R. pp. 170-172; p. 187; pp. 200-202). When they arrived, they approached the dumpster and found the baby covered in trash inside the plastic trash bag on the ground. (R. p. 187). At that point, the baby's umbilical cord was still attached to the placenta. (R. pp. 172-173; pp. 187-188). Upon finding the baby in that condition, Captain Keith Drabick, a paramedic with the Horry County Fire and Rescue Team, cut the umbilical cord, began providing medical treatment, and quickly transported the baby to the hospital. (R. p. 171; pp. 173-174; p. 189). Through that prompt attention, he and the others who responded to the scene were able to save the life of the baby, who was in need of emergency care in order to survive. (R. p. 178; pp. 181-182; p. 188).

Once the baby had been transported from the scene, officers from the Horry County Police Department began investigating, and, during the investigation, Detective Jeremy Neely found a receipt from a local restaurant amongst the other trash present inside the bag in which the baby had been discarded. (R. p. 187; pp. 189-191; pp. 200-202). Based on the information contained in the receipt, officers obtained surveillance footage from the restaurant, and the footage depicted Appellant leaving that location on the day before the baby was found. (R. p. 53; p. 192; pp. 202-204). Detective Jeff Cauble then released several images taken from the footage to the media for dissemination in effort to locate Appellant, whose identity was still unknown to law enforcement at that time. (R. p. 54; pp. 204-207).

Once the images were disseminated, Appellant was alerted by multiple family members her photograph had been broadcast by the media, and she responded by going to a police station that evening along with several family members to purportedly find out what was going on. (R. pp. 54-56; p. 92; pp. 207-208; p. 285; State's Ex. # 3). At the police station, Detective Cauble interviewed Appellant along with another officer, and Appellant repeatedly—and calmly—denied having anything to do with or knowing anything about the baby found in the dumpster. (R. pp. 57-58; p. 86; p. 208; p. 285; State's Ex. # 3). Additionally, Appellant continuously asserted she would never do something as "awful" as what had occurred, and she stated—with a laugh—she would adopt the baby if only she could afford to do so. (R. p. 104; p. 302; State's Ex. # 3). Furthermore, Appellant claimed she personally would have taken the baby to the hospital, and she indicated she would never do anything like what had happened to any baby. (State's Ex. # 3).

At the conclusion of the interview with Appellant, Detective Cauble spoke with Appellant's husband, Patrick Taylor. (R. p. 59; Court's Ex. # 1 (Recording of Interview)). During that conversation, Taylor noted Appellant had gained some weight recently and had been avoiding cuddling with him for the preceding three months. (Court's Ex. # 1). He further indicated he had a "gut feeling" Appellant had been lying to him and believed she may have been responsible for what had occurred. (R. p. 64; Court's Ex. # 1). Detective Cauble then asked Appellant to return to the interview room, and, shortly after she did, she finally admitted she had given birth to the baby before discarding it in the dumpster.[1] (R. pp. 60-61; Court's Ex. # 1). At that point, Appellant was arrested for the baby's attempted murder. (R. p. 286; Court's Ex. # 1).

[1] Throughout her later interview, Appellant repeatedly expressed personal concern about being in trouble and going to jail. (Court's Ex. # 1).

Following her arrest, Appellant was transported to the hospital for treatment, and she was examined there by Dr. John Burney, an obstetrician and gynecologist. (R. pp. 230-231; p. 236). Through the examination, Dr. Burney confirmed Appellant had given birth within the preceding day or so. (R. pp. 232-233). However, he found no signs suggesting Appellant had experienced any abnormal trauma as a result of the birth. (R. p. 234). Following that examination, Appellant was referred to a psychologist and a social worker, and, when speaking with the psychologist, she admitted she had been actively hiding the pregnancy from her husband and other family members. (R. pp. 235-236; p. 295). She then remained at the hospital for two days before she was released and transported to jail. (R. p. 236; p. 287).

Meanwhile, Detective Cauble continued the investigation into the incident and conducted a consent-based search of Appellant's apartment. (R. pp. 215-217; Court's Ex. # 1). During the search, the detective located a few spots of blood on the carpet inside the residence. (R. p. 220). Furthermore, he found cleaned items in the washing machine, including the mats from the bathroom, and discovered the bathroom had been cleaned. (R. pp. 221-222). Beyond that, Detective Cauble submitted DNA samples for analysis to determine the identity of the baby's parents, and that testing confirmed Appellant was the baby's mother while her husband was the baby's father. (R. pp. 223-224).

Subsequently, Appellant was indicted for attempted murder, and she proceeded forward to trial. (R. pp. 10-12). At the conclusion of trial, the jury convicted her as indicted, and the trial judge ultimately sentenced her to a twenty-five-year term of imprisonment. (R. pp. 517-519; p. 571).

ARGUMENT

The trial judge committed no conceivable error when instructing the jury on attempted murder because his jury instructions as presented conveyed to the jurors all the necessary elements of that offense and ensured they understood they could not convict Appellant unless they expressly found she had a specific intent to kill her victim when she put the newborn infant into a plastic trash bag, tied the bag shut, tossed the bag into a garbage dumpster, and left it there.

Appellant contends the trial judge committed reversible error through the manner in which he instructed the jury on attempted murder. In support of that contention, Appellant maintains the trial judge's jury instructions were purportedly erroneous because the charge as presented instructed the jurors they could infer malice and intent in a variety of different ways, which Appellant suggests was somehow improper in light of the fact a finding of a specific intent to kill was necessary for the offense of attempted murder to be established. Critically though, the trial judge's jury instructions as presented clearly conveyed to the jurors they could *only* convict Appellant of attempted murder if they found she acted with the *specific intent to kill* her victim. Moreover, while the charge on the law did convey to the jurors they could infer malice and intent from the circumstances of the crime, such a statement of law was entirely correct and in no way permitted the jurors to convict Appellant of the indicted offense without expressly finding the required specific intent to kill. Under such circumstances, the trial judge's jury charge accurately instructed the jury on the relevant and applicable law related to attempted murder and could not have resulted in any improper prejudice to Appellant. Appellant's conviction should be affirmed.

Relevant Facts

During the course of trial, the evidence and testimony presented—including from Appellant herself—established Appellant placed her newborn infant into a plastic trash bag filled with garbage just after the baby was born, tied the bag shut, discarded the bag in a dumpster, and

left it there. (R. pp. 171-173; pp. 187-188; pp. 223-224; pp. 232-233; State's Ex. # 23 (Photograph); State's Ex. # 26 (Photograph)). Additionally, evidence and testimony was presented establishing Appellant intentionally concealed the pregnancy from her family members and husband prior to that point. (R. p. 272; p. 299; p. 301). Similarly, testimony and evidence was presented demonstrating Appellant took active steps to prevent anyone from finding out about the birth after it occurred by thoroughly cleaning her apartment before her husband woke up and by calmly making a number of untruthful statements to detectives in an effort to mislead their investigation into the incident. (R. pp. 207-211; pp. 220-222; State's Ex. # 3). Furthermore, the evidence and testimony presented established the life of the baby, who—as would be expected of a newborn infant abandoned for hours inside a plastic trash bag that had been tossed into a dumpster—was in need of emergency medical care, was only fortuitously saved because two curious boys decided to climb into the dumpster to look for what they believed was a cat at a point in time at least an hour *after* Appellant had driven away from the apartment complex to run errands. (R. pp. 164-166; p. 178; State's Ex. # 3).

In addition to that testimony and evidence, Appellant testified in her own defense, claimed she was not thinking when she discarded the baby inside into the dumpster, and asserted she did not understand why she did what she did. (R. p. 280; p. 291). She further expressed regret and sorrow for her actions. (R. pp. 290-291). However, Appellant admitted she was aware she had given birth, conceded she was acting under her own power when she placed the baby into the plastic trash bag and then tossed the bag into the dumpster, and confirmed she cleaned up after the crime to conceal evidence of the birth. (R. pp. 280-283). Furthermore, Appellant indicated she did not believe she was financially capable of caring for another child at the time the victim was born, and she acknowledged she had received criticism from her family

in the past in connection to the first pregnancy and had also believed she would receive more "lecturing" from her family members if they found out about the second one.[2] [3] (R. p. 290; p. 300).

Beyond Appellant's testimony, Dr. Robert McCarthy, the executive director of a private mental health practice, testified on Appellant's behalf as an expert in clinical forensic evaluations and counseling. (R. pp. 357-358; pp. 386-387). During his testimony, Dr. McCarthy asserted he conducted a clinical forensic evaluation of Appellant that included standardized testing with validity scales he characterized as "basically paper-and-pencil lie detectors."[4] (R. pp. 387-395). He further indicated Appellant reported during the evaluation experiencing "rejection" from family members, pressure from negative comments, abuse, and financial struggles. (R. pp. 406-408). Based on that, Dr. McCarthy contended Appellant was suffering from peripartum depression and, in his expert opinion, experienced the "very rare" condition of transient peripartum psychosis, which he asserted could lead to an individual becoming "disoriented," "illogical," and "irrational." (R. pp. 400-401; p. 403; pp. 406-408; p. 413; p. 415). However, he conceded the psychiatrist who examined Appellant at the hospital on the date of the incident

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[2] Following Appellant's testimony, Appellant's mother confirmed she and other family members had previously expressed disappointment and made negative comments to Appellant about her life choices. (R. pp. 307-310).

[3] During her testimony, Appellant also claimed her husband was abusive to her throughout their marriage. (R. pp. 270-271). However, Appellant conceded her claims of spousal abuse were first raised over a year after her arrest to a psychiatrist retained for her defense. (R. p. 297; p. 299; pp. 305-306). Furthermore, she acknowledged she had previously informed the detectives and medical personnel she encountered after the incident her husband was not abusive to her. (R. pp. 242-243; pp. 293-295; p. 299).

[4] As part of his evaluation, Dr. McCarthy also interviewed Appellant's family members but *not* her husband. (R. p. 389; p. 420).

noted Appellant had good concentration and attention and appeared to be cognitively intact at that time. (R. pp. 424-425).

Once all that evidence and testimony had been introduced, the trial judge began going over his intended jury instructions with the parties. (R. p. 439). During the ensuing discussion, the trial judge indicated he had reviewed the Supreme Court's decision in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), and noted the Supreme Court had indicated in that decision one cannot attempt to achieve an unintended result, which he noted could potentially impact how the jury should be instructed on implied malice as part of the attempted murder charge. (R. pp. 451-452). The trial judge then invited the parties to offer any suggestions as to how he should instruct the jury on malice. (R. pp. 452-453). In response, the solicitor asserted he believed the "standard" instruction on express and implied malice would be proper so long as the portion dealing with recklessness was excised. (R. pp. 453-455). Meanwhile, defense counsel indicated he objected to any instruction on implied or inferred malice in light of the King decision. (R. p. 457; p. 459). After listening to the parties' suggestions, the trial judge indicated he would work on crafting a proper malice instruction after giving the matter further consideration. (R. p. 461). However, the trial judge indicated he would ensure the malice charge did not contain language permitting a finding of guilt based on recklessness or something similar since an unintended result had been recognized as being inconsistent with an attempt crime. (R. p. 462). Thereafter, upon considering the matter overnight, the trial judge explained he intended to leave the statutory "express or implied" language in his jury instructions on attempted murder since that language was a part of the statutory offense created by the legislature. (R. p. 476). In response, defense counsel objected to the inclusion of that language despite the fact it was contained in the attempted murder statute while candidly conceding it was "odd" to object to an instruction

simply conveying the statute's language. (R. pp. 476-477). At that point, the trial judge affirmed he spent "hours upon hours" attempting to craft a proper jury instruction that would comply with the King decision, and he noted his intended instructions expressly required a finding of a specific intent to kill while further omitting any reference to unintentional behavior, recklessness, or negligence. (R. p. 478).

Following that discussion, the trial proceeded forward, and the parties presented their closing arguments to the jury.[5] (R. pp. 483-501). During the State's closing argument, the solicitor readily acknowledged a specific intent to kill had to be proven in order for Appellant to be convicted of attempted murder but contended Appellant's intent was, in fact, to end her baby's life. (R. p. 492; p. 501). Furthermore, the solicitor argued—without objection—Appellant's deceit, efforts to conceal the crime, and act of putting the baby in the plastic trash bag and tying it shut constituted evidence of malice.[6] [7] (R. p. 486; pp. 490-492; p. 500). Conversely, during the defense's closing argument, defense counsel maintained Appellant had

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[5] Both before and after the parties' closing arguments, the trial judge instructed the jurors the arguments of counsel were not evidence. (R. pp. 141-142; p. 505). Likewise, the trial judge explained to the jurors they were required to solely apply the law as he personally instructed it to them. (R. p. 143; p. 503).

[6] Notably, the solicitor's argument in that regard was fully consistent with established South Carolina law. See State v. Ballington, 346 S.C. 262, 273, 551 S.E.2d 280, 286 (Ct. App. 2001) (instructing Ballington's attempts to cover up a killing and mislead others about what occurred constituted evidence he acted with malice at the time of the killing), overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); see also State v. Arnold, 309 S.C. 157, 169, 420 S.E.2d 834, 840 (1992) (finding efforts to mislead police about a killing constituted evidence the killing was committed with malice).

[7] Because no objection was raised to those remarks, any issue Appellant may have had with them was not properly preserved for appellate review and cannot now be validly raised on appeal. See State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) ("The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

no hatred or ill will towards her baby and merely acted in a delusional and non-malicious manner based on a psychological disorder. (R. pp. 494-497). Moreover, defense counsel suggested Appellant's actions were not malicious because they were not part of "some grand plan."[8] (R. p. 496).

At the conclusion of the closing arguments, the trial judge instructed the jury on the applicable law. (R. pp. 502-516). In doing so, the trial judge instructed the jury on criminal intent—without objection—as follows:

> [I]n order to establish criminal liability, criminal intent is required. For example, these are examples: The mental state required to be proven by the [S]tate for a particular crime could be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the [S]tate beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances that surround the situation. There is no way to prove intent to a mathematical certainty. There is no way that medical science can dissect a person's brain and determine what the person had in mind. So, the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element that requires intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state. It is a conscious wrongdoing. It is up to you to determine what the defendant intended to do based upon the circumstances shown to have existed.

(R. pp. 509-510; 516). Likewise, the trial judge instructed the jury on attempted murder—and the accompanying element of malice—as follows:

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[8] Significantly, notwithstanding the fact Appellant's intentional concealment of the pregnancy for months coupled with the actions she took after the baby was born were consistent with a planned course of action, evidence of a "grand plan" was in no way required in order for the jury to find Appellant acted with malice aforethought under South Carolina law. See State v. Wilds, 355 S.C. 269, 277, 584 S.E.2d 138, 142 (Ct. App. 2003) ("Although malice must be aforethought, there is no requirement that it must exist for any appreciable length of time before the commission of the act. It may be conceived at the very moment the assault occurs.").

[Appellant] is charged with attempted murder. What does the [S]tate have to prove? In order to prove this crime, the [S]tate must prove that the defendant attempted to kill another person with malice aforethought either expressed or implied.

So, what is malice? So, malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury under circumstances that the law will infer an evil intent.

Now, what is malice aforethought? Malice aforethought does not require that the malice exist for any particular time before the act is committed. The malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of previous evil intent and the act. Now, malice aforethought may be expressed or inferred. These terms express and inferred do not mean different kinds of malice but merely the manner in which the malice may be shown to exist. That is either by direct evidence or inference from the facts and circumstances which are proved. Express malice is when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. Malice may be inferred from conduct that shows a total disregard for human life. If facts are proven -- are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you along with the other evidence in the case and you may give it the weight that you decide it should receive.

Attempted murder -- excuse me, a specific intent to kill is an element of attempted murder. Attempted murder is the performance of an act or acts which tend but fail to kill a human being when such acts are done with deliberate intention unlawfully to kill. Intent may be shown by acts and conduct of the defendant from which you may naturally and reasonably infer intent. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another human's life.[9] [10]

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[9] After the trial judge finished instructing the jury on the applicable law, defense counsel indicated he did not have any additional objections beyond those he had previously raised. (R. p. 516).

[10] In addition to attempted murder, the trial judge also instructed the jury on the lesser-included offense of first-degree assault and battery. (R. pp. 511-512).

(R. pp. 510-511).

Subsequently, the case was submitted to the jury, and the jurors began their deliberations. (R. p. 517). Thereafter, at the conclusion of those deliberations, the jurors unanimously convicted Appellant of the indicted offense of attempted murder. (R. pp. 517-519).

Standard of Review

In a criminal case, the appellate court sits solely to review errors of law. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an issue involving a trial judge's jury charge, the appellate court must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."). The appropriate test for reviewing the charge involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal."); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."). Moreover, an appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constitutes a prejudicial abuse of discretion. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); Rauch v. Zayas, 284 S.C. 594,

597, 327 S.E.2d 377, 378 (Ct. App. 1985) ("[A]n alleged error in a portion of the charge must be prejudicial to the appellant to warrant a new trial."); see also State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005) ("Error without prejudice does not warrant reversal.").

Analysis

The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). To carry out that purpose, a trial judge is required to charge the jury on the current and correct South Carolina law applicable to the case based on the evidence presented. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). In doing so, the trial judge is only required to instruct the jury on the substance of the law and does *not* have to use any particular verbiage. State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002); see Brandt, 393 S.C. at 549, 713 S.E.2d at 603 ("The substance of the law is what must be charged to the jury, not any particular verbiage."). Importantly, so long as the trial judge's jury instructions are substantially correct and adequately cover the applicable law, those instructions are considered to be appropriate and not erroneous. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

In the case sub judice, the issue on appeal centers on the propriety of the trial judge's jury instructions on the indicted offense of attempted murder. Relatively recently, that particular offense was enacted through our legislature's passage of the Omnibus Crime Reduction and

Sentencing Reform Act of 2010, which abolished all prior statutory and common law assault and battery offenses and replaced them with a number of new offenses. See Act No. 273, § 6.A, 2010 S.C. Acts & Joint Resolutions (adding the statutory offense of attempted murder to the South Carolina Code of Laws); see also State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014) ("Though the passage of the Act, the legislature abolished all common law assault and battery offenses and all prior statutory assault and battery offenses."). Pursuant to South Carolina's attempted murder statute, the offense of attempted murder is committed when a person "with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied[.]" S.C. Code Ann. § 16-3-29. Thus, based on the plain language of the statute, the statutorily-delineated elements of the offense include: (1) an attempt to kill another person; (2) with intent to kill; and (3) with malice aforethought, either express or implied. Id.; see State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) ("We, of course, *must take the statute as we find it*, giving effect to the legislative intent as expressed in its language." (emphasis added)).

Significantly, in State v. King, 422 S.C. 47, 64, 810 S.E.2d 18, 27 (2017), our Supreme Court recently addressed an appellate challenge to a trial judge's jury instructions on attempted murder subsequent to the enactment of the offense. In that case, King was charged with attempted murder, and, as part of his jury instructions on the offense, the trial judge explained to the jury over defense counsel's objection a specific intent to kill is *not* an element of attempted murder and the offense could be committed with only a general intent to commit serious bodily harm. Id. at 54, 810 S.E.2d at 21. At the conclusion of the trial, the jury convicted King of attempted murder along with several other offenses, and he appealed. Id. On appeal, the Court of Appeals reversed King's attempted murder conviction after finding the legislature "intended

to require the State to prove specific intent to commit murder as an element of attempted murder[.]" State v. King, 412 S.C. 403, 411, 772 S.E.2d 189, 193 (Ct. App. 2015). The State then filed a petition for a writ of certiorari in regard to that particular ruling, and the Supreme Court granted the State's petition.[11] King, 422 S.C. at 50, 810 S.E.2d at 20. Thereafter, on certiorari, the Supreme Court agreed with the Court of Appeals a specific intent to kill was an element of the crime. Id. at 55, 810 S.E.2d at 22. In reaching that conclusion, the Supreme Court found the legislature's use of "intent to kill" and "malice aforethought, either express or implied" evidenced an intention to create an offense requiring a higher level of mens rea than the offense of murder. Id. at 61, 810 S.E.2d at 25. However, the Supreme Court further cautioned implied malice was "arguably" inconsistent with a specific intent crime. Id. at 64, n. 5, 810 S.E.2d at 27, n. 5. As support for that conclusion, the Supreme Court noted the Nevada Supreme Court had previously concluded the offense of attempted murder would be inconsistent with implied malice as one cannot attempt an unintended result, attempt to be negligent, or attempt to be malignantly reckless. Id. at 57, 810 S.E.2d at 23.

Cognizant of our Supreme Court's decision in King and its cautionary language about implied malice, the trial judge in Appellant's case painstakingly strove to craft a jury instruction on attempted murder that gave effect to all of the words of the applicable statute while simultaneously ensuring the jurors understand Appellant could not be convicted of the offense unless they found beyond a reasonable doubt she *intentionally* acted with a *specific intent to kill* her victim. See S.C. Code Ann. § 16-3-29 ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder."); see also In re Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)

[11] King also filed a petition for a writ of certiorari on unrelated grounds, and the Supreme Court granted King's petition as well. King, 422 S.C. at 50, 810 S.E.2d at 20.

(instructing "[a] statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous" (citations and internal quotations omitted)). Critically, based on the attempted murder instructions that were presented to the jury, the trial judge achieved that desired result.

Looking to the relevant language employed in the attempted murder charge as presented, the trial judge: (1) advised the jury of the exact language used by the statute to define the offense; (2) explained the general concept of malice as hatred, ill will, hostility, and the intentional doing of a unjustified and wrongful act; (3) defined the "aforethought" component of the malice as requiring the malice to exist before and at the time of the act; (4) attempted to prevent any misunderstanding about implied malice in the context of attempted murder by equating express and implied malice solely to proof of malice by direct and circumstantial evidence; (5) *expressly indicated a specific intent to kill was a required element of attempted murder*; (6) defined attempted murder as "the performance of an act or acts which tend but fail to kill a human being when such acts are done with deliberate intention unlawfully to kill;" and (7) explained various ways the required intent could potentially be inferred, including through proof the defendant "voluntarily and willfully commits an act, the natural tendency of which is to destroy another human's life." Significantly, when giving that language its natural meaning and viewing the charge as a whole, the jury could have *only* convicted Appellant if they found she committed an *intentional* act with the *specific intent to kill* her victim with an unlawful and malicious purpose. See Sheppard, 357 S.C. at 664, 594 S.E.2d at 474 ("[T]he test is what a reasonable juror would have understood the charge as meaning."); see also Foye v. State, 335 S.C. 586, 590, n. 1, 518 S.E.2d 265, 267, n. 1 (1999) ("The jury was instructed to determine petitioner's guilt based only on the evidence presented in the trial. A jury is presumed to follow

instructions. Therefore, without some showing the jurors disregarded these instructions, this Court declines to presume prejudice." (citations omitted)); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) ("[J]urors are presumed to follow the law as instructed to them."). Moreover, nothing in the trial judge's attempted murder charge would have permitted the jury to convict Appellant based on a finding she merely engaged in negligent or reckless conduct, and, instead, the charge required the jury to find Appellant had the specific intention to end the newborn infant's life through her actions in order to convict. Cf. United States v. Kwong, 14 F.3d 189, 196 (2nd Cir. 1994) (finding the trial judge reversibly erred when instructing the jury on the requisite elements of attempted murder by including an instruction that indicated "reckless indifference might serve as a substitute for proof of a specific intent to kill"). Under such circumstances, the trial judge's jury instructions properly instructed the jury on the required elements of attempted murder without incorrectly permitting the jurors to convict Appellant for attempting an unintended result, attempting to merely be negligent, or attempting to be reckless, and, therefore, those instructions were not erroneous. See King, 422 S.C. at 63-64, 810 S.E.2d at 26-27 (holding the offense of attempted murder includes specific intent to kill as an element); see also Rye, 375 S.C. at 123, 651 S.E.2d at 323 (recognizing a trial judge's decisions regarding jury instructions will not be reversed when the instructions properly charged the applicable law when considered in their entirety); cf. State v. Jackson, 297 S.C. 523, 527, 377 S.E.2d 570, 572 (1989) ("It is unlikely that a reasonable juror would have singled out this portion of the charge and interpreted it as an opinion on the facts of this case or an instruction as to the weight to be given the evidence.").

In arguing to the contrary, Appellant contends the trial judge's jury instructions on attempted murder were somehow improper because those instructions informed the jury "both

malice *and* a specific intent to kill [could] be inferred." Critically though, absent a candid and truthful admission of intent from a defendant, a defendant's intent—including specific intent to kill—must *necessarily* be inferred from the circumstances. See State v. Sutton, 340 S.C. 393, 397, n. 5, 532 S.E.2d 283, 285, n. 5 (2000) ("A *specific intent to kill* may be, and normally is, inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon, and the nature and extent of the victim's injuries." (emphasis added)); see also State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) ("The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred." (citation omitted)); State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971) ("Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct."); State v. Land, 419 S.C. 191, 202, 797 S.E.2d 48, 54 (Ct. App. 2016) ("[W]ithout an actual statement of intent by the actor, proof of intent must be determined by inferences from conduct."). In fact, the Nevada Supreme Court, whom our Supreme Court looked to for guidance in interpreting our attempted murder statute, has *expressly* found a jury instruction indicating the specific intent to kill necessary to prove attempted murder may be inferred from a defendant's actions to be entirely proper, and the Nevada Supreme Court's determination in that regard is consistent with the decisions of numerous other appellate courts, including courts in South Carolina. See Sharma v. State, 56 P.3d 868, 875 (Nev. 2002) (finding a jury instruction "directing the jury that a specific intent to kill may be inferred from an external circumstance, i.e., the intentional use of a deadly weapon upon the person of another at a vital part" to be proper in an attempted murder case); see also Williams v. Maggio, 695 F.2d 119, 122

(5th Cir. 1983) (recognizing the specific intent to kill necessary to prove an offense "may be inferred from the accused's entire conduct"); People v. Hill, 658 N.E.2d 1294, 1298 (Ill. App. Ct. 1995) ("Proof of a specific intent to kill is an indispensable element of attempt first degree murder. . . . The necessary specific intent to kill may be shown by surrounding circumstances, including the character of the assault and the use of a deadly weapon. Such intent may be inferred if one willfully does an act, the direct and natural tendency of which is to destroy another's life." (citations omitted)); Sutton, 340 S.C. at 397, n. 5, 532 S.E.2d at 285, n. 5 (instructing specific intent to kill can be inferred); State v. Williams, 422 S.C. 525, 542, 812 S.E.2d 917, 926 (Ct. App. 2018) (instructing "the specific intent to kill [for attempted murder] can be inferred by the surrounding circumstances of the case, including the use of a deadly weapon and the character of the attack"). As a result, the trial judge's use of language on inferring intent and malice—which in no way permitted an attempted murder conviction absent proof of a specific intent to kill—did not render the trial judge's jury instructions incorrect or erroneous. See Kwong, 14 F.3d at 194 ("By necessity, intent must usually be proven by circumstantial evidence."); cf. State v. Raglin, 699 N.E.2d 482, 492 (Ohio 1998) ("Appellant contends that the trial court's instructions to the jury in the guilt phase that defined 'causation' in terms of foreseeability permitted a conviction for aggravated murder without proof of purpose to kill. Appellant makes a similar argument with respect to the trial court's instruction to the jury that '[i]f a wound is inflicted upon a person with a deadly weapon in a manner calculated to destroy life, the purpose to cause the death may be inferred from the use of the weapon.' Appellant's arguments are not persuasive. The trial court's instructions to the jury, viewed as a whole, made it clear that a finding of purpose (and specific intent) to kill was necessary in order to convict appellant on the charge of aggravated murder.").

Accordingly, because the trial judge's jury charge properly and correctly instructed the jury on the necessary elements of attempted murder in a manner that would not have permitted the jury to convict Appellant of that offense without finding she acted with the specific intent to kill her victim, the trial judge's jury instructions accurately conveyed the relevant and applicable law to jury and could not have resulted in any improper prejudice to Appellant.[12] See State v. Marin, 415 S.C. 475, 482-483, 783 S.E.2d 808, 812 (2016) (explaining the "inquiry on appellate review is concerned only with the question of whether the jury charge, when viewed as a whole, accurately conveys the applicable law"); cf. State v. Hicks, 330 S.C. 207, 218, 499 S.E.2d 209, 215 (1998) (concluding no reasonable juror would have understood the trial judge's jury instructions to place the burden of proof of Hicks where "[t]he instructions specified the State had the overall burden of proof"). Appellant's conviction should be affirmed.

[12] Moreover, even assuming the trial judge's jury instructions were somehow improper, Appellant's acts of placing a defenseless newborn infant into a plastic trash bag, tying the bag shut with a knot, throwing the bag into a dumpster, and leaving it there for hours without doing anything suggesting any intention to ever return could *only* support a conclusion she specifically and maliciously intended the baby to die since those actions are utterly inconsistent with the baby's survival, and, thus, any conceivable error in the trial judge's jury instructions was entirely harmless under the circumstances of Appellant's case. See Middleton, 407 S.C. at 319, 755 S.E.2d at 436 ("[T]he only conclusion established by the evidence is that [Middleton] was guilty of attempted murder, given the facts that [Middleton] deliberately drove up to the passenger window and shot into the vehicle at least five times[.] . . . In our view, there is no other way to construe the evidence in this case but that [Middleton] was attempting to kill [his victims]."); see also State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) ("The burden is upon the appellant to satisfy [the appellate] court that there has been *prejudicial* error." (emphasis added)).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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April 23, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Robert E. Hood, Circuit Court Judge
Appellate Case No. 2018-000341

RECEIVED
APR 23 2019
SC Court of Appeals

THE STATE,

Respondent,

vs.

SHELBY HARPER TAYLOR,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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April 23, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Robert E. Hood, Circuit Court Judge
Appellate Case No. 2018-000341

RECEIVED
APR 23 2019
SC Court of Appeals

THE STATE,

Respondent,

vs.

SHELBY HARPER TAYLOR,

Appellant.

PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Final Brief of Respondent on Appellant by sending two copies of the same to:

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I further certify all parties required by Rule to be served have been served.
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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000341

THE STATE ..... RESPONDENT.

V.

SHELBY HARPER TAYLOR ..... APPELLANT.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

In her opening brief, Appellant, Shelby Harper Taylor, set forth why her conviction (and the resulting twenty-five year sentence) for the attempted murder of her newborn child should be reversed. In its brief, Respondent has, on one factual point (whether Appellant's baby needed emergency medical care) mischaracterized the record evidence. Furthermore, Respondent's harmless error argument turns a blind-eye to the actual language used by the trial judge and – more importantly – how that language would have been understood by a reasonable juror to relieve the prosecution of its burden of proving that Appellant acted with the specific intent to kill. Both points will be responded to briefly below.

1. There is no evidence Baby T needed emergency care.

Respondent asserts at p. 4 and p. 8 of its brief that Appellant's newborn child (referred to in the record as Baby T), required emergency medical care in order to survive. The record does not directly, or indirectly, support this statement. Respondent bases this assertion on the mere fact that Baby T was transported to the hospital (R. pp.181-82, 188), as would naturally be expected under the circumstances, and the testimony of the responding paramedic who stated it would be "purely speculation" for him to comment on the baby's oxygen levels, but he nonetheless "felt" she was in need of emergency care. R. p.178, ll.9-18. Baby T was transported to Tidelands Health Waccamaw, where she weighed 8 pounds, 4.6 ounces which was "a suitable weight for a full-term infant." R. p.249, l.3 – p.250, l.14. No other evidence regarding Baby T's medical condition at the time of her birth was entered into the record. During the charge conference, the trial judge stated there was "obviously no evidence" of injury to Baby T (R. p.447, l.15), and during the sentencing proceeding, the judge confirmed that Baby T was, at that time, "healthy, functioning and doing all the things that three-year-olds do, playing and laughing, starting to speak and have

conversations and communication and all that good stuff." R. p.569, ll.11-15. Baby T suffered neither immediate nor long-term injuries. At the time of the trial, she and her sister lived in the care of their paternal grandparents, and the department of social services had no concerns about her care or development. R. p.569, ll.1-15.

2. The instructional error was not harmless.

Respondent argues that even if the trial judge's instructions were improper, any error was harmless because there was evidence from which the jury could properly have concluded that Appellant "specifically and maliciously intended the baby to die." Initial Brief of Respondent p.22, n.12. Even assuming the truth of that statement, it reveals a fundamental misunderstanding of the legal standard for assessing whether an error was harmless. Respondent bears the burden of demonstrating "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" *Arnold v. State/Plath v. State*, 309 S.C. 157, 165, 420 S.E.2d 834, 838 (1992) (quoting *Chapman v. California*, 386 U.S. 18 (1967)). This Respondent cannot do, because the trial judge repeatedly instructed the jury that criminal intent could be inferred and implied. R. pp.509-511. The prosecution seized upon these instructions and likewise encouraged the jury to find malice by inference, including the argument that malice and intent could be found from the mere fact that Appellant initially denied her involvement in the crime (although she shortly thereafter confessed). R. p.486, ll.7-20. Respondent asserts, "viewing the charge as a whole, the jury could have *only* convicted Appellant if they found she committed an *intentional* act with the *specific intent to kill* her victim with an unlawful and malicious purpose." Initial Brief of Respondent pp.18-19 (emphasis in original). But this simply does not square with a plain reading of the charge. The trial judge told the jury:

> So, in order to establish criminal liability, criminal intent is required. For example, these are examples: The mental state required to be

proven by the State for a particular crime could be purpose, intent, knowledge, ***recklessness***, or ***criminal negligence***. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances that surround the situation. There is no way to prove intent to a mathematical certainty. There is no way that medical science can dissect a person's brain and determine what the person had in mind. So, the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element that requires intent was present. It is not necessary to establish intent by direct and positive evidence, but ***intent may be established by inference*** in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state. It is a conscious wrongdoing. It is up to you to determine what the defendant intended to do based upon the circumstances shown to have existed.

All right. So, Ms. Taylor is charged with attempted murder. So, what does the State have to prove? In order to prove this crime, the State must prove that the defendant attempted to kill another person with malice aforethought ***either express or implied***.

So, what is malice? So, malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury ***or under circumstances that the law will infer an evil intent.***

Now, what is malice aforethought? Malice aforethought does not require that the malice exist for any particular time before the act is committed. The malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of previous evil intent and the act. Now, ***malice aforethought may be expressed or inferred.*** These terms express and inferred do not mean different kinds of malice but merely the manner in which the malice may be shown to exist. That is either by direct evidence ***or inference from the facts and circumstances which are proved***. Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. ***Malice may be inferred from conduct that shows a total disregard for human life***. If facts are proven – are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you along with the other evidence in the case and you may give it the weight that you decide it should receive.

> ***Attempted murder – excuse me, a specific intent to kill is an element of attempted murder.*** Attempted murder is the performance of an act or acts which tend but fail to kill a human being when such acts are done with deliberate intention unlawfully to kill. ***Intent may be shown by acts and conduct of the defendant from which you may naturally and reasonably infer intent. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another human's life.***

R. p.509, l.11 – p.511, l.22.

In *State v. King*, the South Carolina Supreme Court specifically and unambiguously held that: "[o]ne cannot be guilty of attempted murder by implied malice because implied malice does not encompass the essential specific intent to kill." 422 S.C. 47, 57, 810 S.E.2d 18, 23 (2017). Contrary to these instructions, the trial judge in this case repeatedly told the jury that they could find Shelby Taylor guilty by implied malice. The instruction likewise clearly contravenes this Court's consistent ruling in *State v. Shands*, --- S.E.2d ----, 2018 WL 2944992 (Ct. App. 2018), which Respondent does not even attempt to address. The trial judge only briefly noted, almost as an aside, that "specific intent to kill is an element of attempted murder" — but then gave no further definition or instructions to the jury regarding specific intent apart from the court's repeated assertions that this element could be established by inference. By contrast, the trial judge listed "recklessness" and "criminal negligence" as examples of criminal intent, and then peppered the charge with multiple statements that malice, criminal intent and specific intent could all be established through inference in a variety of ways. Under these circumstances, the jury very well could have believed Appellant's state of mind to be something less than "specific intent to kill," and – as in *King* and *Shands* – this error was not harmless.

CONCLUSION

For these reasons, and the reasons stated in Appellant's Opening Brief, This Court must reverse.

Respectfully Submitted,

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April 18, 2019

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000341

THE STATE ..... RESPONDENT.

V.

SHELBY HARPER TAYLOR ..... APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Final Reply Brief was served by first class United States mail, postage prepaid, this 18th day of April, 2019, upon the following:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Shelby Harper Taylor, Appellant.

Appellate Case No. 2018-000341

Appeal From Horry County
Robert E. Hood, Circuit Court Judge

Opinion No. 5853
Submitted March 1, 2021 – Filed September 1, 2021

AFFIRMED

John H. Blume, III, of Elizabeth Franklin-Best, P.C., and Emily C. Paavola, of Death Penalty Resource & Defense Center, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Mark Reynolds Farthing, both of Columbia; and Solicitor Jimmy A. Richardson, II, of Conway, all for Respondent.

HEWITT, J.: The question in this case is whether "inferred malice"—the concept that a jury may deduce malice from a defendant's actions—is inconsistent with the specific intent to kill required for attempted murder. We hold it is not. After all, actions can speak louder than words.

Sometimes the jury is left with nothing to consider except the defendant's actions. That was the case here. Shelby Harper Taylor placed her newborn baby in a trash bag and left the bag in a dumpster. The jury was charged that it could not convict her unless it found she intended to kill the baby and that the difference between "express" and "implied" malice related to whether malice was proved by words, preparation, or by inferring malice from other facts. This was proper under the law. Thus, we affirm.

FACTS

This case's background is heartbreaking. Taylor gave birth to a baby girl in the bathroom of her apartment during the early hours one morning in April 2015. She was in her early twenties and had successfully hidden the pregnancy from her family. This was Taylor's second child.

At the time, she lived in the apartment with her husband and their sixteen-month-old daughter. After giving birth, Taylor placed the newborn inside a trash bag, tied the bag, took the bag downstairs, and placed it in the apartment's shared trash dumpster. Taylor also cleaned the bathroom.

Taylor's husband and toddler slept through all of this. Taylor proceeded with her day as though nothing had happened: she took a nap, took her toddler for a well checkup, and visited her mother.

Early that afternoon, two boys from another unit in the apartment complex were taking out the trash and heard what they believed was an animal in the dumpster. When they investigated, the boys saw the newborn's face pressed against the side of the trash bag and rescued the baby.

A receipt inside the bag led police to a local restaurant. The police got the restaurant's internal surveillance video, isolated the picture of a person of interest, and sent the image to local media.

Taylor went to the police station after she learned her picture was on the news. Taylor denied knowing anything about the baby or how the baby came to be in a bag that indisputably contained her trash. Police did not believe her denial, nor did Taylor's husband, whom police initially questioned separately.

Taylor confessed after her husband sat with police while they interviewed her a second time. She was then taken to the hospital where a doctor confirmed she had recently given birth. Taylor also spoke with a psychologist and a social worker. She

told them she was not the victim of any domestic abuse and that she had hidden the pregnancy from her family.

The basic facts we have recited were not disputed at trial. The sole issue in court was Taylor's mental state and her intent. Taylor claimed she did not intend to kill the newborn when she discarded the child. She said the event occurred during a state of Transient Peripartum Psychosis. In other words, she claimed this happened while she was temporarily delusional.

Taylor supported this argument with testimony from an expert who opined Taylor experienced impermanent psychosis in the months leading up to and immediately after the child's birth. The expert explained Taylor told him she was the victim of emotional and physical domestic abuse, she was stressed because her family already did not support her decision to have the couple's first child, and the couple was in a difficult financial situation. The expert explained these things (and others) were consistent with a finding of Transient Peripartum Psychosis.

The State argued the only logical inference from the evidence was that Taylor intended to kill the child. The State believed this was the most obvious explanation for placing the newborn in a trash bag and dumpster rather than dropping the baby at a hospital or fire station, and this was also the best way to understand Taylor's hiding the pregnancy from her family and not seeking prenatal care. The State believed Taylor's theory of psychosis was refuted by Taylor's months-long decision to conceal her pregnancy, by Taylor's cover-up of the birth, and by the fact that Taylor resumed normal daily activities immediately following the birth.

The case was tried in February 2018. This was shortly after our supreme court's October 2017 decision in *State v. King*, holding attempted murder is a specific intent crime. 422 S.C. 47, 63–64, 810 S.E.2d 18, 26–27 (2017). *King* was a central feature of the discussions concerning the jury charges.

The jury convicted Taylor of attempted murder, and the trial court sentenced her to twenty-five years' imprisonment. This appeal followed.

ISSUE

Whether the trial court erred in instructing the jury on inferred malice.

STANDARD OF REVIEW

In criminal cases, the appellate court sits solely to review errors of law. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "In reviewing jury charges for

error, this Court must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

LAW/ANALYSIS

Attempted murder was codified as part of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, which abolished several common law assault and battery offenses including assault and battery with intent to kill, also known as ABWIK. *See* Act No. 273, 2010 S.C. Acts 1947–49. It replaced these with new, codified offenses including the crime of attempted murder. *Id*. at 1948. In pertinent part, the attempted murder statute provides that "[a] person who, with intent to kill, attempts to kill another person with malice aforethought, either express or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29 (2015).

King held the attempted murder statute "[wa]s not [simply] a codification of the offense of ABWIK[, instead] the General Assembly expressly repealed the offense of ABWIK and purposefully created the new offense of attempted murder, which includes a 'specific intent to kill' as an element" that was not required for ABWIK. 422 S.C. at 63–64, 810 S.E.2d 18, 26–27.

Taylor's argument about implied or inferred malice is drawn from a footnote in *King*. In footnote five, *King* suggested the General Assembly re-evaluate the statute's language because "the inclusion of the word 'implied' in section 16-3-29 is arguably inconsistent with a specific-intent crime." *Id*. at 64 n.5, 810 S.E.2d at 27 n.5. Taylor argues this language makes implied malice out-of-bounds. We disagree.

When our supreme court spoke of implied malice in *King*, it was speaking of malice implied by operation of law, not of the jury's ability to infer malice based on its view of certain facts. *King* cited *Keys v. State*, 766 P.2d 270 (Nev. 1988), for its holding that specific intent to kill is an essential element of attempted murder. *King*, 422 S.C. at 56–57, 810 S.E.2d at 23. *Keys* distinguished attempted murder from murder by defining "express malice" as a specific intent to kill and said "express malice" was "malice in fact." 766 P.2d at 272. "Implied malice," on the other hand, consisted of a "general malignant recklessness" rather than the specific intent to kill. *Id*. at 273. As *Keys* and *King* explain, malignant recklessness is a sufficient criminal intent for murder but not for attempted murder because the attempted murder statute explicitly requires "intent to kill." Recklessness is not enough.

If "implied malice" is used to describe mere "malignant recklessness," *King* plainly holds implied malice is inconsistent with and falls short of the bar for attempted

murder. Even so (and critically), nothing in *Keys*, *King*, or any other case prevents a jury from being charged that it can look at a defendant's actions and imply or infer from those actions that the defendant "in fact" had the specific intent to kill.

Here, the jury charges repeatedly emphasized that the jury could not convict Taylor without finding she specifically intended to kill the child. The judge gave the jury a general charge on "criminal intent." Then, the judge charged the language of the attempted murder statute. Next, the judge charged the jury on malice, but excluded any language about negligence or recklessness. Finally, the judge charged that attempted murder was a specific intent crime.

The judge charged the jury that malice could be expressed or inferred—but that those terms referred to the whether malice was proven by direct evidence or by the jury's inferences from other facts. The judge charged the jury that malice means hatred or ill will and that it could be inferred from conduct that shows a total disregard for human life. He also charged that specific intent to kill can be shown by acts and conduct from which someone would naturally and reasonably infer intent and that specific intent could be inferred from voluntary and willful actions that naturally tend to destroy another's life.

Abundant authorities support using inferences to find specific intent. *See, e.g., State v. Raglin*, 699 N.E.2d 482, 488 (Ohio 1998); *Williams v. Maggio*, 695 F.2d 119, 122 (5th Cir. 1983); 4 *Wharton's Criminal Law* § 695 (15th ed.); 41 C.J.S. *Homicide* § 283. Here, the judge charged malice in a way that complied with *King*, using language from both *King* and *Keys*.

To be fair, the first section of the general malice charge included language common in malice charges that malice includes intentionally doing a wrongful act without just cause or excuse, with an intent to inflict an injury, or "under circumstances that the law will infer an evil intent." Even so, there were no charges regarding the circumstances under which *the law* may imply malice. This was the only reference to malice implied by operation of law. The judge gave the jury multiple instructions that it could not find Taylor guilty unless it found she intended to kill the child. Thus, when taken in its entirety, we believe the charge was correct. *See Simmons*, 384 S.C. at 178, 682 S.E.2d at 36 ("In reviewing jury charges for error, this Court must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial."); *see also State v. Burkhart*, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002) ("A jury charge is correct if it contains the correct definition of the law when read as a whole.").

Taylor contends *State v. Shands* supports her argument that implied malice instructions do not belong in an attempted murder case. 424 S.C. 106, 817 S.E.2d 524 (Ct. App. 2018). There, the relevant issue was whether the trial court erred in instructing the jury that malice could be inferred from the use of a deadly weapon. *Id*. at 128, 817 S.E.2d at 535–36. This court wrote "malice can never be implied in an attempted murder case," and that attempted murder requires the State to prove the defendant "acted with express malice *and* the specific intent to kill." *Id*. at 130–31, 817 S.E.2d at 536–37.

As already noted, we understand "implied malice" as prohibited in *King* to mean malice implied by the law, not malice found by the jury based on the circumstances. Again, neither *King* nor any other case holds an intent to kill cannot be shown through circumstantial evidence, as Taylor seems to insist. *Shands* turned on this court's analysis of *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), which has since been overruled by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) (holding the charge that malice may be inferred from use of a deadly weapon is improper in all instances). Critically, no deadly weapon instruction was given here.

Finally, Taylor argues the court should not have allowed the solicitor to suggest during closing argument that the jury could find malice based upon Taylor's attempts to cover up the crime. The solicitor told the jury it could infer malice from Taylor's effort to cover up a crime and her intentional denials to police in the face of the evidence against her. Nothing suggests this argument was improper. Indeed, our supreme court has emphasized that parties are free to argue the existence or nonexistence of malice based on the evidence. *Burdette*, 427 S.C. at 503, 832 S.E.2d at 582–83.

AFFIRMED.[1]

LOCKEMY, C.J., and HUFF, J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000341

THE STATE ……. RESPONDENT.

V.

SHELBY HARPER TAYLOR …… APPELLANT.

PETITION FOR REHEARING

Appellant, Shelby Harper Taylor, requests rehearing pursuant to Rule 221(a), SCACR, regarding this Court's Opinion filed September 1, 2021.

Months before Taylor's trial, the South Carolina Supreme Court held in *State v. King*, that "a specific intent to kill is an element of attempted murder." 422 S.C. 47, 56, 810 S.E.2d 18, 22 (2017). The Court expressly rejected the notion that "a general intent will suffice" for a conviction of attempted murder. *Id*. at 55, 810 S.E.2d at 22; *see also*, *id*. at 56, 810 S.E.2d at 23 ("'prosecutions are generally not maintainable for attempts to commit general intent crimes, such as criminal recklessness'"); *id*. at 57, 810 S.E.2d at 23 ("'one cannot *attempt* to kill another with implied malice'") (citations omitted).

Despite defense counsel's objections based on *King*, the jury instructions in this case failed to properly convey that a specific intent to kill was required to convict Taylor of attempting to kill

her newborn daughter.[1] The panel errs in its claim that the jurors were "repeatedly" told that they "could not convict Taylor without finding she specifically intended to kill the child." Panel Opinion at 5. On the contrary, the jury instructions did not clearly explain that a specific intent to kill the baby was required. Instead, the charge conveyed, in relevant part:

- "[I]n order to establish criminal liability, criminal intent is required. For example, these are examples: the mental state required to be proven by the State for a particular crime could be purpose, intent, knowledge, recklessness, or criminal negligence." R. p.509, ll.11-15.

- "[T]he law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element that requires intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case." R. p.509, ll.21-24.

- "So, Ms. Taylor is charged with attempted murder. So, what does the State have to prove? In order to prove this crime, the State must prove that the defendant attempted to kill another person with malice aforethought either express or implied." R. p.510, ll.8-12.

- "[M]alice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent." R. p.510, ll.13-17.

- "Malice may be inferred from conduct that shows a total disregard for human life." R. p.511, ll.6-7.

- "Attempted murder – excuse me, a specific intent to kill is an element of attempted murder. Attempted murder is the performance of an act or acts which tend but fail to kill a human being when such acts are done with the deliberate intention unlawfully to kill. Intent may be shown by acts and conduct of the defendant from which you may naturally and reasonably infer intent. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another human's life." R. p.511, ll.13-22.

[1] As set forth in Appellant's Final Brief and Reply, Taylor gave birth in the bathroom of the one-bedroom apartment she shared with her husband and sixteen-month-old daughter. The newborn was recovered from a dumpster outside the apartment complex shortly thereafter and suffered no injuries.

The trial court mentioned a specific intent to kill only once in the entire jury charge, without further elaboration (R. p.511, ll.13-17), but consistently and repeatedly emphasized that the State could establish the element of intent by inference – i.e., malice is the intentional doing of a wrongful act "under circumstances that the law will infer an evil intent," R. p.510, l.16-17; "[m]alice may be inferred from conduct that shows a total disregard for human life," R. p.511, ll.6-7; intent may be inferred when "the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another human's life." R. p.511 ll.19-22. These are general intent instructions. They are not consistent with the Supreme Court's holding in *King* that attempted murder requires a specific intent to kill – a mental state that the Court acknowledged was "a higher level of *mens rea* than that of the completed crime." 422 S.C. at 56, 810 S.E.2d at 22.

Based on a fair reading of the charge as a whole, a reasonable juror could have convicted Taylor of attempted murder while simultaneously believing her mental state to be something less than a specific intent to kill her baby. According to the instructions, a mental state of recklessness, criminal negligence, or a disregard for human life would have been sufficient to support the guilty verdict. A defense expert witness testified that Taylor suffered from a medical condition that left her "disoriented," "illogical," "irrational," "overwhelmed," and "[in] chaos and confusion on a cognitive level," during the events of her unaccompanied delivery. R. p.400, ll.16-20. The jurors could easily have believed this testimony and nevertheless viewed the element of intent as satisfied. Indeed, there was little incentive for the jurors to consider whether Taylor possessed a specific intent at all. Based on the trial court's instructions, the jurors could have determined that the State had met its burden simply because Taylor "willfully" committed the act of placing the newborn in a dumpster. Thus, the jury instructions improperly reduced the State's burden of proof, undermined Taylor's defense by reducing its relevancy, and created the potential for confusion.

The panel also errs in its assertion that *King* and this Court's subsequent decision in *State v. Shands*, 424 S.C. 106, 817 S.E.2d (Ct. App. 2018), addressed only the narrow issue of intent implied "by operation of law" rather than "the jury's ability to infer malice based on its view of certain facts." Panel Opinion at 4. Whatever the distinction between these two categories may be in the panel's view, neither *King* nor *Shands* said anything about it. Indeed, the charge in *King* involved some of the same language at issue here – "[m]alice may be inferred from conduct showing a total disregard for human life." 422 S.C. at 54, 810 S.E.2d at 21. Likewise, this Court's discussion in *Shands* was not narrowly focused on the *Belcher*[2] instruction issue, as the panel suggests. Specifically, this Court stated:

> In light of our supreme court's discussion in *King*, we find the State needed to prove Shands acted with express malice *and* the specific intent to kill in order to be found guilty of attempted murder. Therefore, we question whether an implied malice instruction is proper in any attempted murder trial.

424 S.C. at 131, 817 S.E.2d at 537 (emphasis in original).

The panel's opinion conflicts with the decisions of this Court and the South Carolina Supreme Court, and rehearing should be granted.

Respectfully Submitted,

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September 14, 2021

[2] *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), *holding extended by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000341

THE STATE ……. RESPONDENT.

V.

SHELBY HARPER TAYLOR …… APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Petition for Rehearing was served by electronic mail to mfarthing@scag.gov, this 14th day of September, 2021, upon the following:

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s/Emily C. Paavola

The South Carolina Court of Appeals

The State, Respondent,

v.

Shelby Harper Taylor, Appellant.

Appellate Case No. 2018-000341

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James E. Lockemy C.J.

Thomas C. Young J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
John H. Blume, III, Esquire
Emily C. Paavola, Esquire
Mark Reynolds Farthing, Esquire
Jimmy A. Richardson, II, Esquire
The Honorable Robert E. Hood

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